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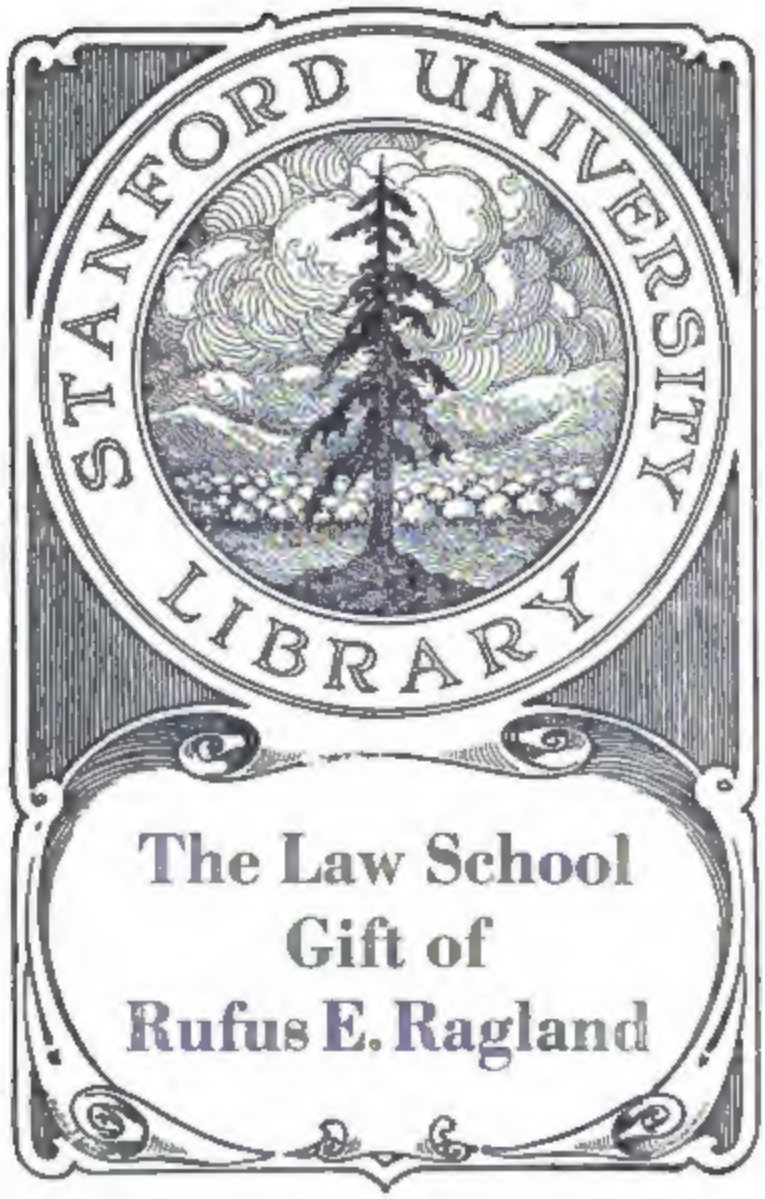
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ENCYCLOPÆDIA

OF

Business Law and Forms

For Business Men, Farmers, Mechanics, Landlords, Tenants, Working Men, Capitalists, and all who have Business Transactions of any kind, as well as for LAWYERS AND CONVEYANCERS.

REPRESENTING THE STUDY AND DECISIONS OF MOST ABLE LAWYERS AND SUPREME JUDICIAL AUTHORITIES.

FOR

ALL THE STATES AND CANADA.

WITH NOTES AND AUTHORITIES.

BY

HON. HUGH M. SPALDING,

Author of Spalding's Treatise upon the Law of Personal Property, Practice, etc., for the State of Ohio;—Treatise for the State of Indiana;—Treatise for the State of Kentucky;—Treatise for the State of Kansas, etc.;—Civil Service of the State of Pennsylvania;—Judicial and Public Records;—Legal Forms, etc., etc., etc.

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STANFORD UNIVERSITY

PREFACE.

No species of knowledge is more in demand, or confers more real and constant usefulness than that of the law and its practical application in both the private and public affairs of each individual:—and no species of knowledge is more difficult to obtain at the desired moment. There are times and circumstances when the necessary legal counsel cannot be had; and times and circumstances which render it advisable to be one's own legal counsellor; there are matters of minor importance which may not justify or require the expense or formality of a legal consultation; there are private affairs which it may be neither prudent nor desirable to disclose, but which require some legal light for satisfactory solution or adjustment; there are business difficulties, enterprises, ventures, controverted and vexed questions, which constantly demand some knowledge of the law to successfully master, and which are otherwise fruitful of annoyance, distress and doubt. These and many other examples demonstrate the *utility* of a work of this character, a book which enables one to combine practical law with personal knowledge and experience. The primary *necessity* of convenient reference to legal subjects is demonstrated by the well-known and universal rule of law that "ignorance of law is no excuse;" every one is presumed to know the law; hence the defence of ignorance avails nothing: one must suffer for every infraction,—and know better afterwards. In this work will be found a very complete law library, compiled with much care, and containing the essence of the various subjects of the law compressed into a comprehensive and convenient form, with its value greatly enhanced by footnotes to leading authorities, to which, when necessary, easy reference in any law library may be had. Forms are given in great profusion and variety; they have been selected and framed with the utmost care and simplicity, and adapted to the practical and common necessities of actual, every-day use.

H. M. S.

AN ENCYCLOPÆDIA OF LAW AND FORMS.

ABANDONMENT. See DIVORCE; INSURANCE; MARRIAGE; PARENT AND CHILD; RIGHTS; WIFE.

ABANDONMENT is confined to an individual's property and legal and equitable rights;[a] it is a relinquishment on the part of the owner, without regard to its future possession, and with an intention to abandon.[b]

When a person, considering an article worthless, casts it away, with an intention of abandoning it, he thereby divests himself of his title in it, and has no more cause to complain, if it be taken by another, than if he had never owned it, unless indeed he reclaims it without violating the rights of others, or before they take it.[c]

Mere nonuser does not necessarily or usually constitute abandonment;[d] there must be an *intention* to abandon;[e] and such intention is to be determined as a question of fact from all the circumstances attending the owner's acts.[f]

Abandonment combined with a sufficiently long possession by another party destroys the original owner's rights.[g]

Where an abandonment is acted upon in good faith by another, it destroys the owner's rights.

Legal rights once vested must be divested according to law. Equitable rights may be abandoned at pleasure.

Abatement. See CONTRACTS; DUTIES; NUISANCE; PLEADING; PRACTICE; TAXES.
Abator. See NUISANCE.
Abbreviation. See AUTHORITIES.
Abduction. See CRIMINAL LAW.
Abet. See CRIMINAL LAW.
Abeyance. See ADVISEMENT; CONTINGENCY.
Abortion. See MEDICAL LAW.
Abridgment. See COPYRIGHT.
Abrogations. See STATUTE LAW.
Absconding. See CONCEALMENT; DEBTORS; PROCESS.
Absence. See CONCEALMENT; DEATH; DOMICIL.
Abstract of Title. See CONVEYANCES.
Abuse. See CRIMINAL LAW.

a-2 Wash. 106; 5 W. & S. 188; 25 Penn. St. 259. b-14 M. & W. 789; 9 Met. (Mass.) 789; 36 Cal. 333. c 11 Ill. 588. d-10 Pick 310; 23 Id. 141; 3 Strobh. 224; 5 Rich. 405; 16 Barb. 150; 24 Id. 44; Tudor L. Cas. 129, 130; 2 Washb. R. Prop. 83-85. e-14 M. & W. 789; 9 Met. (Mass.) 395, 789; 36 Cal. 333. f-4 Yeates, 330,

ACCEPTANCE. See BILLS OF EXCHANGE AND PROMISSORY NOTES, ETC.; CONTRACTS; INSURANCE; RENT; STATUTE OF FRAUDS; TENDER.

ACCEPTANCE is the receipt with an intention to retain it of a thing offered by another.[h] An agreeing to an act or contract of another by some act which binds the person in law.

Where a landlord takes rent reserved on a lease made by his predecessor, it is an *acceptance* of the terms of the lease and binds the party.

As distinguished from assent, acceptance denotes the receipt of something in compliance with and satisfactory fulfilment of an undertaking to which assent had been previously given.

A receipt with an intention to retain is indispensable to every acceptance, though a manual taking is not necessary. The intention to retain may exist at the time of receipt or afterwards; and may be indicated by acts, words or otherwise, and will in many instances be implied by circumstances.

Access. See MEDICAL LAW.
Accessary. See CRIMINAL LAW.
Accessions. See PROPERTY, ETC.
Accessory. See CRIMINAL LAW.
Accessory Contract. See CONTRACTS.

ACCIDENT. See PRACTICE; REMEDIES.

AN ACCIDENT is that which takes place without one's expectation or foresight; an event which proceeds from an unknown cause; or is an unusual effect from a known cause, and therefore not expected. It is the happening of an event without the concurrence of the will of the person by whose agency it was caused, as the burning of a house from kindling a fire for domestic purposes; or the happening of an event without any human agency, as the burning of a house by lightning.[i] It is such an unforeseen act, event, loss, misfortune or

534; 5 W. & S. 284; 9 Penn. St. 273; 30 Cal. 630; 36 Id. 333; Necessity of intention under Spanish land cases, 12 Mo. 238. g-6 Cal. 510; 11 Ill. 588; 10 Watts, 192; 2 Met. (Mass.) 32; 6 Id. 337; 31 Me. 381; 2 Washb. R. Prop. h-2 Parsons' Contr. 221. i-Fonbl. Eq. 374, 375, a.

omission as is not the result of any misconduct or negligence.[j]

An accident which arises from a cause which operates without the aid or interference of man is called an act of God.[k] Accidents which are produced by physical causes, such as loss by lightning, and storms, perils of the sea, inundations, earthquakes, sudden death, illness, and the like, are called fortuitous events.[l] That which happens by a cause which cannot be resisted,[m] which neither of the parties has occasioned or can prevent,[n] and unforseen events which cannot be prevented,[o] are alike called fortuitous events and inevitable accidents.[p] Unforeseen circumstances which cannot be guarded against by any human agency, and in which man takes no part, are called casualties or inevitable accidents.[q] Interposition of human agency, as the inroad of a hostile army which from its nature and power is absolutely uncontrollable, is denominated irresistible force.[r]

Generally, no one is responsible for that which is the result of superior force or inevitable accident; but a man may be so where he has stipulated that he would, and also where he has been guilty of fraud or deceit;[s] for no man may take advantage of his own wrong.

Where in the performance of a lawful act, without any intention to do harm, and after using due precaution to prevent danger, a person unfortunately kills another, it is an accident or misadventure for which he cannot be held amenable. Examples of this are: When death ensues: 1. From innocent recreations. 2. From moderate and lawful correction in the domestic relation. 3. From acts lawful and innocent in themselves, done with proper and ordinary caution.[t] An act upon which death ensues must have been neither bad in itself, wrong in its nature, nor a prohibited evil or offence.

Accommodation Paper. See Bills of Exchange and Promissory Notes, etc.

Accomplice. See Criminal Law.

Accord. See Contracts; Debtors.

Accouchment. See Medical Law

ACCOUNTS. See Evidence.

ACCOUNTS. An Account is a registry of debts and credits, or charges; an entry in a book or on paper of things bought or sold, of payments, services, etc., including the names of parties to the transaction, date and price or value of the article. A detailed statement of the mutual demands in the nature of debt and credit between parties, arising out of contracts or some fiduciary relation.[b]

A bank account is the statement of the amount deposited and drawn, which is kept in duplicate, one in the depositor's bank book and the other in the books of the bank.

An open account is one in which some item of the contract is not settled by the parties, whether the account consist of one item or many.[c] Thus, where five loads of corn were sold at the same time and delivered, and there was no stipulation as to the price, it is an open account.[d] So, also, when there are running or current dealings between the parties which are kept unclosed with the expectation of fresher transactions.[e] If the plaintiff brings two suits on an open account, it is not improper to admit on the trial of the second action, testimony of payments that were in evidence on the first trial; but the defendant cannot be twice allowed for the same payments.[f]

An account stated is an agreed balance of accounts. An account which has been examined and accepted by the parties.[g]

An original entry of account is the first entry made by a merchant, tradesman, or other person in his account books, charging another with merchandise, materials, work or labor, or cash, on a contract made between them.

Entries in books of account may be admitted in evidence, when it is made to appear by the oath of the person who made the entries, that such entries are correct, and were made at or near the time of the transaction to which they relate, or upon proof of the handwriting of the person who made the entries, in case of his death or absence from the country.[j] The books must have been kept for the purpose, and the entries must have been made contemporaneous with the delivery of the goods, and by the person whose duty it was, for the time being, to make them.[j]

The charges of an account book should be in such a state that they may be presumed to have been the daily minutes of the business or transactions of the party,[k] and such book may be considered as the original, though transcribed from a slate; the slate containing merely memoranda, not intended to be permanent.[l] So, also, from memoranda made by a servant.[m] The form of keeping the book is not material,[n] but it must be a registry of the business actually done,[o] and the charges therein must be specific and particular,[p] and made at or near the time of the transaction to which they relate.[q] If the party keeps a ledger, or the account book has marks, showing that the items have been transferred to a ledger, the ledger must also be produced, that the other party may have the advantage of any items entered therein to his credit.[r] If an account book appear to be manifestly erased and altered in a material point, the charges will not be admitted, unless the alteration is satisfactorily explained.[s]

j-Francis' Max. 87; Story Eq. Jur. § 78. k-Parsons' Contr. 635; 1 T. R. 27. l-Story Bailm. 25; Lois des Bât. Pt. 2, ch. 2, § 1. m-La Code, Art. 2522, No. 7. n-Lois des Bât. Pt. 2, ch. 2. o-Dict. Juris. p-See 19 Miss. 572. q-Story Bailm. § 240; 1 Parsons' Contr. 543–547. r-Story Bailm. § 25; Lois des Bât. Pt. 2, ch. 2, § 1. s-2 Kent Comm. 448; Poth; Story Bailm. § 25. t-4 Bl. Comm. 182; 1 East Pl. Cr. 221. b-1 Met. 216; 1 Hempst. 114; 32 Penn St. 202. c-1 Ala. (N. S.) 62. d-Id. e-6 Id. 438. f-6 Kas. 471. g-2 Atk. Ch. 251; 27 Miss. 267. j-Greenl. Ev. §§ 115–118. k-4 Mass. 455. l-13 Mass. 427; 11 Pick. 139; 6 Whart. 189. m-9 Serg. & Rawle, 285. n-13 Mass. 427; 8 Met. 269; 3 Halstead, 68. o-5 Watts, 258; Wright, 219; 4 Yeates, 341. p-1 Nott & M'Cord, 130. q-G. S. 1868, Ch. 80, § 387. r-2 Mass. 569. s-6 Whart. 106.

AN ORIGINAL ENTRY, to be admissible as evidence, must be made in the proper book. In general, the books in which the first entries are made, belonging to a merchant, tradesman, or mechanic, in which are charged goods sold and delivered, or work and labor done, are received in evidence. There are many books which are not evidence. A book made up by transcribing entries made on a slate by a journeyman, the transcript being made on the same evening, or sometimes not until nearly two weeks after the work was done, is not a book of original entries.[l] A book purporting to be a book of original entries, containing an entry of the sale of goods when they were ordered, but before they were delivered, is not a book of original entries.[m] And unconnected scraps of paper, containing, as alleged, original entries of sales by an agent, on account of his principal, and appearing on their face to be irregularly kept, are not to be considered as a book of original entries.[n]

The entry must be made in the course of business, and with the intention of making a charge for goods sold and work done; they ought not to be made after the lapse of one day.[o] A book in which the charges are made when the goods are ordered is not admissible.[p]

The entry must be made in an intelligible manner, and not in figures or hieroglyphics which are understood by the seller only.[q] A charge made in gross as "190 days' work,"[r] or "for medicine and attendance," or "thirteen dollars for medicine and attendance on one of the general's daughters in curing the whooping-cough,"[s] were rejected. An entry of goods without carrying out any prices proves, at most, only a sale; and the jury cannot, without other evidence, fix any price.[t] The charges should be specific, and denote the particular work or service charged as it arises daily, and the quantity, number, weight, or other distinct designation of the materials or articles sold or furnished, and attach the price and value to each item.[u]

The entry must, of course, have been made by a person having authority to make it,[v] and with a view to charge the party.[w]

The proof of the entry must be made by the person who made it. If made by the seller, he is competent to prove it from the necessity of the case, although he has an interest in the matter in dispute.[x] When made by a clerk, it must be proven by him. But in either case, when the person who made the entry is out of the reach of the process of the court, as in the case of death, or absence out of the State or county, the handwriting may be proved by a person acquainted with the handwriting of the person who made the entry.[y]

The books and original entries, when proved by the supplementary oath of the party, is *prima facie* evidence of the sale and delivery of goods, and work and labor done.[z] But they are not evidence of money lent or cash paid,[a] nor of the time a vessel lay at the plaintiff's wharf,[b] nor of the delivery of goods to be sold on commission.[c]

These entries are evidence in suits between third parties,[d] and also in favor of the party himself.[e]

AN ACCOUNT STATED is in the nature of a new promise,[f] and is conclusive as to the liability of the parties, with reference to the transactions included in it,[g] except in cases of fraud or manifest error.[h]

Acceptance may be inferred from circumstances; as where an account is rendered to a merchant and no objection is made, after sufficient time.[i] In general, when a party indebted upon an account receives and retains it beyond such time as is reasonable under the circumstances and according to the usage of the business, for examining and returning it, without communicating any objections, he is considered to acquiesce in its correctness, and he becomes bound by it as an account stated. Signature to the account, or express admission is not necessary.[j] This rule is held applicable to accounts between merchants residing in different countries.[k] Such an account is deemed conclusive between the parties,[l] to the extent agreed upon,[m] unless some fraud, mistake, or plain error is shown,[n] and in such case, generally, the account will not be opened, but liberty to surcharge or falsify will be given.[o] But in cases of gross fraud, or gross mistake, or undue advantage, or imposition made palpable to the court, the court will direct the whole account to be opened and taken anew.[p] Acceptance by the party to be charged must be shown by the one who relies upon the account.[q] The

l-1 Rawle, 435: 4 Id. 408; 2 Watts, 451; 4 Id. 258; 5 Id. 432; 6 Whart. 189; 2 Miles, 268. m-4 Rawle, 404. n-13 Serg. & R. 126; see 2 Whart. 33; 4 M'Cord, 76; 2 Wend. 72: 1 Yeates, 98: 4 Id. 341. o-1 Nott & M'Cord, 130; 4 Id. 77; 4 Serg. & R. 5; 9 Id. 285; 8 Watts, 545. p-4 Rawle, 404; 3 Dev. 449. q-4 Rawle, 404. r-1 Nott & M'Cord, 130. s-2 Const. 476. t-1 South. 370. u-2 Const. 745; 2 Bail. 449; 1 Nott & M'Cord, 130. v-4 Rawle, 404. w-8 Watts, 545. x-5 Conn. 496; 12 Johns. 461; 1 Dall. 239; 4 Kas. 211. y-2 Watts & S. 137. z-1 Yeates, 347; Swift Ev. 84; 3 Vt. 463; 1 M'Cord, 481; 2 Root, 59; 1 Cooke, 38. a-1 Day, 104; 1 Aik. 73, 74; Kirb. 489. b-1 Browne, 257. c-2 Whart. 33. d-8 Wheat. 326; 3 Campb. 305, 377; 2 Perr. & D. 573; 15 Mass. 380; 20 Johns. 168; 7 Wend. 160; 15 Conn. 206; 7 Serg. & R. 116; 16 Id. 89; 2 Harr. & J. 77; 2 Rand. 87; 1 Younge & C. Exch. 53. e-2 Martin (N. S.) 508: 4 Id. 383; 2 Mass. 217; 1 Dall. 239; 2 Bay. 173, 362; 5 Vt. 313; 1 Phill. Ev. 266; Cow. & H. note. f-See 1 Johns. 34. g-3 Jones Eq. 109; 3 Grant Cas. 195. h-1 Esp. 159; 24 Conn. 591; 4 Wis. 219; 5 Fla. 478; 6 Coldw. 56; see 4 Sandf. (N. Y.) 311; 16 Mo. 226; 37 Ill. 512; 6 Conn. 447; 11 Wheat, 237; Addis. 260, 334. i-2 Vern. Ch. 276; 1 Sim. & S. Ch. 333; 3 Johns. Ch. 569; 7 Cranch, 147; M'Cord Ch. 156; 2 Md. Ch. 433. j-7 Cranch. 147; 6 Ala. 518; 13 Cal. 427; 10 Iowa, 238; 18 La. An. 124; 2 Md. Ch. 433; 8 N. J. Eq. 795; 26 Miss. 212; 3 Johns. Ch. 569, 587; 1 Edw. Ch. 417; 2 Id. 1; 11 N. Y. 170; 2 Barb. 586; 10 Id. 213; 12 Id. 288; 45 Id. 490; 1 M'Cord, 156; 15 Vt. 105. k-7 Cranch. 147 25 Miss. 267; 3 Johns. Ch. 569. l-2 Brown Ch. 62, 310; 2 Ves. Ch. 566, 837; 1 Swanst. Ch. 460; 6 Madd. Ch. 146; 20 Ala. (N. S.) 747; 3 Johns. Ch. 587; 1 Gill. 350; 3 Jones Ch. 109; see 2 Edw. Ch. 1; 10 Barb. 213; 4 Sandf. 311; 3 W. & S. 109; 31 N. Y. 498; 10 Humph. 238; 18 N. Y. 285; 12 La. An. 20; 18 Id. 356; 50 Me. 102; 2 Bosw. 188; 13 Ohio St. 168. m-1 Hopk. 239; 4 Mich. 336. n-1 Parsons Contr. 174; 1 Johns. Ch. 550; 1 M'Cord, 156. o-2 Atk. Ch. 119; 9 Ves. Ch. 265; 1 Schoales & L. Eq. 192; 7 Gill. 119; 1 Md. Ch. 306. p-6 Coldw. 56. q-10 Humph. (Tenn.) 238; 12 Ill. 111.

acknowledgment that the sum is due is sufficient,[g] though there be but a single item in the account.[h] Acceptance may also be inferred from retaining the account a sufficient time without making objection,[i] and from other circumstances.[j] The acceptance of the account is an acknowledgment of a debt due for the balance,[k] and it is not necessary to prove the items, but only to prove an existing debt or demand, and the stating of the account.[l]

Any admission of a balance or acknowledgment made by one party to another, that a sum of money is due to the latter, is sufficient *prima facie* evidence to entitle him to recover that sum on an account stated;[m] so where the defendant stated that he would call and settle the amount of the debt sent in,[n] or where he sent money on account, stating he would pay the remainder next week.[o] But a mere qualified acknowledgment is not.[p]

An acceptance of a bill is evidence of an account stated by the acceptor with the holder;[q] at all events it is so in an action at the suit of the drawer,[r] or at the suit of a payee, who is also drawer.[s] A promissory note is evidence as an account stated, in an action by the payee against the maker.[t] An I. O. U. is evidence of an account stated.[u] Where accounts are submitted to an arbiter, not by bond, his award may be given in evidence under an account stated.[v] Stating an account will, in general, amount to an admission of the title of the party to receive the money.[w]

The account must be stated by a competent person, excluding infants and those who are of unsound mind.[x] Husband and wife may join and state an account with a third person.[y] An agent may bind his principal.[z] Proof of an account stated with the plaintiff's agent is sufficient, proving the party to be such agent; so a plaintiff may recover on an account stated by the defendant with the plaintiff's wife, or an account stated by the defendant's wife,[a] if she proved to be the party's agent. Partners may state accounts, and an action lies for the party entitled to the balance.[b]

The subject-matter[c] *of the account* must be proved to have been *money* and *a debt*. A definite ascertained *sum* must be stated to be due.[d] It is sufficient to prove an account stated, without giving evidence of the several items constituting the account,[e] it is not necessary that there should be cross demands between the parties, or that the defendant's admission should relate to more than one item or transaction.[f] Accounting in a particular character admits that character.[g] An account stated does not alter the nature of the original debt.[h]

An account stated is not, in general, conclusive evidence against the party admitting the balance to be against him.[i] He would be allowed to show a gross error or mistake in the account, or any fraud or misrepresentation by the other party, if he could adduce clear evidence of that fact. But where an account is settled, and the party gives a bill for the amount, which bill is not paid, he cannot, on an action brought, impeach the charges in the first account which he has settled.[j] And where parties having cross demands, settle and balance their accounts, though part of the plaintiff's demand could not be recovered in the action, the settlement of accounts will bind the defendant, so that he cannot set up that defence to an action for the balance.[k]

The material allegations in an action upon an account stated are: (1) That plaintiff and defendant came to an accounting together, (2) in such accounting defendant was found indebted to plaintiff, (3) which defendant promised to pay, (4) and has not paid.

ACCOUNT FORMS.

Accounts—Administrator's.

See title AFFIDAVITS, post.
See ACCOUNT—EXECUTOR'S, below.

The account of A. D. and A. R., administrators of all and singular the goods and chattels, rights and credits which were of D. D., late of ——, in the county of ——, merchant, deceased.

Date.	The said accountants charge themselves with all and singular the goods and chattels, rights and credits which were of said dec'd, agreeably to an invent'y thereof filed in the — office in — amounting to			Date.	Voucher.	The said accountants credit themselves for the following disbursements made out of and on acc't of the estate aforesaid, viz		
		8325	50		No. 1	Fees for letters of administration	5	00
	To divid'd received on — stock —	760	00		2	Funeral ex.	72	00
					3	Last sickness, . .	207	50
					4	Attendance last sickness	56	30
	To rent of T. T. for —	50	00			Decrease in sale of goods, etc.	2073	56
						Etc., etc.		
	To bal.					By bal.		

[g]-2 Mod. 44; 2 Term. 480. [h]-13 East. 249; 5 Maule & S. 65; 1 Show. 215. [i]-7 Cranch, 147: 3 Watts. & S. 109; 10 Barb. 213; 1 Sandf. 311; see 22 Penn. St. 454. [j]-1 Gill. 234. [k]-11 Eng. L. & Eq. 421. [l]-16 Ala. (N. S.) 742. [m]-2 Mod. 44; 1 T. R. 42; 1 Esp. 159; 6 Id. 24. [n]-3 Stark. 10. [o]-10 East. 104. [p]-1 R. & M. 239; 4 B. & C. 235; 6 D. & R. 306, S. C. [q]-1 H. Bl. 239; 3 East. 169; 3 B. & P. 559; 1 East. 98. [r]-5 M. & S. 65. [s]-5 B. & A. 245; 5 B. C. 360. [t]-2 Str. 719; Chitt. Bill, 366. [u]-5 M. & S. 65. [v]-1 Esp. 194; 1 Chitt. Pl. 308. [w]-4 Moore, 73. [x]-1 T. R. 40. [y]-2 T. R. 483; 16 Eng. L. & Eq. 290. [z]-3 Johns. Ch. 569.

[a]-B. N. P. 129. [b]-4 Dall. 434; 1 Wash. C. C. 435; 16 Vt. 169. [c]-5 Moore, 114, 116. [d]-19 Serg. & R. 241. [e]-1 T. R. 42; 8 Taunt. 688. [f]-13 East. 249; 5 M. & S. 65. [g]-10 East. 104. [h]-Alleyn, 72, 73. [i]-1 T R. 42; see 2 Edw. Ch. 293; 6 Ired. Eq. 197. As to effect of stipulation by the words "errors excepted" or otherwise, reserving leave to interpose objections in future to an account; see 9 Cal. 353; Hopk. Ch. 239; 6 Harr. & J. 43. [j]-1 Esp. 159; 1 Stark, 151; 3 Id. 51; Chitty Bills, 72, see note *o*, and cases noted for examination. [k]-6 Esp. 24; 12 Mo. 517, Ch. C. 199; see reference in preceding note.

Final (*or* partial) account of A. R., administrator of the estate of D. D., of ——, deceased.

Date.	Said administrator charges himself with the amt. of the inven'ry and appraisem't on file, . .	5731	50	Date.	Voucher.	Said administrator claims credit as follows:		
					No. 1	Diff'ce bet. sale bill and inven'ry and appraisem't	1231	70
	Shares of stock as follows (*describing them.*)				2	Desperate claims reported, . .	730	60
	Promissory notes as follows (*describing them.*)					Etc., etc.		
	Cash.							
	Etc., etc.							
	To bal.					By bal.		

A. R., administrator of the estate of D. D., deceased, in account current for partial (*or* final settlement).

Date.	Accountant charges himself as follows:	$	c	Date.	V'cher	Accountant claims credit as follows:	$	c
	To bal.					By bal.		

Accounts—Assignee's.

See title AFFIDAVITS, post.

The account of A. A., assignee of I. T., merchant, of ——, by deed of voluntary assignment, dated the —— day of ——.

Date.	The said assig'ee ch'rgs himself with all and singular the assigned est'te, real, person'l and mixed, of said assignor, I. T., according to an inventory and appraisement thereof filed in the — office on the — day of —, amounting to the sum of —.	$	c	Date.	V'cher	The said assig'ee claims credit and allowance for the following payments, etc., viz.	$	c
					No. 1			
	Said ass'g'ee further ch'gs himself as follows, etc.							
	To bal.					By bal.		

Account of A. A., assignee of I. T., insolvent.

Date.	Said assig'ee ch'rgs himself as follows:	$	c	Date.	V'cher	Said assig'ee claims credit as follows, viz.:	$	c
	Amount of inven'ry and appraisem'nt made the — day of —.				No. 1			
	To bal.					By bal.		

In the matter of the assignment of I. T., merchant. } **In the —— court.**

Account of A. A., assignee of said insolvent.

Date.	Said assig'ee ch'rgs himself as follows, to-wit, etc.	$	c	Date.	V'cher	Said assig'ee claims credit as follows, viz., etc.	$	c

Accounts—Guardian's.

See title AFFIDAVITS, post.

The account for settlement with the court should be a true transcript of the books kept by the guardian. It should clearly show the debits and credits of the guardian, and should clearly refer by number or otherwise to the vouchers produced for each item, and be so complete that any person, without explanation, can understand the precise condition of the account.

G. N., guardian of I. D., one of the children and heirs of D. D., of ——, deceased, in account with the estate of said D. D.

Date.	Said guardian charges hims'f as follows, viz.:	$	c	Date.	No. of V'cher	Said guardian credits himself for the following sums, paid on account of his said ward, as per vouchers on file, viz.:	$	c
	Amount received from E. A., executor (*or* administrator) of said D. D., being the proportion of personal estate (*or otherwise*) due the said I. D., as one of the heirs of said D. D., . .	1200	00		1	Paid C. C., clerk's fees,	7	00
					2	Paid A. Y., at'ney's fees,	50	00
					3	Paid B. G., for 6 months' b'rd for ward	96	00
					4	Paid T. N., for 6 months' tuition, etc.,	18	00
	Cash from R. R. for one year's rent of —, etc., etc.					Etc., etc.		
	Etc., etc.							
	Total,					Total,		

The guardian should add to the credits the amount that the court allows him as compensation.

G. N., guardian of the person and estate of I. D., minor heir of D. D., deceased, account of receipts and expenditures.

Date.	Said guardian credits said estate with —.	$	c	Date.	No. of V'cher	Said guardian charges said estate with the following payments on vou'ers filed.	$	c
	Etc., etc.,					Etc., etc.		
	To bal.					By bal.		

G. N., guardian, in account with I. D., his ward.

Cr. Dr.

Date.		$	c	Date.	No. of V'cher		$	c
	To amount received of E. A., administrator of ward's father, . .	1076	39			By costs and expenses of guardianship as per schedule A, hereunto attached,	37	45
	To amount of note of P N., to ward, secured by mortgage,	8930	00			By amount paid for the maintenance and tuition of ward, repairs on real estate, taxes, etc , as per schedule B, hereunto annexed, .	910	11
	To rent received of T T., for, etc	750	00			By balance on hand, etc.		
	Etc., etc.							

Accounts—Executor's.

See title AFFIDAVITS, post

The first and partial (*or* final) account of E. X., executor of the last will and testament of D. D., of ——, in the county of ——, merchant, deceased.

Date.		$	c	Date.	No. of V'cher		$	c
	The said accountants charge themselves with all and singular the goods and chattels, rights and cr'dits which were of the said dec'd, agreeably to an inventory filed in the — office, etc amounting to	3500	20		5	The said accountants credit themselves for the following disbursements made out of the estate aforesaid, viz By cash pd for probate of will, etc., etc .	5	00
	To an increase on the sale of goods, etc., . .	60	30		7	By amount of goods bequthed widow, etc., etc.,	1750	00
	Etc., etc.							
	To bal.					By bal.		

The second and final (*or* 3d, 4th, etc., final, partial, *or* supplementary) account of E. X., T. S., executors of the last will and testament of D. D., of ——, farmer, deceased.

Date.		$	c	Date.	No. of V'cher		$	c
	The said accountants charge themselves as follows, viz					The said accountants claim credit and allow'ce for the following payments, etc , viz		
	The amt of personal est'e remaining in their hands at the close of the first partial (*or other* account filed and audited (*or* allowed on the — day of —, .	1673	50			Etc , etc.		
	Balance of cash on hand at the close of the first (*or other* account,	210	00					
	The said accountants further ch'ge themselves with the following sums received in cash since the filing of the first (*or other*) acc't, viz.:							
	Etc., etc							
	To bal					By bal.		

The final (*or other*) account of E. X., executor of the last will and testament of D. D., of ——, deceased.

Date.		$	c	Date.	No. of V'cher		$	c
	Said executor charges himself with the amount of the inventory and appraisement as filed in the office of the —, etc.,					Said executor claims credit for the follw'g payments, ch'rgs and disb'rsements made on account of said estate, viz.'		
	$7,500					By cash paid, etc.		
	Less interest in special partnership, with — not rec'd, $3,000	4500	00					
	To cash, 6 mos. interest on $10,000 at 6 per ct. loan of —, etc., due —, $600							
	Less State tax, $12 .	588	00					
	Etc., etc.							

Final (*or* Partial) account of E. X., executor of the last will and testament of D. D., of ——, deceased.

Date.		$	c	Date			$	c
	Accountant charges himself as follows:				V'cher	And acc'nt-ant claims credit for the follw'g payments made on behalf of said estate.		
	Amount of sale bill, .					Paid — —	No. 1	
						Paid by balance, etc.	" 2	
	To balance							

Statements of Account.

In Detail, for Collection, etc

See title AFFIDAVITS, post.

Mr. A. B., of ——. Bought of C. D., of ——.

Dates.	Items and description of things purchased.	Amounts. $	c.

Order, No. ——. New York, ——,

Mr. A. B., No. ——, —— St.

Bought of C. D. & Co., Importers, etc., No. ——, —— St.

Terms cash Purchases not giving satisfaction must be returned at once, when the price will be refunded.

Dates.	Items of goods purchased.	Amounts. $	c.

BOOK-KEEPING[1] is the science of recording business transactions in such a manner that a person may at any time know the exact state of his business affairs.

There are two methods of book-keeping in general use: single and double entry.

SINGLE ENTRY.

In single entry, accounts are kept with *persons only*, and the amounts entered but once in the ledger.

BOOK-KEEPING FORMS.

Day Book—Single or Double Entry.

Daily Entries.

Philadelphia, January 1st, 1876.

Page of Ledger.

Commenced business this day with a cash capital of 1,000 00

" 1

Bought of J. H. Warren, for cash, Mdse. as per invoice, . . 750 00

2

Sold R. Stevens, for cash, Mdse. as per bill, . . . 200 00

3

Sold J. C. Anderson, for cash, Mdse as per bill, . . . 475 00

4

Sold Geo. Brown, on his note at 10 days, Mdse as per bill, . . . 390 00

5

Bought of H. C. Wright, on my note at 10 days, Mdse. as per invoice, . . 862 00

6

Paid for painting counters, shelves, etc , ... 15 00

" 1

Paid for ton of coal for store, 8 50

8

Sold T. C. Mann, for cash, 20 yds. blk. cassimere, @ $3.50 70 00

9

Bought of Saml. Mills, on my note at 30 days,
50 yds. fancy cas., @ $2.00 100 00
65 " blk doe., @ 3.25 211 25 311 25

10

Bought for cash, 10 shares R. R. stk., @ $49.00 490 00

12

Sold Geo. E. Oberer, on his note at 10 days,
10 yds. fancy cass., @ $2 50 25 00
20 yds. blk. doe, @ 4.12½ 82 50 107 50

13

Sold J. C. Abbott, for cash, 2 shares stk , @ $50 100 00

15

Paid for washing windows, counters, etc 7 50

16

Sold O. L. Smith, on his note at 30 days,
20 yds. fancy cass., @ $2 37½ 47 50
100 yds. fancy cass., @ $2.75 275 00
50 yds. blk. doe, @ 4.45 222 50 545 00

17

Rec'd cash for Geo. Brown's note, due this day, . . 390 00

"

Sold T. L. Clark, for cash, 125 yds. fancy cass., @ $3.00 375 00

18

Paid my note, favor of H. C. Wright, due this day, . . 862 00

20

Sold for cash, 5 shares stk-s @ $50½ 252 50

Page of Ledger.

22

Bought for cash, 100 yds. blk. cass , @ $1.75 175 00

23

Sold J C Abbott, on his note at 3 days,
50 yds. blk br'd cloth, @ $5.00 250 00
75 yds. fancy cass., @ 2.25 168 75 418 75

24

Bought of James P. Brown,
50 yds. fancy cass., @ $2.10 105 00
Gave in payment,
2 shares stk., @ $52½

25

Rec'd cash from George E. Oberer, For his note due this day, 107 50

26

Sold for cash, 1 share stk., @ $51½ 51 50

27

Sold J. Baker, for cash, 25 yds. blk. doe, @ $3.00 75 00

29

Rec'd from James C. Abbott, For his note due this day, 418 75

31

Paid rent for January, . . 50 00
do. gas bill " . . . 6 25 56 25

Single Entry.

Ledger Entries—General Forms.

J. H. Warren.

Dr. 1876.			Page of Ledger.		Cr. 1876.			Page of Ledger.	
Jan.	15	To cash,		500 00	Jan.	1	By mdse.		750 00
"	19	" 100 bbls. flour,		500 00	"	17	" "		250 00
Jan.	31	To cash bal.		100 00					100 00
				1100 00					1100 00

R. Stevens.

Dr. 1876.				Cr. 1876.				
Jan.	10	To corn,	70 30	Jan.	16	By cash.	50 00
"	11	" flour.	10 70			" bal'ce,	71 00
"	17	" cloths,	10 50				121 00
"	19	" sundries.	14 50				
			121 00				

J. C. Anderson.

Dr. 1876.				Cr. 1876.				
Jan.	15	To sundries,	73 10	Jan.	30	By mdse.	197 00
"	17	" groceries,	26 90	"	31	" bal'ce,	303 00
"	17	" mdse.,	100 00				500 00
			500 00				

H. C. Wright.

Dr. 1876.				Cr. 1876.				
Jan.	31	To cash,	862 00	Jan.	30	By mdse.	862 00

Single Entry.

Cash Book Entries—General Forms.

Cash.

Dr. 1876.			$	c	Cr. 1876.		$	c
Jan	1	To'sh on hand	637	50		By rent for one quar. pd. L.	65	00
"	2	" A. B.,	27	94		By note to P. E.	127	62
"	3	" C. D. on ac't	45	45		" family exp's	27	81
"	4	" E. F.'s note	127	62		" mds. of M. K.	614	27
"	5	" G. H.,	84	72		" cash on hand	550	85
"	6	" I. K.,	17	90				
"	7	" L. M.,	100	00				
"	31	" sales mdse.	311	18				
			1351	86			1386	86

Feb. 1 | Cash on hand | 550 | 85 |

DOUBLE ENTRY.

IN DOUBLE ENTRY accounts are kept with *both persons and things*, and the amounts entered twice in the ledger—once on the debit and once on the credit side.

[1] Pierce's Guide to Book-Keeping.

Debtor and creditor are correlative terms; the one implies and involves the other. Wherever there is a debit there must be a credit for an equal amount, and wherever there is a creditor there must be a debtor.

The same general results may be shown by either single or double entry, but the latter is superior in this respect;—that it not only shows one's standing with the persons with whom he is dealing, but it also shows the particular kinds of property possessed, and the profit on each kind, thereby furnishing a guide for the management of business.

The principal books used in business are the Day Book, Journal, Ledger, and Cash Book.

The Day Book should contain a concise and comprehensive history of the merchant's business transactions. It being one of the few books allowed in cases of litigation care must be taken in making the records so that an entire stranger, by reading them, would understand fully the nature of the transactions. No erasures are allowable in this book. If a mistake is made, either in words or figures, draw a line through it with red ink, and place the correction above. Do not remove the error; only cancel its effect.

The Journal is a book in which the transactions recorded in the day book are prepared for the ledger, by determining the proper debits and credits and their names. This process is called journalizing, and is, in fact, the science of double entry book-keeping.

The Ledger is the general register in abstract of all the debits and credits, arranged in systematic order under their appropriate heads. From this book the merchant can readily ascertain the state of his business affairs, as well as his relations to persons with whom he is doing business.

The Cash Book, in which is entered all cash received or paid out at the time of occurrence. Be careful to give the date, the account to be debited or credited, the explanations, and the amount of each entry. In actual business it is usually balanced every night, the balance agreeing with the amount of cash on hand, added to the bank balance, if a bank account is kept.

There are four distinct classes of accounts, viz., Individual, Non-speculative Representative, Speculative Representative, and Loss and Gain Accounts.

Individual accounts are those accounts clothed with the authority to maintain a suit at law; they include accounts with persons, banks, and all corporate companies.

Loss and Gain accounts are such as show losses and gains *only*, and do not in themselves represent any value. To this class belong Profit and Loss, Interest, Commission, Insurance, Expenses, etc.

Representative Non-speculative accounts are those that represent assets or liabilities, on which there can be no increase or diminution of value, as Cash, Bills Receivable, Bills Payable, etc.

Representative Speculative accounts are those which represent value, but on which you may gain or lose: as Merchandise, Real Estate, Personal Property, Shipments, Shipment Companies, Merchandise Companies, and all kinds of Corporation stocks.

MERCANTILE DEFINITIONS.

See "Practical Rules," below.

The principal kinds of business paper in general use are Bills of Exchange (Foreign and Inland), Notes, Checks, and Receipts.

An Account Current is a statement of the mercantile transactions of one person with another, drawn out in the form of Dr. and Cr., dealing only with gross sums, and is an exact copy of the personal account found in the ledger.

An Account Sales is a statement of all the details concerning an individual lot of goods. It is distinguished from an account current by these three particulars: 1. The account current is with an individual. The account sales is of a particular lot of goods. 2. The account current involves net sums. The account sales presents items in detail. 3. The account current may involve the proceeds of many account sales, and all transactions with an individual, whether arising from the sale of his goods or not. The account sales is limited to an account of the transactions arising from the sale of one lot of goods.

A Bill of Exchange is a written order or request from one person to another, desiring the latter to pay to some person designated a certain sum of money therein named. When drawn in one country (or State) and payable in another, it is called a foreign bill. When drawn and payable in the same country (or State) it is called an inland bill, or more frequently a draft. It generally is, and to be negotiable, it must be made payable to "order" or "bearer." The person who draws the bill is called the drawer; the person on whom it is drawn is, before acceptance, called the drawee; after acceptance, the acceptor. The person to whom the money is directed to be paid is called the payee.

A Bill of Goods is an account of goods sold, given by the seller to the buyer, containing the quantity and prices of the articles, with a statement of the date and terms of credit.

A Check is an order for money drawn on a bank, or persons doing banking business, having money in their hands, payable at sight.

To Close an Account is to make both sides equal.

An Invoice is an account of goods sent by a merchant to his consignee, containing the particular marks, value, charges, and other particulars of the goods.

A Ledger Account is a space in the ledger set apart for the debits and credits of a particular kind, with the name of that kind written at the top.

Posting is transferring the journal debits and credits to their proper place in the ledger.

A Promissory Note is a promise, in writing, to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named, or to his order, or to the bearer.

A Receipt is a writing acknowledging the receipt of money or any other kind of property.

A Trial Balance is a systematic arrangement of the ledger accounts, with their proper debit and credit totals, made for the purpose of ascertaining if the debits and credits of the ledger are equal or balance.

PRACTICAL RULES.

See "Mercantile Definitions," above.

Bank. The debtor side shows the amount deposited. The credit side the amount drawn out. It usually closes "By balance."

A Bills Payable is a written obligation for the unconditional payment of a certain sum of money, at a certain time to a certain person, his order or bearer, without interest, issued by yourself, and payable by you by virtue of your written promise contained in it. At the time of commencing business, bills payable account will be credited for all notes and acceptances outstanding, and during the business for all notes and acceptances issued by the merchant. It is debited for all redeemed. The difference shows the amount still outstanding. It always closes "To balance."

A Bills Receivable is a written obligation for the unconditional payment of a certain sum of money, at a certain time to a certain person, his order or bearer, without interest, issued by any one but yourself, and payable to you by virtue of the written promise contained in it. Bills receivable account is debited for all notes and drafts on hand at commencing business, and for all received during the business. It is credited for all parted with. The difference is the amount still held. It always closes "By balance."

Cash is a non-speculative representative account. The debtor side shows the amount received; the credit side the amount paid out; and the difference is the amount on hand. It always closes "By balance."

A Consignment is a name given to goods received, to be sold on account of the shipper, and at his risk. It is debited for all charges when received, and credited for all sales. When an account sales is rendered, it is debited for all unposted charges, and for the shipper's net proceeds. The person who receives a consignment is called the consignee.

Expense account is debited with all moneys paid or liabilities incurred, from which no direct return is expected, such as clerk hire, store rent, etc. It is closed "By profit and loss."

Merchandise is a speculative representative account. It is debited for the cost of merchandise on hand at commencing, and for all purchased during business, and credited for all sales; and when the merchandise has all been sold, the difference between the sides will be gain or loss—gain when the production or credit side exceeds the cost, and loss when the cost or debtor side exceeds the production. To find the gain when the merchandise has not all been sold, add the inventory to the sales or credit side, and from this sum substract the cost or debtor side; the remainder will be gain. It is closed "To" *or* "By profit and loss." Should the debtor side be greater than the creditor, the difference between them will be loss.

Real estate, personal property, corporation stocks, and all speculative accounts are treated precisely as merchandise.

Merchandise Company is a name given to goods received to be sold on joint account and risk. When received, it is made debtor for the consignee's interest and all charges. It is credited for all sales, and at the time of rendering an account sales, is debited for all unposted charges and the shipper's net proceeds.

Profit and Loss account is debited with all losses and credited with all gains. The difference is the net gain or loss. It is closed "To" *or* "By stock."

A Shipment is a name given to goods shipped to be sold on account of the shipper, and at his risk. It is made debtor for the cost of the merchandise sent, and all expenses incurred at the time of shipping. It is credited for the net proceeds when an account sales is received. It is closed "To" *or* "By profit and loss," if an account sales has been received, but if not, it is credited for its full cost. The person shipping the goods is called the shipper or consignor.

Shipment Company represents the shipper's interest in goods shipped to be sold on joint account and risk. It is made debtor for his interest at the time of shipping, and creditor for his net proceeds when an account sales is received. It is closed the same as a shipment.

Stock represents the merchant or stockholder, and is made debtor for what the business man owes on commencing business, for all sums withdrawn, and at the time of closing, for all losses that have occurred during the business. It is credited for all sums invested, and for all gains. It is closed "To" *or* "By balance;" "To balance" showing the net capital, and "By balance" the net insolvency.

JOURNALIZING.

Journalizing may be, and often is, done without a journal. One journalizes when on hearing of or reading a business transaction he determines that entries should be made on certain sides of certain ledger accounts. The fundamental law of journalizing is that exactly as much shall be placed on the Dr. side of the ledger as goes on the Cr. side, and exactly as much must be placed on the Cr. side as goes on the Dr. side. And no business transaction can be invented in which *each* of the parties to it does not either receive something, or somebody or thing has cost him value, *and* at the same time each of the parties to the transaction has parted with something, or somebody or thing has produced him value.

Rules.

DEBIT THE THING RECEIVED OR WHATEVER COSTS VALUE.

CREDIT THE THING PARTED WITH OR WHATEVER PRODUCES VALUE.

CLOSING A LEDGER.

Closing the ledger is ending the current condition of all the Ledger accounts. In the process, all the gains and losses that have occurred in the business are gathered together in the "Profit and Loss" account and there compared. The gains are placed upon the credit side; the losses on the debit side. When the credit side is the greater the account is closed "To stock," and shows a net gain. The opposite entry "By profit and loss" is made in the Stock account, and increases the capital. When the debtor side is the greater the account is closed "By stock," and shows a net loss. The opposite entry "To profit and loss" is made in the Stock account, and decreases the capital.

A balance sheet is a systematic arrangement of the resources and liabilities of a business.

Rules.

1. Take a trial balance; if it shows the total of the ledger debits equal to the total of the ledger credits, proceed as directed below.

If the totals referred to above are not equal, re-add each journal column to see if the debits and credits are equal there; if the mistake be undiscovered yet, re-add the ledger debits and credits, and if this does not reveal the mistake, examine each individual post from the journal, and check it where correct. The mistake in your trial balance must arise from faulty work in one of these three items, in every case where the ledger contains no matter excepting what was posted from the journal. Any one can find the mistake who can perform such work (adding and transferring) correctly, and he who finds the mistake will find it in one of these three places.

2. Take an inventory, and credit the Speculative Representative accounts for their respective amounts "By balance," and make the opposite or debit entries in a Balance account, which open.

3. Close all Speculative Representative accounts "To or by profit and loss," making opposite entries in Profit and Loss account.

4. Close Profit and Loss account "To or by stock," making an opposite entry in Stock account.

5. Commence with the first account now unclosed and close it, and all others unclosed, "To or by balance," making the opposite entries in Balance account.

All closing entries must be made in red ink. The entries subsequent, opposite and corresponding to the closing ones, together with footings, write in black ink. Accounts closing "To balance" show liabilities, those closing "By balance" assets or resources, hence Balance account will show resources on the Dr. side and liabilities on the Cr. side.

Accounts closing "To profit and loss," show gains, those closing "By profit and loss," losses, hence Profit and Loss account will show losses on the Dr. side, and gains on the Cr. side.

When the direction given requires an account closed "To or by another," close it "To the other" if the debit side is the least, and "By the other" when the Cr. side is the least.

There are but three general ways of closing accounts: "To or by profit and loss," by which all the gains and losses are collected in Profit and Loss account; "To or by stock," by which the net gain or loss is taken to the Capital account; and "To or by balance," by which all the resources and liabilities are gathered together in the Balance account.

If no mistake is made in closing the ledger the two sides of Balance account will be equal, for in prosperity the Dr. side comprises all the resources of the business man, and the Cr. side all his liabilities *and* his net capital—the net capital being the excess of resources over liabilities. And the net capital properly appears among the liabilities, as the books are of the business, and show that the business owes the merchant whatever he has invested in it. So in adversity the Dr. side of Balance account consists of the resources and the net insolvency, and the Cr. side of the liabilities—the net insolvency being the excess of the liabilities over resources. And the net insolvency properly appears among the resources, as the merchant needs to pay or provide the business with what it owes beyond its ability to discharge.

Book-Keeping—Ledger Entries.

Double Entry.

The ledger is the principal account book, and as all other books are subservient to it, it seems proper that this should be the first book considered. It is extremely difficult for a person who has no previous knowledge of the subject to understand the use or language of the journal or day-book until he is made acquainted with the nature and use of the ledger.

The ledger is the book of accounts. Into it are gathered, in a condensed form, the entries contained in all the other books. Every transaction must come to this book for final adjustment; in fact, were it not for the great difficulty experienced to avoid errors and the lack of time to neatly make the entries, all the other books might be dispensed with, and the transactions, as they occur, entered under their appropriate headings in this book directly. All other books used in business are merely aids to the book-keeper in preparing the transactions for the ledger.

For each person who becomes indebted to us, or to whom we become indebted, an account is opened in this book, and the date and amount of such indebtedness therein recorded, so that however numerous the transactions that we have with an individual may be, or however widely separated as to time, they are all brought together within a very small space under his account in the ledger, where the amounts can be readily seen, and whether we owe him, or he owes us, and how much, easily determined.

By thus bringing compactly together all the transactions which we may have with an individual, spread over, it may be, many months, and arranging upon one side of his account all items for which he becomes indebted to us (that is, for which he owes us), and upon the other side all items for which we become indebted to him (that is, for which he trusts us), we make it an easy matter to quickly determine at any time the difference, or balance as it is termed, and whether it be in our favor or against us. The balance is in our favor when the Dr. side exceeds the Cr., that is, when he owes us more than he trusts us; and against us when the Cr. side exceeds the Dr., that is, when he trusts us more than he owes us.

By double entry book-keeping we not only keep accounts with individuals but with every kind of property which we own or deal in, such as Merchandise, Real Estate, Cash, Notes, etc. Each kind of property has a separate account in the ledger, the same as individuals, and is made Dr. for what it costs us when we buy, and Cr. for what it brings us when we sell or part with it.

It will be seen by the following ledger accounts with Merchandise, R. Evans, John Jones, William Smith, and Cash, that each account has two sides, being divided in the centre by a triple line. The left-hand side is the debit (abbreviated Dr.) side, and the right-hand side the credit (abbreviated Cr.) side. The term debit comes from the Latin word *debet*, and means *he owes*, and the term credit comes from the Latin word *credit*, and means *he trusts*. When an individual becomes indebted to us for goods sold to him on credit, or for payments made by us to liquidate our indebtedness to him, such sales or payments must be entered upon the Dr. side of his account because he owes us for them, and *vice versa*, when we become indebted to an individual for goods bought from him on credit, or for payments received from him to liquidate his indebtedness to us, such purchases or payments must be entered upon the Cr. side of his account, because he trusts us for them.

The following rule must always be borne in mind, viz.: That whoever or whatever causes us to part with value or to run into debt must be debited in the ledger; and whoever or whatever brings us in value or gets us out of debt, or causes persons to owe us, must be credited in the ledger.

The following examples will serve to illustrate the foregoing remarks. Carefully consider each example and follow it to its proper accounts in the ledger. Each example affects equally two accounts, the Dr. side of one and the Cr. side of another.

January 4, 1876. We bought of R. Evans on account, merchandise to the value of $1,500.

In this example or transaction we buy a certain kind of property called merchandise, for which we run in debt to R. Evans, and following out what has already been said, we turn to the Merchandise account in the ledger, and upon the Dr. side we enter the date, To whom we owe for the merchandise, viz., R. Evans, and the amount $1,500, and then upon the Cr. side of R. Evans' account we enter the date, By what he trusts us, viz., Mdse., and the amount $1,500. The amounts upon the Dr. and Cr. sides of the ledger, after the above transaction is posted, are equal; it is essential that such should be the case after each transaction is posted.

January 7. We sold to John Jones on account, 10 yds. fancy cassimere (Mdse.), @ $2.25; $22.50.

In this transaction we enter upon the Dr. side of John Jones' account, because he owes us, the date, To what he owes us for, viz., Mdse., and the amount; and upon the Cr. side of the Merchandise account, because it was merchandise, that produced us the amount that John Jones owes us, we enter the date, By the person who owes us for the goods, viz., John Jones, and the amount.

January 10. Sold to William Smith on account, 12½ yds. bl'k br'd cloth, @ $6; $75.

January 15. Sold John Jones on account, 5 yds. bl'k beaver overcoating, @ $7.50; $37.50.

January 28. Bo't of R. Evans on account, Bill of Mdse., amounting to $350.

February 5. Paid R. Evans on account, $500.

By looking at R. Evans' account it will be seen that at this date we owe him, or rather he trusts us for goods bought of him January 4th and 28th, $1,850. By this payment of $500, he in reality trusts us from this time until we make another payment or purchase but $1,350. Now, as we cannot erase the $1,850 and insert $1,350 in its place, we enter the $500 upon the Dr. side of his account, thus making his account to show that he still trusts us $1,850, but owes us $500. The question is now, what account to credit? R. Evans has been debited $500, and some account *must* be credited the same amount. According to what has already been said it must be that which we parted with or enabled us to decrease our indebtedness. In this case it was a kind of property called money with which we parted; it was the money which we paid over to R. Evans that decreased our indebtedness to him, therefore money deserves credit. The money received and paid out is entered in the ledger under an account called Cash, we therefore turn to the Cash account and upon the credit side enter the date, By R. Evans, and the amount, $500.

February 12. Received from John Jones on account, $15.

In this example we receive property called money, and as all property when received is debited, we turn to the account in the ledger representing money, viz., Cash, and enter upon the Dr. side the date, To John Jones, and the amount, $15, and as John Jones trusts us for the $15 until he settles in full for the goods sold to him January 7th and 15th, we give his account Cr. for that amount. His account will now show that he owes us $60, but that he trusts us $15.

February 21. Received from Wm. Smith on account, $25.

March 2. Paid R. Evans on account, $100.

March 20. Sold Wm. Smith on account, 30 yds. fancy cassimere, @ $2; $60.

April 8. Sold John Jones on account, 20 yds. bl'k br'd cloth, @ $6; $120.

April 13. Sold Wm. Smith on account, 10 yds. bl'k cassimere, @ $3.75; $37.50.

April 27. Paid R. Evans on account, $500.

May 15. Rec'd from John Jones to balance bills of January 7th and 15th, $45.

June 3. Sold Wm. Smith on account, 2½ yds. fancy cass. @ $7.50; $18.75.

June 18. Paid R. Evans on account, $200.

June 30. Rec'd from Wm. Smith to balance his account to date, $166.25.

In this last example, when Wm. Smith receives credit for the $166.25, the two sides of his account will be even. In all cases where a settlement in full is made or a statement sent to a customer, his ledger account should be balanced and ruled off. This will save much time and perplexity in future settlements, as all transactions up to the time the account is balanced or closed are supposed to be correct and adjusted, and in future settlements only transactions after the date of balancing are to be taken into consideration. The ruling off of an account divides the adjusted or settled transactions from the new or unadjusted ones.

Ledger Entries—General Forms.

Double Entry.

Dr. Merchandise. Cr.

1876.						1876.					
Jan.	4	To R. Evans	1500	"		Jan.	7	By J. Jones,	Page Journal.	22	50
"	28	" do.	350	"		"	10	" W. Smith		75	"
						"	15	" J. Jones,		37	50
						Mar.	20	" W. Smith		60	"
						Apr.	8	" J. Jones,		120	"
						"	13	" W Smith		37	50
						June	3	" do.		18	75

Dr. R. Evans. Cr.

1876.						1876.					
Feb.	5	To cash,	500	"		Jan.	4	By mdse.		1500	"
Mar.	2	" do.	100	"		"	28	" do.		350	"
Apr.	27	" do.	500	"							
June	18	" do.	200	"							

Dr. John Jones. Cr.

1876.						1876.					
Jan.	7	To mdse.	22	50		Feb.	12	By cash		15	"
"	15	" do.	37	50		May	15	" do.		45	"
Apr.	8	" do.	120	"							

Dr. William Smith. Cr.

1876.						1876.					
Jan.	10	To mdse.,	75	"		Feb.	21	By cash,		25	"
Mar.	20	" do.	60	"		June	30	" do.		166	25
April	13	" do.	37	50							
June	3	" do.	18	75							
			191	25						191	25

Dr. Cash. Cr.

1876.						1876.					
Feb.	12	To J. Jones,	15	"		Feb.	5	By R. Evans		500	"
"	21	" W. Smith	25	"		Mar.	2	" do.		100	"
May	15	" J. Jones,	45	"		Apr.	27	" do.		500	"
June	30	" W. Smith	166	25		June	18	" do.		200	"

Journal Entries—Double Entry.

General Forms.

The Journal. The journal is an intermediate book between the day book and ledger. Its use is to determine the proper accounts in the ledger to be debited and credited from each day book transaction, and to arrange the debits and credits in a convenient and easy form for posting. We could dispense with the use of this book with much less inconvenience than that of the day book, but as it serves an excellent purpose in systematically arranging the day book matter for the ledger, and greatly facilitates the detection of an error in the posting, its use is very general. In many cases the day book and journal are combined in one book under the name of journal day book. This form shortens the work considerably, and is well adapted to many kinds of business.

There are four forms of journal entries, as shown in the following diagrams:

	Dr.	Cr.
1.		
ONE DEBIT AND ONE CREDIT.		
Mdse., ...	500 00	
To cash, ...		500 00
2.		
ONE DEBIT AND TWO OR MORE CREDITS.		
Mdse. To sundries, ...	750 00	
To cash, ...		200 00
" bills payable, ...		550 00
3.		
TWO OR MORE DEBITS AND ONE CREDIT.		
Sundries To mdse., . . .		500 00
Cash, ...	300 00	
Bills receivable, ...	200 00	
4.		
TWO OR MORE DEBITS AND TWO OR MORE CREDITS.		
Sundries To sundries, . . .		
Mdse, ...	700 00	
Reading R R st'k, . . .	5,500 00	
To cash, ...		2,000 00
" Sam'l B. Smith, . . .		4,200 00

The following are the journal entries for a few of the day book transactions hereafter given.

It will be seen that the account which we wish to debit in the ledger is named first and the amount carried out into the inner of the two right-hand columns, and then upon the next line below, a little to the right, say about three-quarters of an inch, we write the name of the account we wish to credit in the ledger and carry the amount out into the outer of the two right-hand columns.

Philadelphia, January 4, 1876.	Dr.	Cr.
Mdse.	1,500 "	
To R Evans, ...		1,500 "
7		
Jno. Jones, ...	22 50	
To mdse., ...		22 50
10		
Wm. Smith, ...	75 "	
To mdse., ...		75 "
15		
Jno. Jones, ...	37 50	
To mdse., ...		37 50
28		
Mdse.	350 "	
To R. Evans, ...		350 "
Feb'y 5		
R. Evans, ...	500 "	
To cash, ...		500 "
12		
Cash, ...	15 "	
To Jno. Jones, ...		15 "

Day Book Entries—Double (or Single) Entry.

General Forms.

The Day Book. In our remarks upon the ledger we stated that in some cases it might be possible to do without the day book, although we would in no case advise it, but when the transactions become numerous, it is then absolutely necessary to have a book in which to record them as they occur, so that time and care can be taken in transferring them to the ledger.

The book for this purpose is called the day book; by some it is called the blotter, and by others a waste book.

In it are entered, in the order of their occurrence, every transaction, bargain, and agreement which we make, and as it is the only book allowed to be produced as evidence in a suit at law (that is, when the transactions are not divided between several books), pains should be taken to record correctly everything pertaining to the transaction, such as the date, articles, price, amount, and anything else essential to the proper understanding of the transaction in the future. Many bitter contentions resulting in the loss of money, reputation, and friends would be avoided if all bargains and agreements, as well as purchases and sales, were recorded in writing by each interested party as soon as made.

This, of course, can be done in the day book. The aim should be to enter each transaction in as concise or terse a manner as possible, and yet to have everything recorded essential to a right reading, without the aid of the memory, in case you were in the future forced to law upon the matter.

No erasure or scratching out is allowed in this book, as that would look suspicious and at once destroy its strength as evidence, but if it be discovered that a transaction has been entered incorrectly, the error should be explained in a separate entry so soon as discovered.

The following are a few of the first examples given in remarks upon the ledger, and are now used here to illustrate the form, etc., of this book. It will be observed that the last entry differs from the others in that it has several kinds of articles recorded. When this is the case, the inner column of the two right-hand columns is used for the sum of each separate item, and the sum total of all the items then carried to the outer columns. When there is but one item in the transaction, the amount is entered only in the outer columns as in all the entries before the last.

Philadelphia, January 4, 1876.					
Bo't of R Evans on ac't, Merchandise per inv, . . .				1,500	"
7					
Sold John Jones on ac't, 10 yds. fancy cass., @ $2.25				22	50
10					
Sold Wm. Smith on ac't, 12½ yds. blk. brd. cloth, @ $6.00				75	"
15					
Sold John Jones on ac't, 5 yds. blk. b. overcoating, @ $7 50				37	50
28					
Bo't of R. Evans on ac't, Mdse. as per inv., . . .				350	"
February 5					
Paid R. Evans on ac't, cash,				500	"
12					
Sold James B. Allan on ac't, 10 yds. fancy cass., @ $4 50			45	"	
5 yds. blk. doe., @ 3.50			17	50	
2½ yds. Scotch tweed, @ $6.00			15	"	
				77	50

Philadelphia, June 1, 1876.				
Commenced business this day with the following resources and liabilities.				
Resources.				
Store and lot valued at .	30,000			
Cash on hand, . . .	10,000			
Mdse, ...	5,000			
R M Snell's note dated May 10th at 2 mos. for	2,460			
E. Cadwallader's note dated April 28th at 90 dys.	1,741	35		
H. King's note dated May 13th at 60 days, .	864	42		
Harrison & Fletcher owe me on ac't,	943	81	51,009	58
Liabilities.				
My note favor E. R Carpenter & Co. dated Apr 24th at 4 mos., . . .	3,215	50		
My note favor Borie & Sons, dated May 3d at 60 days, ...	1,319	40		

Journal folio.

Liabilities.

My note favor Harrison, Haremeyer & Co. dated May 4th at 90 days, . 743 25
I owe R. M. Bartoll & Co. on ac't, ... 2,126 18 — 7,397 23

2

Bot. of Borie & Sons, 82 hhds. mus. sugar.

1544	1621	1586	1643
1601	1585	1611	1567
1562	1581	1587	1640
1605	1544	1620	1575
1575	1617	1610	1609
1601	1548	1562	1617
1568	1620	1602	1600
1447	1502	1412	1417

Total gross weight 50-410—5 per cent., tare 2521 =47889 lbs. @ 10¾ c.
Gave them on ac't cash 1,500
My note at 60 days for Bal. 30 days. 1,750

3

Sold Harrison & Fletcher, 12 hhds. mus. sugar,

1502	1480	1491	1504
1474	1521	1500	1524
1482	1510	1505	1565

Total gross weight 18-046—5 per cent. tare, =lbs. @ 11¼
Rec'd on ac't cash, 500
Their note at 30 days, 825
Balance 30 days.

5

Dis'd at the Girard B'k R. M. Snell's note, dated May 10, at 2 mos. Dis. off 39 days. Proceeds to my credit. 2,460

6

Sold Rob't Thompson, on his note at 90 days, 5 bbls. mus. sugar, 251, 272, 267, 233, 268,—2½ per cent. Tare= lbs. @ 11½

7

Dis'd for E. R. Carpenter & Co.
My note their favor, dated Ap'l 24, at 4 mos.
Dis'd off 82 days, @ 9 per cent. 3,215 50
Proceeds paid in cash.

8

Rec'd from Harrison & Fletcher on ac't.
Their note at 30 days, 500

9

Dis'd for Borie & Sons,
My note their favor, dated May 3, @ 60 ds. 1,312 40
Dis'd off days.
Proceeds paid in cash.

10

Gave R. M. Bartoll & Co. on ac't, my note at 2 mos. for 1,260
Cash, ... 500

12

Sold E. Cadwallader, 2 hhds. mus. sugar, 1824, 1639,—2 per cent = lbs. . . @ 12¼
Rec'd on ac't cash, 275

13

Sold R. M. Manning, 4 hhds. sugar, 1694, 1710, 1742, 1723,—4 per cent, = los. . @ 11⅛
Rec'd on ac't cash, . 200 15
His note at 60 days, 371
Balance 10 days.

15

Paid R. M. Bartoll & Co. to balance ac't, . . 366 18

Journal folio.

19

Rec'd from Harrison & Fletcher to balance ac't 1,047 51

23

Paid for advertising, . 23
" sundry petty exp. 3 15 — 26 15

26

Paid J. Dunn's bill for counters, shelv'g, desk, chairs, etc. 275

30

Paid sundry petty exp. 13 75

Inventory.

Store and lot, .	$30,000
Mdse on hand,	8,700
Store fixtures, .	270

Ledg'r folio.		Journal Entries.	Dr.	Cr.
		Philad'a, June 1st, 1876.		
	1	Sundries To Stock, . .		51,009 58
2		Store and lot, ...	30,000 00	
1		Cash, ...	10,000 00	
1		Mdse., ...	5,000 00	
1		Bills Receivable, . . .	5,065 77	
2		Harrison & Fletcher, .	943 81	
		1		
1		Stock To Sundries, . .	7,397 23	
	1	Bills Payable, . . .		5,271 05
	2	R. M. Bartoll & Co.,		2,126 18
		2		
1		Mdse. To Sundries, . .	5,148 07	
	1	Cash, ...		1,500 00
	1	Bills Payable, . . .		1,750 00
	2	Borie & Sons, . . .		1,898 07
		3		
	2	Sundries To Mdse., . .		1,928 70
1		Cash, ...	500 00	
1		Bills Receivable, . .	825	
2		Harrison & Fletcher, .	603 70	
		5		
	2	Sundries To Bills Rec.,		2,460 00
1		Cash, ...	2,301 76	
1		Interest and Discount,	158 24	
		6		
1	1	Bills Receivable, . . .	144 —	144 79
		7		
1		Bills Payable To Sundries	3,215 50	
	1	Cash, ...		3,149 58
	1	Interest and Discount,		65 92
		8		
1	2	Bills Receivable To Harrison & Fletcher, . .	500 00	500 00
		9		
1		Bills Payable To Sundries	1,312 40	
	1	Cash, ...		1,262 09
	1	Interest and Discount,		50 31
		10		
2		R. M. Bartoll & Co. To Sundries, ...	1,760 —	
	1	Cash, ...		500 00
	1	Bills Payable, . . .		1,260 00
		12		
1		Sundries To Mdse., . .		413 39
1		Cash, ...	275 00	
3		E. Cadwallader, . . .	138 39	
		13		
1		Sundries To Mdse., . .		669 04
1		Cash, ...	200 15	
1		Bills Receivable, . . .	371 00	
3		R. M. Manning, . . .	97 89	
		15		
2	1	R. M. Bartoll & Co. To Cash, ...	366 18	366 18
		19		
1	2	Cash To Harrison & Fletcher, ...	1,047 51	1,047 51
		23		
1		Sundries To Cash, . .		26 15
2		Advertising, ...	23 00	
2		Expense, ...	3 15	
		26		
3	1	Store fixtures To Cash,	275 00	275 —
		30		
2	1	Expense To Cash, . .	13 75	13 75
			77,687 80	77,687 80

Ledger Entries.

Dr. Stock. Cr.

1876.					1876.				
June	1	To Sund's	7,397	33	June	1	By Sund's	31,009	55
"	30	" Bal.	46,232	22	"	30	" P. & L.	1,620	67
			53,630	55				53,630	55
					July	1	By Bal.	46,232	22

Dr. Cash. Cr.

1876.					1876.				
June	1	To Stock,	10,000	00	June	2	By Mdse.	1,500	00
"	3	" Mdse.,	500	00	"	7	" Bl'smn.	3,146	50
"	5	" Bl'smn.	2,80[illegible]	78	"	9	" " "	1,263	00
"	12	" Mdse.	275	00	"	10	" B. M. B.	500	00
"	13	" "	200	15	"	15	" " "	300	15
"	19	" B. & F.	1,047	51	"	23	" Sund's,	26	15
					"	25	" Stretch	275	00
					"	30	" Expse	13	75
					"	30	" Bal.	7,231	07
			14,324	42				14,324	42
July	1	To Bal.	7,231	07					

Dr. Merchandise. Cr.

1876.					1876.				
June	1	To Stock,	5,000	00	June	3	By Sund's	1,928	72
"	3	" Sund's	6,148	07	"	6	" B'lsmn.	144	70
"	30	" P. & L.	1,707	78	"	12	" Sund's,	413	33
					"	13	" Sund's,	669	04
					"	30	" Bal. Inv.	8,700	00
			11,855	85				11,855	85
July	1	To Bal.	8,700	00					

Dr. Bills Receivable. Cr.

1876.					1876.				
June	1	To Stock,	5,065	77	June	5	By Sund's,	2,465	00
"	2	" Mdse.,	825	00	"	30	" Bal.	4,446	56
"	8	" "	144	79					
"	8	" H. & F.	500	00					
"	13	" Mdse.,	371	00					
			6,906	56				6,906	56
July	1	To Bal.	4,446	56					

Dr. Bills Payable. Cr.

1876.					1876.				
June	1	To Sund's,	3,315	50	June	1	By Stock,	5,271	05
"	8	" "	1,312	40	"	2	" Mdse.,	1,750	00
"	30	" Bal.	3,753	15	"	10	" M.M.B.	1,280	00
			8,281	05				8,281	05
					July	1	By Balance	3,753	15

Dr. Interest and Discount. Cr.

1876.					1876.				
June	8	To Bills rec.	158	24	June	7	By Bills pay.	65	93
					"	9	" " "	50	31
					"	30	" Prof. & L.	42	91
			158	24				158	24

Dr. Expense. Cr.

1876.					1876.				
June	23	To Cash,	3	15	June	30	By Prof. & Loss	16	90
"	30	" "	13	75					

Dr. Advertising. Cr.

1876.					1876.				
June	23	To Cash,	23	00	June	30	By Profit & Loss	23	00

Dr. Harrison & Fletcher. Cr.

1876.					1876.				
June	1	To Stock,	943	81	June	8	By Bills rec.	500	00
"	3	" Mdse.,	603	70	"	19	" Cash,	1,047	51
			1,547	51				1,547	51

Dr. R. M. Bartoll & Co. Cr.

1876.					1876.				
June	10	To Sund's,	1,730	00	June	1	By Stock,	2,129	18
"	15	" Cash,	399	18					
			2,129	18				2,129	18

Dr. Boris & Sons. Cr.

1876.					1876.				
June	30	To Bal.	1,886	07	June	1	By Mdse.,	1,886	07
					July	1	By Bal.	1,886	07

Dr. E. Cadwallader. Cr.

1876.					1876.				
June	12	To Mdse.,	130	32	June	30	By Balance,	130	32
July	1	To Balance,	130	32					

Dr. R. Manning. Cr.

1876.					1876.				
June	13	To Mdse.,	97	80	June	30	By Balance,	97	80
July	1	To Balance,	97	80					

Dr. Store and Lot. Cr.

1876.					1876.				
June	1	To Stock,	30,000	00	June	30	By Bal.	30,000	00
July	1	To Bal.	30,000	00				30,000	00

Dr. Store Fixtures. Cr.

1876.					1876.				
June	26	To Cash,	275	00	June	30	To Bal. Inv.	230	00
"					"	30	" Profit. & L.	5	00
			275	00				275	00
July	1	To Bal.	270	00					

Dr. Profit and Loss. Cr.

1876.					1876.				
June	30	To Int. & Dis.	42	01	June	30	By Mdse.,	1,707	78
"	30	" Expense,	16	90					
"	30	" Adver.,	23	00					
"	30	" Store Fix.	5	00					
"	30	" 5% Net G.	1,620	87					
"	30								
"	30		1,707	78				1,707	78
"	30								

Trial Balance.

Cash,	7,231 67	Stock	46,232 22
Mdse.,	8,700 00	Bills pay.	3,753 15
Bills rec.	4,446 56	Boris & S.	1,886 07
E. Cadwallader	130 32		
R. Manning	97 80		
Store & Lot	30,000 00		
Store Fixt.	270 00		
	50,884 11		50,884 11

Accretion. See Real Property.

Accusation. See Criminal Law; Slander.

ACKNOWLEDGMENT. See Bills of Sale; Conveyances; Evidence; Leases; Mortgages; Powers of Attorney. For full and elaborate series of Acknowledgment Certificates see New York and Pennsylvania Forms.

All deeds, mortgages, powers of attorney, and other instruments for the conveyance of incumbrance of any real property whatever, must be acknowledged, and in conformity with the provisions of the statute in force where the property is situated.

ACKNOWLEDGMENT FORMS.

Stating the officer's place of residence.

The first thing that the certificate of acknowledgment should show is the place where it is taken and made. The officer who certifies to the acknowledgment must be authorized by law, and can act only in the limits of the territory or locality for which he is appointed or elected. Thus: an officer or court of Allen county could not legally take an acknowledgment in Brown county, and Allen county may be in Alabama and also in Wyoming.

This statement should be such as is commonly used in the place it is taken.

Examples are as follows:

State of ——, —— county, ss., or:

State of ——, —— county, sct., or:

State of ——, —— county, to wit, or:

State of ——, county of ——, city of ——, ss., or:

State of ——, city (or department, district, parish, town, township, *or other place where the officer takes the acknowledgment*) of ——, ss.

Territory of ——, city, etc., of ——, ss.

Province of ——, Dominion of ——, etc.

Port of ——, Empire of ——, etc.

Commencement of the Certificate.

After stating the place where the acknowledgment is taken, the certificate, like any other instrument of writing, must have its commencement. Examples of which are as follows:

I certify that, etc., *or:*

I do hereby certify that on this —— day of ——, in the year ——, before the subscriber, a ——, etc., *or:*

On this —— day of —— personally appeared before me, a —— (*giving your official title*) in and for said county, came (or personally appeared) G. R., etc., *or:*

On this —— day of ——, before me (the undersigned) O. R., a (*give official title*) in and for said county (or city, etc.) came (or personally appeared) G. R., etc., *or:*

I, O. R., a —— in and for said county (or city, etc.) do hereby certify unto all whom it may concern that G. R. did this day appear before me, etc., *or:*

Be it remembered, that on this —— day of ——, before me, O. R., a (*stating the name of his office*) in and for said county, the grantors, G. N., T. R., and R. S., etc., *or:*

Boston, July 4, 1876, then personally appeared the above G. R., etc.

After commencing the certificate as above indicated, it is necessary to state what the party appearing acknowledges; these forms of statement vary in the different States, and are given in the following pages, to which you are referred.

Conclusion of the Certificate.

In order that the certificate shall be authoritative, the officer must by an appropriate conclusion bear witness to and affirm the making of the declarations embraced in the certificate of acknowledgment, and then sign, and (if he have any) affix his seal to the same.

The conclusion may be thus:

Given under my hand and seal of office, *or:*

Given under my hand and seal this —— day of ——, *or:*

In testimony whereof, I have hereunto set my hand and (official *or* notarial) seal, the day and year last above written (*or*, the —— day of ——), *or:*

In testimony whereof, I have caused the seal of (the —— court) to be affixed (at ——) this —— day of ——, *or:*

In witness whereof, etc.

Officer's Signature and Seal.

The signature of the officer followed by his official title is made at the bottom right side of the instrument.

The seal of an officer (when a seal is required by law), if a scrawl, is generally written at the end of his name and official title; but, if an impression seal, it is stamped at the bottom left side of the instrument.

[L. S.] M. R., Mayor of ——.

J. P., Justice of the Peace. [*Seal.*]

[L. S.] N. P., Notary Public.

[L. S.] P. O., Presiding Officer of (*state what*).

[L. S.] C. C., Clerk of the —— Court, *or:*

[L. S.] J. J., Judge of the —— Court.

[L. S.] C. D., Commissioner of Deeds for the State of ——.

[L. S.] C. L., Consul of the United States of America resident at ——.

a-These clauses apply to Florida only. It is also necessary that the certificate of acknowledgment of the clerk or prothonotary be authenticated by the judge or justice present at the making thereof certifying that said acknowledgment was made in his presence, and that

Acknowledgment—General Form.

Embracing the legal requisites for District of Columbia, all the States, Territories, and Canada.

All terms, words, and phrases in this acknowledgment are strictly statutory, are drawn from a comparison of *all* the statutes, and when this acknowledgment is used it should be *either* in connection with the particular statutes regulating the terms of the acknowledgment to be taken *or* copied at large.

It is necessarily long, but exhibits practically and in the aggregate the various methods of securing a free and voluntary acknowledgment. There is no necessity in its use; it being customary to take and conform the acknowledgment according to the provisions of the law of the place where the land conveyed is situated.

State (*or* Empire; Kingdom; Port; Territory of ——, *as the case may be*). County (*or* City; District; Province, etc., *as the case may be*) of ——, ss.

I hereby certify:

That I (*name of officer taking acknowledgment in full*) am (*title of officer in full*) and duly commissioned, qualified, sworn, and acting as such.

That A. B. and his wife W. B. signed and sealed the (above, *or* annexed, *or* foregoing, *or* within) conveyance (*or* instrument of writing).

That said A. B. and W. his wife are personally known to me as the grantors in said conveyance (*or* instrument).

***Or*, That said A. B. and W. his wife were each (*or*, that the identity of each of said grantors was) satisfactorily proved to me by and on the oath (*or* affirmation) of W. T., of ——, and N. S., of ——, both good and credible witnesses, who are each personally known to me to be the persons whose names are subscribed to said conveyance (*or* instrument).**

That said A. B. and W. his wife each personally appeared before me at ——, on this —— day of ——, A. D. ——.

That said A. B. and W. his wife were then and there each made acquainted with the contents and legal effect of said conveyance (*or* instrument), and the same explained to them, and each fully advised of their rights in and concerning the property therein conveyed, described and referred to.

That said A. B. and W. his wife did then and there acknowledge that they executed, signed, sealed, and delivered said conveyance (*or* instrument) on the day the same bears date, for the consideration, purposes, and uses therein expressed, mentioned, and set forth.

(That W. T., of ——, and N. S., of ——, good and credible witnesses, attested such execution, signing, sealing, delivery, and acknowledgment.)

A. B.
W. B.

Subscribed and sworn (*or* affirmed) to before me this —— day of ——, A. D. ——.

[*Official seal.*] (*Signature and official title.*)

I do further certify:

That said W. B., wife of said A. B., was then and there privily, privately, separately, and apart from, and in the absence, and without the hearing of her said husband A. B. (and in the presence of J. J., Judge of the —— Court,a and in the presence of W. T. (of ——), and N. S. (of ——), two credible witnesses a), and being by me (the clerk of said court a) first made acquainted with the contents of said conveyance (*or* instrument), and the same thing shown and fully explained to her, and she being fully advised of the nature of her rights in, to and upon the property therein described, conveyed, etc., examined her touching her execution, signing, sealing, and delivery of said conveyance (*or* instrument).

That said W. B. then and there and thereupon acknowledged and declared that she made herself a party to said conveyance (*or* instrument), executed, signed, sealed, and delivered the same (and the relinquishment and renunciation of dower therein a a to the lands, tenements, and hereditaments therein described a) of her own free will and accord,

the person acting as clerk or prothonotary was, at the time of his so doing the clerk or prothonotary of the court of which he was judge or justice. a-This clause applies to Arkansas and Florida only.

freely, understandingly, willingly, voluntarily, and as her own act and deed, and without the coercion, compulsion, constraint, restraint, apprehension, fear, threats, illicit or undue influence by, of, or from her said husband or any other person, or fear of her said husband's or any other person's displeasure, and that she was and is still satisfied therewith, and wished not, and does not wish to retract it, and consents that the same may be recorded. (*Signature of wife.*) W. B.

Subscribed and sworn to before me this —— day of ——, A. D. ——.

[*Official seal.*] (*Signature and official title.*)

Acknowledgment—Administrator.

The only difference between this acknowledgment and those between parties representing themselves personally is this: an individual sets out only his name and acknowledges the conveyance as such. The administrator sets out both his "name and official title in full," and acknowledges the conveyance "as such officer."

Write out the acknowledgment as usual to the grantor's name, then write the grantor's (administrator's) name, etc., thus, "A. R.," Administrator of the estate and effects of D. D., deceased; continue the acknowledgment as usual, and ending "as such Administrator."

Acknowledgment—Assignee.

See *Acknowledgment—Administrator*, above.

Write out the acknowledgment as usual, and for grantor's (assignee's) name, etc., "A. E.," Assignee of the estate and effects of A. R. & Co., bankrupts (*or* insolvents), continuing the acknowledgment as usual, and ending "as such assignee."

Acknowledgment—Agent or Attorney.

The acknowledgment is in the usual form to grantor's name, which is as follows: A. B. "by A. A., his attorney in fact." Continue the acknowledgment as usual, adding to it, when complete, the following matter: (by virtue of a power of attorney, duly executed by said grantor, bearing date the —— day of ——, 187–, and recorded in the office of the —— of —— county, in the State of ——, in volume ——, page ——, of ——,) for and as the act of said A. B.

Acknowledgment—Corporation.

The acknowledgment in such cases is, in the absence of provisions to the contrary, the same as usual, adding the name and description of the officers authorized to acknowledge for the corporation, thus, "The A. B. Railway Co., by P. P., its President" (and S. Y., its Secretary, etc., continuing as usual and ending with (a recital of authority and) "as such president (and secretary), etc., for and as the act of said company" (*or* corporation).

The seal of the corporation is also a requisite to the acknowledgment.

Acknowledgment—Executor.

See *Acknowledgment—Administrator*, above.

The acknowledgment is as usual, except grantor's name and title should be thus, E. X., "Executor of the last will and testament of D. D., deceased," continuing the form as usual, and ending "as such executor."

Acknowledgment—Guardian.

See *Acknowledgment—Administrator*, above.

The acknowledgment is as usual, except grantor's name should be thus, G. N., "Guardian of the person (and estate) of M. I., N. O., and R. R., minor heirs of D. D., deceased," continuing the form as usual, and ending "as such guardian."

Acknowledgment—Infant or Minor.

The acknowledgment is in the usual form to grantor's name, "I. I.," inserting the proper words of connection, "that said instrument was formerly executed by him when an infant under the age of twenty-one years; that he since arrived at full age; that he is desirous of confirming his former execution thereof," ending as usual.

Acknowledgment—Receiver.

The acknowledgment is in the usual form, grantor's name as follows, R. R., "Receiver in the matter of A. B. *vs.* C. D., pending in the —— Court," continuing as usual, and ending with a recital of authority and "as such receiver."

Acknowledgment—Sheriff.

The acknowledgment is in the usual form, grantor's name as follows, S. F., "Sheriff of —— County," continuing as usual, reciting the substance of judgment, execution, order of sale, and confirmation, and ending "as such sheriff."

Acknowledgment—Translation.

The acknowledgment is in the usual form, the instrument being acknowledged as "the conveyance (*or* instrument) of which the foregoing is a correct translation" (*or* purports to be a correct translation).

ALABAMA.

Acknowledgments and proofs of conveyances may be taken in this State by judges of the supreme and circuit courts and their clerks, chancellors, and registers in chancery, judges of the courts of probate, justices of the peace, and notaries public. If taken in other States of the United States, they may be taken by judges and clerks of any federal court, judges of any court of record in any State, notaries public, or commissioners appointed by the governor of Alabama. Beyond the limits of the United States, such acknowledgments and proofs may be taken by the judge of any court of record, mayor, or chief magistrate of any city, town, borough, or county, notaries public, or by any diplomatic, consular, or commercial agent of the United States.[b]

No other proof or authentication of such acknowledgment is necessary than the certificate of such officer.

Powers of attorney to convey property may be proven or acknowledged in the same manner, and must be received as evidence to the same extent as conveyances.

If the grantor is unknown, his identity may be established by witnesses sufficient to satisfy the officer before whom the acknowledgment is made.

The execution of deeds, etc., by corporation depends altogether on the act of incorporation.

Deeds may be proved as well as acknowledged.

Acknowledgment—Husband and Wife.[c]

The State of ——, —— county,

I (*name and title of officer*) hereby certify that A. B. and W. B. his wife, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, they executed the same voluntarily, on the day the same bears date.

Given under my hand this —— day of ——, A. D. ——. (*Signature and title of officer.*)

Proof by Subscribing Witness.[d]

The State of ——, —— county,

I (*name and title of officer*) hereby certify that W. S., a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that A. B., the grantor, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand this —— day of —— A. D. ——. (*Signature and title of officer.*)

Acknowledgment—Separate Examination of Wife.

The examination of the wife separate and apart from her husband is necessary to convey the title to any homestead exempted by the laws of this State. This examination may be had before any officer authorized by law to take acknowledgments of deeds, who must indorse thereon a certificate in writing in the following form:[e]

State of Alabama. County of ——.

I (*name and title of officer*) do hereby certify that on the —— day of ——, 18—, came before me the within named W. B., known to me (*or made known to me*) to be the wife of the within named A. B. who being examined separate and apart

b-Code of 1886, § 1799–1900. c-Code of 1886, § 1802. d-Code of 1886, § 1803. e-Code of 1886, § 2508.

from the husband, touching her signature to the within —— —— acknowledged that she signed the same of her own free will and accord and without fear, constraints or threats of the husband.

In testimony whereof I have set my hand this —— day of ——.

(*Signature and title of officer.*)

ARKANSAS.

Conveyances, when acknowledged or proved in this State. Proof or acknowledgment may be taken before the supreme or circuit court, or either judge or clerk thereof, or before the county court or presiding judge thereof, or any justice of the peace or notary public. **Anywhere else in the United States,** before any court of the United States, or any State or Territory having a seal, or the clerk thereof, mayor or chief officer of any city or town having a seal of office. **Out of the United States,** before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country who, by its laws, is authorized to take probate of the conveyance of real estate of his own country, if he have an official seal. The officer must certify that the grantor is known to him personally, when such is the case, otherwise he must take proof of his identity by affidavit or affidavits to accompany the certificate of acknowledgment. Proof is made by one or more subscribing witnesses swearing that they saw the grantor subscribe the deed, or heard him acknowledge that he had subscribed and executed the deed for the purposes and consideration therein mentioned, and that he or they had subscribed the same as witnesses at the request of the grantor. If the witnesses are dead, or cannot be had, the handwriting of the grantor and at least one of the witnesses may be proved by depositions of two disinterested witnesses.[g]

Wife must join husband in conveyance of his lands and relinquish dower. Husband need not join in conveyance of wife's lands. Conveyances must be recorded in county where lands are situated, and are not liens until recorded. Defective acknowledgments cured to date by Act of May 8, 1899. Such an act is passed every two years.

Acknowledgment by Husband and Wife, Lands of Husband.

State of ——, county of ——, ss.

Be it remembered, that on this day came before the undersigned (*name and title of officer*), within and for the county aforesaid, duly commissioned and acting, A. B., to me well known as the *grantor* in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day also voluntarily appeared before me, W. B., wife of the said A. B., to me well known, and in the absence of her said husband, declared that she had of her own free will signed and sealed the relinquishment of dower in the foregoing deed, for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal, as such (*title of officer*) on this —— day of ——.

(*Signature and title of officer.*)

Acknowledgment by Husband and Wife, Lands of Wife.[h]

State of ——, county of ——, ss.

On this day came before me, a duly commissioned, qualified, and acting (*here insert name and title of officer*), within and for the county aforesaid, A. B. and W. B. his wife, to me well known as the grantors in the foregoing deed; and the said A. B. stated that he had executed the same for the consideration and purposes therein mentioned and set forth; and the said W. B., in the absence of her said husband, voluntarily declared that she had of her own free will executed the same for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand as such (*title of officer*), on this —— day of ——.

(*Signature and title of officer.*)

g-Gould's Dig. ch. 117, § 1. h-Gould's Dig. ch. 37.

CALIFORNIA.

The proof or acknowledgment of an instrument may be made **within the State** before a justice or clerk of the supreme court, a judge or clerk of a court of record, a court commissioner, county recorder, notary public, or a justice of the peace.[i]

If proved or acknowledged **out of this State, but in the United States,** it may be before a justice, judge, or clerk of a court of record of the United States, any justice, judge or clerk of any court of record, a notary public, or by a commissioner appointed by the governor of this State for that purpose; also by any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.[j]

If taken or made **out of the United States,** before a minister, commissioner, or *chargé d'affaires* of the United States resident and accredited in the country where the proof or acknowledgment is made, or a consul, vice-consul, or consular agent of the United States resident in the country where the proof or acknowledgment is made, or a judge of a court of record of the country where the proof or acknowledgment is made, or commissioner of deeds for this State or a notary public.[k]

Acknowledgment—General Form.

State of ——, county of ——, ss.

On this —— day of ——, in the year ——, before me (*name and title of officer*), personally appeared A. B., known to me (or proved to me on the oath of W. S.) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she or they) executed the same.

[*Seal.*] (*Signature and official title.*)

If the deed be executed by a corporation, after the words "known to me," etc., insert "to be the president (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same."[l]

Acknowledgment—Of Married Woman.

A conveyance by a married woman in the State of California has the same effect at law as if she were unmarried. There need not, therefore, be a separate form of acknowledgment for a married woman, but the same form can be used as if she were unmarried. The above general form will answer every purpose of a valid acknowledgment by married women.

An acknowledgment by an attorney in fact is the same as the general form, excepting after the word "instrument" insert "as the attorney in fact of ——, and acknowledged that he subscribed the name of ——thereto as principal, and his own name as attorney in fact."[o]

Acknowledgments must be authenticated by the signature of the certifying officer, followed by the name or title of office, and the official seal affixed, if the officer has by law an official seal. The seal may be made by an impression on the paper, or on wax or other substance attached.

Proof by Subscribing Witness.

Deeds can be proved "by the party executing it or either of them; or by a subscribing witness," or by other witnesses as to the handwriting where all the parties and witnesses are dead, non-residents of the State, or residence unknown, etc.

No particular form is specified or required. It must show that the witness making the proof was sworn, and deposed that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.[p]

If grantor be unknown, the officer may take the acknowledgment after examining a known witness under oath; he must set out the fact that the grantor "was proved by the oath of W. S., a credible witness, personally known to me to be the person named in and who executed the within instrument." With this modification use the same form as for an ordinary acknowledgment, together with a certificate of the chief judge or

i-C. C. § 1181. j-C. C. § 1182. k-C. C. § 1183. l-C. C. § 1189. o-C. C. § 1192. p-C. C. § 1198.

presiding magistrate that the person making the attestation is the clerk of the court or the legal keeper of the record, and in either case that the signature of such person is genuine, and that the attestation is in due form.

The signature of the chief judge or presiding magistrate must be authenticated by the minister or ambassador, or a consul, vice-consul, or consular agent of the United States in such foreign country.[r]

CANADA.

Province of Ontario.

In conveying the estate of a married woman no acknowledgment or separate examination of the wife is required.

Proof of deeds, mortgages, etc., for registration, is to be made by affidavit on the instrument, or securely attached to it, as follows: **Within the Province**, before any commissioner for taking affidavits, before the registrar of deeds or his deputy, or before a judge of any of the superior courts or a county court. **In Great Britain**, before a judge of the superior courts, or of a county court, or the mayor or chief magistrate of any city, borough, or town corporate, certified under the common seal of such city, etc., or a commissioner appointed for taking affidavits in any of the courts of record of the Province. **In any British colony or possession, except India**, before a judge of a court of record, or the mayor of any city, borough, or town corporate, certified under the common seal; or before any notary public certified under his official seal. **In India**, before any magistrate or collector certified to have been such under the hand of the governor of the possession. **In any foreign country**, before the mayor of any city, borough, or town corporate, certified under the common seal; or before any British consul or vice-consul resident in such country; or before a judge of a court of record or a notary public, certified under his official seal.

Proof by Subscribing Witness.

State of ——, county of ——, to wit.

I (*here insert* 1, *name;* 2, *residence;* 3, *addition, occupation, or calling, of the subscribing witness in full*), make oath and say: 1, That I was present and did see the within (*or* annexed) deed (mortgage, discharge of mortgage, or other instrument), ***and a duplicate thereof (if the fact)* duly executed, signed, sealed, and delivered, by A. B. and C. D., the parties (*or two of the parties*) thereto. 2. That the said instrument and duplicate were executed at (*state place of execution*). 3. That I know the said parties so executing the said instrument (*or such one or more of them, according to the fact*). 4. That I am a subscribing witness to the said execution of the said instrument and duplicate.**

[*Signed*] **W. S.**

Sworn to before me .....
at .....
in the county of.....
and State of.....
on this.....day.....
A. D. 189–.

And I hereby certify the same under my official seal.

(*Signature of certifying officer*)
(*Title of same.*) (*Signature of Witness.*)

CANADA.

Province of Quebec.

The execution of deeds to real property in the Province of Quebec made by parties residing in the United States are valid when duly executed according to the laws or custom of the locality where executed.

If executed in presence of witnesses, one or all of such witnesses must make an affidavit of the authenticity of the signatures before the mayor or chief magistrate of the locality, who must give a certificate to that effect, which certificate should then be legalized by the nearest British consul.

All such matters as the number of witnesses, seals, etc., may be governed by the laws of the locality where the deed is executed.

A wife, if she have any interest, such as waiver of dower, or other right, may be a party to the deed, subject to the laws of the locality.

If the authenticity of any such deed is questioned, it must be proved by evidence taken at the place of its execution by a commissioner appointed by the court.

Such deeds, to take effect, must be registered in conformity with the provisions of the Civil Code on the registration of real rights.

Acknowledgment—Taken in the United States or Territories.

State (or Territory) **of ——, county of ——, ss.**

On the —— day of ——, A. D. one thousand eight hundred and ——. Before me, J. P., of (place of residence), (a justice of the peace for the county of ——, or mayor of ——, *or* a notary public duly appointed and sworn for ——), **personally came and appeared A. B., the person who executed the foregoing deed** (power of attorney *or other instrument*), **and to me well known as such, who then and there acknowledged that he had executed the same.**

Witness my hand and seal at ——, on the day and year first above written. J. P. [*Seal.*]

The above acknowledgment may be made before any public officer of the country in which the power is made; but if the power be one authorizing the execution of a discharge of a mortgage or other deed requiring registration, it must be proved by affidavit of one of the witnesses before any minister or *chargé d'affaires*, or consul of her majesty in such foreign country.

COLORADO.

Acknowledgment of deeds, mortgages, etc., when executed in this State, may be taken before any justice of the supreme or district courts, or any clerk of either of said courts, or the deputy of any such clerk, or before the probate judge of any county, such probate judge and such clerks certifying the same under the seal of such court respectively; before the county clerk of any county, or his deputy, he or his deputy certifying the same under the seal of his county: before any notary public, he certifying the same under his notarial seal; or before any justice of the peace within his county; *Provided*, that if the lands do not lie in the county of such justice of the peace, then there must be affixed to his certificate of acknowledgment the certificate of the county clerk of such county, under his hand and the seal of such county, to the official capacity of such justice of the peace, and that the signature of such justice of the peace to the certificate of acknowledgment is the true signature of such justice. **When executed outside of this State,** and within the United States or the Territories thereof, before the secretary of any such State or Territory, certified by him under the seal of such State or Territory; before the clerk of any court of record of such State or Territory, or of the United States, within such State or Territory, having a seal, such clerk certifying the same under the seal of such court; before any other officer authorized by the laws of such foreign State or Territory, to take and certify such acknowledgments; *Provided*, there shall be affixed to the certificate of such officer, a certificate by the clerk of some court of record of the county, city or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be, that he has authority by the laws of such State or Territory to take and certify such acknowledgment, and that the signature of such officer to the certificate of acknowledgment is the true signature of such officer; or before any commissioner of deeds for such foreign State or Territory appointed under the laws of this State, certified under the hand and official seal of such commissioner. **When executed out of the United States,** before any court of record having a seal, the judge or justice of such court certifying the acknowledgment to have been made before such court, under the seal of such court; before the mayor or other chief officer of any city or town having a seal, certified under such seal by such mayor or other officer, or before any consul of the United States within such foreign country, certified by him under the seal of his consulate.[s]

Acknowledgment—General Form.

State of ——, county of ——, ss.

—— appeared before me this —— day of —— in person, and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal:
My commission expires ———.

A. B.
(*Title of officer.*)

r-C. C. P. § 1906. s-See General Statutes.

Deeds must be signed by the grantor. No witnesses are required. Seals are abolished. There is neither dower or courtesy. Women convey as *femmes sole;* but in conveying a homestead both husband and wife must sign and acknowledge. An acknowledgment taken before a court of record should show that said court is a court of record. Powers of attorney for conveying land must be recorded. Livery of seizin is abolished. All estates granted or sold to be construed as fee simple, unless expressly limited. Estates in fee tail are abolished.

CONNECTICUT.

An acknowledgment, whether within or without the State, is sufficient, if made before a justice of the peace, notary public, judge of some court of ordinary *nisi prius* or superior jurisdiction, or any officer having power by law to take acknowledgments of deeds. Deeds may also be acknowledged in the State by the commissioners of the school fund, judges of probate, town clerks, and commissioners of the superior court. All deeds executed by grantors residing out of the United States may be personally acknowledged before a United States consul, notary public, or justice of the peace. A notarial seal proves itself. A certificate of the county clerk should be annexed to an acknowledgment by a justice of the peace. The magistrate must be personally acquainted with the grantor.[t]

The omission of a notarial seal to a deed acknowledged before a notary public does not invalidate the deed.

The word ["Seal"] or the scroll [L. S.] are, either of them, equivalent to a seal.

Acknowledgment by Corporation—General Form.

State of ——, county of ——, ss.

New York city, ——, A. D. 18—. Then and there before me, a (*name and official title*), **within and for the county and State aforesaid, duly commissioned and acting as such, personally appeared A. B. and W. B. his wife, signers and sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed before me.** (*Or*, "personally appeared A. A., agent of the C. C. Company, signer and sealer of the foregoing instrument, and acknowledged the same to be its free act and deed, before me.")

Witness my hand and seal of office, on this —— day of ——.

[*Seal.*] (*Signature and title.*)

Proof by subscribing witness is not allowed.

DAKOTA, NORTH AND SOUTH.

Acknowledgments may be taken within these States by a justice, clerk of supreme court or notary; or within the jurisdiction for which officers are elected or appointed, by a judge, clerk of court of record, mayor, register of deeds, justice of peace, commissioner of United States and district courts, county auditor or any public officer having an official seal. Outside of these States, but within the United States, by a justice, judge or clerk of any *United States, State or Territorial* court of record, notary, or other official with power to take acknowledgments. Without the United States, by a minister, commissioner, *charge d'affaires*, consul, vice-consul, or consular agent, resident in the country where the acknowledgment is taken. All the above officials must sign officially and use their seals, where seals are required.[u] Acknowledgments by justices of the peace, for other counties than their own, must have the certificate of their court of record, under seal, to the effect that said justices are authorized to so act, and that their signatures are genuine.[v] The general form of acknowledgment is:

State of ——, County of ——, ss.

On this —— day of —— 189 , personally appeared before me —— known to me (*or proved to me on oath of* ——) **to be the person who is described in and who executed the within instrument, and acknowledged to me that he (she, or they) executed the same.** (*Signature and title of officer.*)

Conveyances by married women have the same legal effect as if unmarried and may be acknowledged in the same way. For proof by subscribing witness see New York form.

DELAWARE.

Acknowledgment may be taken out of State before any consul-general, consul, or commercial agent of the United States duly appointed in any foreign country, at the places of their respective official residences, or before any judge of a district or circuit court of the United States, or the chancellor or any judge of a court of record, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor or officer, and the seal of his office, court, city or borough; or in open court, certified under seal of the court; or before a commissioner of deeds appointed by the governor or by a notary public of any State.

The certificate of acknowledgment *must* show that the wife relinquishes her dower, and the private examination *must* be certified in the words stated in the form as given below.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, personally came before the subscriber, a (*name and official title*), **A. B. and W. B. his wife, parties to this indenture, known to me personally** (*or* proved on the oath of W. S.) **to be such, and severally acknowledged said indenture to be their act and deed respectively, and that the said W. B. being at the same time privately examined by me apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threats, or fear of her husband's displeasure.**

Given under my hand and official seal the day and year aforesaid. (*Signature and official title.*)

Proof by subscribing witness is not allowed.

DISTRICT OF COLUMBIA.

The following sections of the Revised Code of law for the District of Columbia, as approved March 3, 1901, and amended June 30, 1902, relate to conveyances and acknowledgments:

Sec. 492. Estates.—No estate of inheritance, or for life, or for a longer term than one year, in any real property, corporeal or incorporeal, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor or declarant, or by will.

Sec. 493. Acknowledgment.—Acknowledgments of deeds may be made in the District of Columbia before any judge of any of the courts of said District, the clerk of the supreme court of the District, or any justice of the peace or notary public, or the recorder of deeds of the District, and the certificate of the officer taking the acknowledgment shall be to the following effect:

I, A. B., a justice of the peace (*or other officer authorized*) **in and for the District of Columbia, do hereby certify that C. D., party to a certain deed bearing date on the —— day of ——, and hereto annexed, personally appeared before me in said District, the said C. D. being personally well known to me as** (*or proved by the oath of credible witnesses*) **the person who executed the said deed, and acknowledged the same to be his act and deed.**

Given under my hand and seal this —— day of ——.

[*Seal.*] **A. B.**

Sec. 494. Release of Dower.—If the wife of the party executing said deed, being not less than eighteen years of age, shall desire to release her dower in the property conveyed, she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed and acknowledged by her in the same manner as provided in the preceding section, and her acknowledgment shall be certified in the same manner.—*Act June 30, 1902.*

Sec. 495. Acknowledgments out of District.—When any deed or contract under seal is to be acknowledged out of the District, but within the United States, the acknowledgment may be made before any judge of a court of record and of law, or any chancellor of a State, any judge or justice of the supreme, circuit or territorial courts of the United States, any justice of the peace or notary public; **Provided,** That the certificate of acknowledgment aforesaid, made by any officer of the State or Territory not having a seal, shall be accompanied by the certificate of the register, clerk or other public officer that the officer taking such acknowledgment was, in fact, the officer he professed to be.—*Act June 30, 1902.*

t-See General Statutes. u-Civil Code, §§ 517, 518.

Sec. 496. Deeds made in a foreign country may be acknowledged before any judge or notary public, or before any secretary of legation, or consular officer, or acting consular officer, of the United States, as such officer is described in Sec. 1674 of R. S. of the U. S.; and when the acknowledgment is made before any other officer than a secretary of legation, or consular officer, or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in section 495.

Sec. 514. Absence of Acknowledgment.—No deeds or conveyances of squares or lots of public lands in the city of Washington, made in pursuance of law prior to the adoption of this code by the commissioner of public buildings or any other authorized officer, shall be deemed invalid in law for the want of an acknowledgment by the commissioner or other authorized officer before such judicial officers, as deeds of real property made between individuals are required by law to be acknowledged.

Sec. 515 cures defective acknowledgments made prior to the adoption of the new code (1901).

Sec. 516 provides that the acknowledgment of a married woman to a deed by husband and wife, given prior to April 10, 1869, must show that such acknowledgment was made "apart" or "privily" from her husband, and that the same was her voluntary act.

FLORIDA.

All deeds, mortgages, or other conveyances, all powers of attorney relating to the same, and all instruments under seal, to be used or recorded in this State, in case the same shall be **acknowledged out of this State**, shall be acknowledged by the party or parties executing the same, or the execution thereof shall be proved by a subscribing witness thereto before a commissioner duly appointed by the governor of Florida. In those cities or counties where no commissioner is appointed, or where he is unable to act, the acknowledgment or proof may be taken before the chief justice, judge, presiding justice, or president of any court of record of the United States, or of any State or Territory thereof, having a seal and a clerk, or prothonotary; but no proof or acknowledgment taken by any such party shall entitle such deed, power of attorney, or conveyance to be recorded, unless taken within some place or district to which the jurisdiction of the court to which he belongs shall extend, and the place of taking such acknowledgment be by him set forth in his certificate of acknowledgment, and also that the court of which he is such chief justice, judge, presiding justice, or president, is a court of record; the certificate shall state that the party taking the acknowledgment knows or has satisfactory proof that the person making such acknowledgment is the individual described in and who executed the deed or instrument under seal; the certificate of acknowledgment of such chief justice, judge, presiding judge, or president, shall be accompanied by the certificate of the clerk, or prothonotary of the court for which he is such judge, justice, or president as aforesaid, under the seal of said court, that he is duly appointed or authorized as such judge, justice, or president, etc. **The acknowledgment of a married woman** (residing out of this State) to a deed, conveyance, or instrument under seal, purporting to be executed by her, shall not be taken, unless, in addition to the foregoing requisites, she acknowledges, on a separate or private examination by the officers taking her acknowledgment, apart from her husband, that she executed such deed, conveyance, or instrument under seal, freely, and without any fear or compulsion of or from her husband. The officer must in all cases certify to the identity of the grantor. It is competent for him, however, to satisfy himself of the identity of the parties at his own discretion.[x]

Deeds, etc., executed in this State of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds may acknowledge the execution thereof before any judge, clerk of the circuit court, notary public or justice of the peace within the State, and if any such deed or conveyance of land shall be executed **in any other State, Territory, or district** of the United States, such deed may be executed according to the laws of such State, Territory, or district, and the execution thereof may be acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, or other officer authorized by the laws of such State, Territory, or district, to take acknowledgment of deeds therein, or before any commissioner appointed by the governor of this State for such purpose.

If such deed be **executed in any foreign country** it may be executed according to the laws of such country; any execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, *chargé d'affaires*, commissioner, or consul of the United States appointed to reside therein, or before a commissioner appointed by the governor of this State for such purpose, which acknowledgment shall be certified therein by the officer taking the same under his hand, and his seal of office shall be affixed to such certificate.

If any such deed or other conveyance shall be executed and acknowledged in any other State or country, **before any officer not having an official seal**, he shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record or certificate of the secretary of state, minister plenipotentiary, minister extraordinary, minister resident, *chargé d'affaires*, commissioner, or consul (as the case may be), that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory, district, or foreign country.[y]

The wife may relinquish her dower in any land, tenements, or hereditaments, by joining in the deed made by the husband, or she may execute a separate instrument under her hand and seal, in the presence of two witnesses. **When made in this State**, her relinquishment of dower (to be effectual) must be accompanied by an acknowledgment under her hand and seal, taken and made separately and apart from her husband, *before some judicial officer of this State*, that it was made freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from the husband. **When made out of this State**, but within the United States, it shall be taken *in the manner aforesaid*, by the clerk or prothonotary of some court of record in the State, Territory, or district in which it shall be made, in the *presence* of the judge or justice, or of one of the judges or justices of the court to which the clerk or prothonotary who takes the acknowledgment shall belong. And the taking of such acknowledgment, and the certificate of the clerk or prothonotary, shall be authenticated under the hand of the judge or justice present at the making thereof, by his certifying that the said acknowledgment was made in his presence, and that the person acting as clerk or prothonotary was at the time of his so doing the clerk or prothonotary of the court of which he is judge or justice.

If any such relinquishment of dower shall be **made out of the United States**, the acknowledgment of the party making it shall be taken in the manner as aforesaid, by and before some public minister, consul or vice-consul, commercial or vice-commercial agent of the United States residing in the country in which the acknowledgment may be taken, and shall be certified under the hand and the seal of office of such public minister, consul or vice-consul, commercial agent or vice-commercial agent.[y]

Relinquishment of Dower—Taken out of the State.

State of ——, city or county of ——, ss.

Be it remembered, that on this —— day of ——, in the year of our Lord ——, before me, the clerk of the —— court for the (city *or*) county of ——, and State of ——, which said court is a court of record, personally came W. B., wife of A. B., to me well known as the person described in, and who executed the foregoing deed of conveyance (*as the case may be*), and acknowledged that she made herself a party to and executed the same, for the purpose of relinquishing her dower, in and to the lands and tenements therein described; and the said W. B., on a private examination taken and made before me, in the presence of the Hon. J. J., judge of our said court, separately and apart from her said husband, acknowledges and says that the said relinquish-

x-Bush's Digest, p. 151. y-Laws 1873, p. 18.

ment and renunciation of dower was and is made freely and voluntarily, and without any compulsion or constraint, apprehension or fear of or from her said husband, the said A. B., to which acknowledgment the said W. B. has in my presence and in the presence of the said J. J., judge of our said court, this day set her hand and seal.

Witness my hand and the seal of our said court at ——, in ——, this the day and year first above written.

[*Seal of Court.*] C. C., Clerk, etc.

Acknowledgment—Certificate.

State of ——, city or county of ——, ss.

I, J. J., judge of the —— court of the (city *or* county) and State aforesaid, do hereby certify that the foregoing acknowledgment was made in my presence at ——, within the jurisdiction of our said court; and that C. C., before whom the said acknowledgment was taken, and whose signature is attached thereto, was at the time of his so doing the clerk of the said —— court, of which I am the judge (and that the signature of the said (*name of clerk*) to said acknowledgment to be genuine). J. J., Judge, etc.

The wife should also acknowledge with the husband, before the proper officer, in the usual form, in order to admit the deed to record.

Proof by Subscribing Witness.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, in the year ——, before me (*name and title of officer*), personally appeared W. T., whose name is affixed as a subscribing witness to the foregoing deed between A. B. and E. F.; and who, being duly sworn, deposes and says, that the said A. B. duly signed, sealed, and delivered the foregoing deed to the said E. F., as his act and deed, in the presence of him, the said W. T., and also in the presence of N. S., the other subscribing witness to said deed, who then at the request of the said A. B. duly signed and attested the same in the presence of the deponent, and of the said A. B., the grantor.

In testimony whereof, I have hereunto set my hand and affixed my seal the day and year first above written.

[*Official seal.*] (*Signature and title of officer.*)

Acknowledgment—Out of the State.

State of ——, city or county of ——, ss.

Be it remembered, that on this —— day of ——, in the year ——, personally appeared before me, a commissioner duly appointed and authorized by the executive authority of Florida under the laws of said State to take within the State of —— proof and acknowledgment of deeds, etc. (*or other officer, as the case may be*), to be used and recorded in said State, A. B., to me well known to be the person who executed the foregoing (and annexed) deed by him sealed and subscribed; and the said A. B. acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[*Official seal.*] (*Signature and title of officer.*)

GEORGIA.

Conveyances of property in this State should be attested (in order to admit them to record) by the following officials: If within the State, by a notary public, judge, or clerk of the superior court or ordinary of court, or by any justice of the peace. Where a deed is executed within the State, it is not necessary that the notary public or other attesting officer should affix any seal. If executed in another State, by a commissioner of deeds for the State of Georgia, or a consul or vice-consul of the United States, under their seals, or by a judge of a court of record in the State where executed, with a certificate of the clerk, under the seal of such court, or by two witnesses, one of whom is a notary public, with the certificate of his appointment attached. All deeds, mortgages, etc., to realty, should be attested by two witnesses, the commissioner, consul, etc., or judge, being one, and should be under seal (or scroll).[a]

[a] See General Statutes.

If the subscribing witness or witnesses be dead or lunatic, or have removed without the State, or be otherwise incapacitated to make the affidavit, the affidavit of a third person to such death, lunacy, etc., and to the genuineness of the handwriting of the subscribing witness or witnesses, shall be sufficient to admit the deed to record.[a]

Renunciation of dower by the wife is not required in this State, except where the husband is alienating lands to which he derived title through the wife by marriage contracted prior to the statute of 1866.[a]

Acknowledgment—General Form.

A simple acknowledgment before the witnesses designated above is all that is required. The attestation clause opposite to or below the signature of the parties executing the deed should be: "Signed, sealed and delivered in presence of." No further certificate by the officer of the execution, or acknowledgment of the signing is necessary. This includes acts of husband and wife.

Proof by Subscribing Witness When Deed is not made before Officer.

State of ——, county of ——, ss.

Before me (*name and title of officer*) personally came W. T., to me known to be the individual whose signature is affixed to the foregoing deed as one of the witnesses thereto, who being sworn says that he was present at the time when said deed was executed, that he saw the same signed, sealed, and delivered by A. B., whose signature is thereto affixed as grantor; that N. S., the other subscribing witness thereto, was likewise present at said time and witnessed said execution of said deed, and that he the said W. T. and the said N. S. then and there signed the same as attesting witnesses. W. T.

Sworn to and subscribed before me this — day of ——, A. D. ——.

(*Signature and title of officer.*

IDAHO.

The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers: If acknowledged or proved within this State, by some judge or clerk of a court having a seal, or some notary public or J. P. or recorder for the proper county. If acknowledged or proved without this State, and within the United States, by some judge or clerk of any court of the United States, or of any State or Territory having a seal, or by any commissioner appointed by the governor of this State for that purpose, or by any official authorized by the laws of the State where the acknowledgment is taken to take acknowledgments. If acknowledged or proved without the United States, by some judge or clerk of any court of any state, kingdom, or empire having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States appointed to reside therein.

A husband and wife may by their joint deed convey the real estate of the wife. Every conveyance affecting real estate must be acknowledged or proved and certified.

Every power of attorney or other instrument in writing, containing power to convey any real estate as agent or attorney for the owner thereof, must be acknowledged and certified in the same manner as above described for deeds.

The party offering to make acknowledgment shall be known to the officer, or prove himself to be the person he represents, by the oath of a credible witness.

Acknowledgment—Grantor unknown to Officer.

State of Idaho, County of——, ss.

On this —— day of——, A. D. ——, personally appeared before me, N. P., a notary public (judge or other officer) in and for said county, A. B., proved to me on the oath of —— to be the person whose name is subscribed to the within conveyance; and he, the said A. B., acknowledged to me that he executed the same.

In testimony whereof, etc.

(*Signature and official title.*)

[a] See General Statutes.

Any officer authorized to take proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

Such married woman must be known to the officer, or satisfactorily proved to be the person represented, and must be examined apart from, and without the hearing of her husband, and must acknowledge that the act is free and voluntary, and without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same.

No estate as tenant by courtesy allowed the husband, nor dower to the wife.

Acknowledgment—Single Person.

State of Idaho, County of ——, ss.

On this —— day of —— in the year 189 , before me ——, a —— in and for said county, personally appeared——known to me to be the person whose name —— subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(*Signature and title of official.*)

Acknowledgment—Husband and Wife:

OR LATTER PART FOR MARRIED WOMAN ALONE.

State of Idaho, County of ——, ss.

On this —— day of —— in the year 189 , before me ——, a —— personally appeared —— known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same; and on this —— day of —— in the year 189 , before me, the officer above described, personally appeared —— known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

In witness whereof I have hereto set my hand and affixed my official seal, the day and year in this certificate first above written.

(*Signature and title of official.*)

The acknowledgment to a conveyance made by a corporation must be taken by and before the same officers prescribed for other parties.

State of ——, county of ——, ss.

On the —— day of ——, A. D. ——, before me personally came P. P., the president of the —— company, personally known to me to be the president of the —— corporation that executed the above instrument, and acknowledged to me that such corporation executed the same.

In testimony whereof, I have hereunto set my hand and affixed my seal of office the day and year first above written.

[*Seal.*] (*Signature and title.*)

Proof by Subscribing Witness.

The proof of the execution of any conveyance whereby any real estate is conveyed or may be affected when not acknowledged shall be, 1st, by the testimony of a subscribing witness; or, 2d, when all the subscribing witnesses are dead or cannot be had, by evidence of the handwriting of the party and of at least one subscribing witness.

No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proven to be such by the oath or affirmation of a credible person.

No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party is the person described in, and who executed the same, that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

State of ——, county of ——, ss.

On this —— day of ——, A. D. one thousand eight hundred and ——, personally appeared before me (*here insert name and title of officer*), in and for the said —— county, ——, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who being by me duly sworn deposed and said that he resides in ——, that he was present and saw A. B., personally known to him to be the same person described in and who executed the said annexed instrument as A. B., party —— thereto, sign, seal, and deliver the same; and that the said A. B. acknowledged in the presence of said affiant that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that he, the said affiant, subscribed his name as a witness thereof.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[*Seal.*] (*Signature and title of officer.*)

ILLINOIS.

Instruments for the conveyance of land must be acknowledged or proved before either of the following officers: **When acknowledged within this State,** before a notary public or United States commissioner, who shall affix his seal; a master in chancery, circuit or county clerk, justice of the peace (the official character of the latter, if he be without the county where the land lies, to be certified by the clerk of the county court), any court of record having a seal, or any judge, justice, or clerk thereof,—if before the court or clerk, the seal of court being affixed. **When acknowledged or proved without this State,** and within the United States: before a justice of the peace (his official character being certified as above), notary public, United States commissioner, commissioner of deeds, mayor of a city, or clerk of a county, such officer affixing his official seal, any judge, justice, or clerk of any United States, State, or Territorial court; or the acknowledgment may be in conformity with the laws of the State where made, in which case a certificate of conformity from the clerk of a court of record, with the seal of court affixed, is required, or conformity may be proved by the laws of such State. **When acknowledged or proved without the United States:** before any court having a seal, mayor, or chief officer of any city or town having a seal, minister or secretary of legation, or consul of the United States in any foreign country, attested by his official seal, or any officer authorized by the foreign law to take acknowledgments; if the latter has no official seal, proof that he is duly authorized is required; or the acknowledgment may be in conformity with the foreign law, and so certified by any consul or minister under his official seal. When an acknowledgment is made before a commissioner of Illinois, it must comply with the laws of this State, and be certified under his official seal.

Proof of the execution of any instrument may be made by a subscribing witness; and, when the grantor or subscribing witness is deceased, the officer may take proof of their handwriting, or of the handwriting of the grantor, if there be no subscribing witness, and grant a certificate thereof.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

I (*name and title of officer*), do hereby certify that A. B. and W. B. his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.*

Given under my hand and official seal this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me (*name and title of officer*) duly appointed and commissioned, personally appeared W. T., to me personally known to be a subscribing witness to the foregoing deed (*or as the case may be*, " who has proved to me on oath of W. S.

*See §27, next page.

a credible witness, to be a subscribing witness to the foregoing deed"), who, after being duly sworn according to law, deposeth and saith that A. B., whose name appears subscribed to said deed, is the real person who executed the same, and that he the said W. T. subscribed his name as a witness thereto, in the presence, and at the request of, the said A. B., which is sufficient evidence to me of the execution of said deed.

In testimony whereof, I have hereunto set my hand and seal at ——, this —— day of ——, A.D. ——

[*Seal.*] (*Signature and title of officer.*)

Waiving Homestead Exemption.

*"**Sec. 27.** No deed or other instrument shall be construed as releasing or waiving the right of homestead, unless the same shall contain a clause expressly releasing or waiving such right. And in such case the certificate of acknowledgment shall contain a clause substantially as follows: 'including the release and waiver of the right of homestead,' or other words which shall expressly show that the parties executing the deed or other instrument intended to release such right. And no release or waiver by the husband shall bind the wife unless she join in such release or waiver." R. S. 1877, Ch. 30, § 27.

INDIANA.

To entitle any conveyance, mortgage, or instrument of writing to be recorded, it must be acknowledged by the grantor, or proved before any judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public, or mayor of a city in this or any other State, or before any commissioner appointed in any other State by the governor of this State, or before any minister, *chargé d'affaires*, or consul of the United States in any foreign country.[g]

When any conveyance, mortgage, or other instrument required to be recorded, is acknowledged in any county in this State other than the one in which the same is required to be recorded, the acknowledgment must be certified by the clerk of the circuit court of the county in which the officer resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, if attested by such official seal, is sufficient without such certificate.[h] A county surveyor is authorized to have a seal, and take and certify acknowledgments of mortgages and deeds for realty.

Any acknowledgment of any conveyance in a foreign country, as above provided, requires no certificate other than the official seal of the officer taking said acknowledgment.[i]

To entitle to record in this State conveyances acknowledged out of this State and within the United States, the same must be certified by the clerk of any court of record of the country in which the officer receiving the acknowledgment resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, attested by his official seal, is sufficient without such certificate.[j]

All deeds may be proved according to the rules of the common law, before any officer authorized to take acknowledgments, and being so proved are entitled to record.[k]

It is not necessary for a married woman to acknowledge her deed in any form other than that required by unmarried persons.[l]

The certificate of any such acknowledgment must be in writing upon or attached to such conveyance.[m]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me (*name and title of officer taking the acknowledgment*), duly commissioned and qualified, personally appeared A. B. and W. B. his wife, the grantors in the foregoing deed, and severally acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned (*name and title of officer*), personally appeared W. T., the subscribing witness to the execution of the within deed, of lawful age, who being by me duly sworn upon his oath did depose and say that on the —— day of ——, A. D. ——, he saw the within-named grantors, A. B. and W. B. his wife, sign, seal, and deliver the within deed, as their act and deed; that this deponent at the same time signed his name as a witness of the execution of said deed, at the request and in the presence of said grantors, which grantors were at the time over the age of twenty-one years, and of sound mind and memory, and laboring under no disability so far as deponent knows.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

IOWA.

Instruments affecting real estate executed within the State must be acknowledged before some court having a seal, or some judge, or clerk or deputy clerk thereof, or some J. P., or notary public, or a county auditor or his deputy.

Instruments affecting real estate executed **out of this State but within the United States** must be acknowledged before some court of record, or officer holding the seal thereof, or before some commissioner of deeds appointed by the governor of this State, or before some notary public or justice of the peace; and when before a justice, a certificate under the official seal of the proper authority, of the official character of said justice and of his authority to take such acknowledgments, and of the genuineness of his signature, shall accompany said certificate of acknowledgment. Such instruments, if executed **without the United States,** may be acknowledged or proven before any ambassador, minister, secretary of legation, consul, *chargé d'affaires*, consular agent, or any other officer of the United States in any foreign country, who is authorized to issue certificates under the seal of the United States. Such instruments may also be acknowledged or proven before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents; but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments, and to certify thereto, and of the genuineness of his signature or seal, if he have any.[n]

The certificate of acknowledgment must contain the title of the court or person before whom it was taken; that the person making the acknowledgment was personally known to be the identical person whose name is affixed thereto: or that such identity was proved by at least one credible witness (*naming him*); and that such person acknowledged the instrument to be his voluntary act and deed.[n]

If the grantor die, or his attendance cannot be procured, or he refuses to acknowledge it, proof of the due execution and delivery of the deed may be made by one competent person other than the vendee or other person to whom the instrument is executed, and the certificate of acknowledgment must contain the title of officer taking same, that it was satisfactorily proved that grantor was dead, or that his attendance could not be procured, or that he refused to acknowledge same, and the names of the witnesses by whom proof was made, that the instrument was executed by the person whose name is signed thereto.[n]

The execution of any deed, mortgage, or other instrument in writing, executed by an attorney in fact, may be acknowledged by the attorney executing the same, and the certificate thereof must contain the title of officer taking acknowledgment, that the person signing same was personally known to be the identical person

g-R. S. 1881, § 2933. h-id. § 2934. i-id. § 2937. j-id. § 2985. k-id. § 2936. l-id. § 2938. m-id. § 2950.

n-See General Statutes.

signing same as attorney in fact for grantor, and that such person acknowledged the instrument to be the act and deed of grantor by him as his attorney thereunto appointed, voluntarily done and executed.[n]

In every conveyance of real estate the joining of the wife with her husband is deemed sufficient to pass all her interest in the property, either as his wife or in her own right.

Conveyances by corporations may be executed by any officer thereof, qualified thereto by charter or laws of the corporation, by giving his title as such officer, certifying that he is duly authorized to act, and by attaching the seal of the corporation.[o]

A married woman may convey her interest in real estate in the same manner as other persons.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, before me (*title of the court or person before whom the acknowledgment is taken*) personally came A. B. and W. B. his wife, to me personally known to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the execution of the same to be their voluntary act and deed.

Witness my hand and notarial (*or* official) seal the day and year above written.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.[p]

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me (*title of court or officer before whom the acknowledgment is taken*) personally appeared W. T., who being by me first duly sworn, did depose and say that A. B., the grantor in foregoing deed, was personally known to him, and that the said A. B. was dead (*or state the reasons for his non-attendance*), which is satisfactory proof to me that his attendance could not be procured to make this acknowledgment (*or* that having appeared he refused to acknowledge the instrument); and the said W. T. further deposed and said that he saw A. B., the grantor therein, subscribe and deliver said deed (*or* that the said A. B., the grantor therein, acknowledged to him that he had subscribed, sealed, and executed said deed), for the uses and purposes therein mentioned, which is satisfactory proof to me that said instrument was executed by said A. B., whose name is thereunto subscribed as a party.

In testimony whereof, I have hereunto set my hand and affixed my notarial (*or other* official seal of office) seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

KANSAS.

All conveyances and other instruments affecting real estate, acknowledged within this State, must be acknowledged before some court having a seal, or some judge, justice, or clerk thereof, or some justice of the peace, notary public, county clerk, or register of deeds, or mayor or clerk of an incorporated city.[p]

If acknowledged out of this State, it must be before some court of record, or clerk or officer holding the seal thereof, or before some commissioner to take the acknowledgments of deeds, appointed by the governor of this State, or before some notary public or justice of the peace, or before any consul of the United States, resident in any foreign port or country. If taken before a justice of the peace, the acknowledgment must be accompanied by a certificate of his official character, under the hand of the clerk of some court of record, to which the seal of said court must be affixed.[q]

General Form of Acknowledgment.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for (said county,) came ——, who is (*or* are) personally known to me to be the same person (*or* persons) who executed the (above, foregoing *or* within) instrument of writing, and such person (*or* persons each) duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand (and affixed my official *or* notarial seal), this —— day of ——, A. D. ——.

[*Seal.*] O. R. (*Official title.*)

Acknowledgment—by Husband and Wife.

The State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for said county, came A. B. and W. B. his wife, who are each personally known to me to be the same persons who executed the (above, foregoing *or* within) instrument of writing, and such persons each duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand, (and affixed my —— seal), this —— day of ——, A. D. ——.

[*Seal.*] O. R. (*Official title.*)

Acknowledgment—by Attorney.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for said county, came A. B., by A. A., his attorney in fact, who is personally known to me to be the same person who executed the (above, foregoing *or* within) instrument of writing for said A. B., and he duly acknowledged the execution of the same (by virtue of a power of attorney, duly executed by said grantor, bearing date the —— day of ——, A. D. ——, and recorded in the office of the ——, of —— county, in the State of ——, in volume ——, page ——, of ——) for and as the act of said A. B.

In testimony whereof, I have hereunto set my hand (and —— seal) this —— day of ——, A. D. ——.

[*Seal.*] O. R. (*Official title.*)

Acknowledgment—to Confirm Deed Executed during Infancy.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for said county, came I. I., who is personally known to me to be the same person who executed the (above, foregoing *or* within) instrument of writing, and such person duly acknowledged that said instrument was formerly executed by him when an infant under the age of twenty-one years; that he since arrived at full age; that he is desirous of confirming his former execution thereof, and duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand (and affixed my notarial *or* official seal), this —— day of ——, A. D. ——.

[*Seal.*] O. R. (*Official title.*)

Acknowledgment—of Administrator or Executor.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for said county, came A. E. (executor of the last will and testament, *or* administrator of the estate and effects), of A. B., deceased, who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand and affixed my —— seal the day and year last above written.

[*Seal.*] *Signature:* —— (*Official title.*)

The within deed approved by me, this —— day of ——, A. D. ——.

[*Seal.*] P. J., Probate Judge.

Acknowledgment—of Guardian.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for said county, came G. N., guardian of the person and estate of I. B., minor heir of A. B., deceased, who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my

[n] See General Statutes. [o] Title XIII. ch. 6. [p] G. S. 1868, Ch. 22, § 9. [q] Id. § 10.

hand and affixed my —— seal, the day and year last above written.

[*Seal.*] *Signature:* —— (*Official title.*)

The within deed approved by me, this —— day of ——, A. D. ——.

[*Seal.*] P. J., Probate Judge.

Acknowledgment—of Sheriff.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the undersigned, a —— in and for the county aforesaid, came S. F., Sheriff of —— county, in the State of Kansas, who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In testimony whereof, I have hereunto set my hand and affixed my —— seal, the day and year last above written.

[*Seal.*] *Signature:* —— (*Official title.*)

Acknowledgment—Tax Deed.

State of Kansas, —— county, ss.

I hereby certify that, before me ——, a —— in and for said county, personally appeared the above-named C. C., clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to, and who executed the above conveyance, as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as clerk of said county, for the purpose therein expressed.

Witness my hand and seal this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and official title.*)

The husband must join in conveyance of wife's property; corporations execute conveyances by the president, presiding member, or trustee thereof, attested with their corporate seal, and acknowledged the same as conveyances of private parties.

Unacknowledged deeds may be proved before any officer authorized to take acknowledgments. The wife need not be "examined apart from her husband," or "relinquish her dower."

Proof by Subscribing Witness.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me (*here insert name and title in full*) duly commissioned in and for the county and State aforesaid, personally appeared W. T., by whose oath duly administered by me, it is proved to my satisfaction that A. B., the grantor named in and who executed the foregoing deed of conveyance, has died since executing the same (*or* that for some other cause his attendance could not be procured in order to make the acknowledgment, *or* that, having appeared, he refused to acknowledge the deed, *as the case may be*), and that said instrument of conveyance was so executed by the said A. B., whose name is thereunto subscribed by himself as a party in the presence of the said W. T.

Witness my hand and official seal the day and year first above written.

[*Seal.*] (*Signature and title of officer.*)

This form of acknowledgment can only be used if the grantor die, or his attendance cannot be procured, or having appeared before the officer he refuses to acknowledge the deed. As no subscribing witnesses are required by the law in this State, the proof may be made by any person knowing the facts to be proven, except that in cases where a deed is witnessed in fact proof of the handwriting of the grantor and of the witnesses cannot be resorted to until it is shown that the subscribing witnesses are dead, or cannot be had to prove the execution of the instrument. Such proof may be made before any court or officer authorized by the law of the State to take the acknowledgment of the grantor in person. They are also empowered by law to issue subpœnas for witnesses to prove the facts required by law to be established, and to compel their attendance by attachment.

KENTUCKY.

Deeds (mortgages, etc.) **by persons other than married women may be admitted to record when executed in this State.** 1. On the acknowledgment before the proper clerk by the party making the deed. 2. Or by the proof of two subscribing witnesses, *or* by the proof of one subscribing witness who shall also prove the attestation of the other. 3. Or by proof of two witnesses that the subscribing witnesses are both dead, and also like proof of the signature of one of them and of the grantor. 4. Or by like proof that both the subscribing witnesses are out of the State, *or* that one is so absent and the other is dead, and also like proof of the signature of one of the witnesses and the grantor. 5. Or on the certificate of a clerk of a county court of this State that the same had been acknowledged or proved before him as required by this section.[r]

Deeds (mortgages, etc.) **executed out of this State and within the United States** by persons other than married women may be admitted to record when the same shall be certified, under his seal of office, by the clerk of a court or his deputy, or by a notary public, mayor of a city, or secretary of State, or commissioner to take the acknowledgment of deeds, or by a judge, under the seal of his court, to have been acknowledged or proved by him in the manner hereby required.[s]

Deeds (mortgages, etc.) **executed out of the United States** by persons other than married women may be admitted to record when the same shall be certified by any foreign minister or consul, or secretary of legation of the United States, or by the secretary of foreign affairs, certified under his seal of office, or the judge of a superior court of the nation where the deed shall be executed, to have been acknowledged or proved before him in the manner prescribed by law.[t]

Where a deed is proved by persons other than the subscribing witnesses, the officer shall state the name and residence of such persons in his certificate.[u]

The deed (mortgage, etc.) **of a married woman,** to be effectual, shall be acknowledged before some one of the officers named in the preceding sections and lodged in the proper office for record. Previous to such acknowledgment it shall be the duty of the officer to explain to her the contents and effect of the deed, separately and apart from her husband, and thereupon, if she freely and voluntarily acknowledge the same, and is willing for it to be recorded, the officer shall certify the same as follows: 1. **Where the acknowledgment is taken by an officer of this State,** he shall simply certify that it was acknowledged before him and when it was done, which shall be evidence that she had been examined separately and apart from her husband, and the contents explained to her, and that she had voluntarily acknowledged the instrument and consented that it should be recorded. 2. **Where the acknowledgment shall be taken by an officer residing out of this State,** the same shall be acknowledged and certified to the effect following:[v]

Acknowledgment—Married Woman out of this State.

Commonwealth (*or* Kingdom) of ——, county (*or* town, *or* city, *or* department, *or* parish) of ——, sct.

I, O. R. (*here give his official title*), do certify that this instrument of writing from A. B. and his wife W. B. (*or* from W. B., wife of A. B.) was this day produced to me by the parties, and the contents and effect of the instrument being explained to said W. B. by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office this —— day of ——.

[*Seal.*] O. R.

If the husband join in the deed with his wife and acknowledge it before the same officer, his acknowledgment may be certified with that of his wife immediately succeeding the word "parties," thus, "which was acknowledged by the said A. B. to be his act and deed."[w]

Proof by Subscribing Witnesses.

State of ——, county of ——, ss.

I, A. B. (*here give his title*), do certify that this day came before me W. T. and N. S., the subscribing witnesses to the foregoing deed (or other instrument), by A. B. to C. D., which witnesses

r-G. S. 1873, ch. 24, § 15. s-Id. § 16; 3 Bush 57a. t-Id. § 17. u-Id. § 18. v-Id. § 21. w-Id. § 21.

are personally known to me to be the same whose names are so written as witnesses, and being solemnly sworn by me in due manner, did severally declare on their oaths, that the said A. B. did acknowledge this instrument to be his act and deed, that the signature thereto was made by him, that they know him to be the same person who is named as the grantor therein, and that they did subscribe said deed as witnesses by his request.

Given under my hand and seal of office this —— day of ——.

[*Seal.*] (*Signature and title of officer.*)

Corporations execute instruments as individuals, and the acknowledgment and certificate are in the same form, except that the corporation must sign and acknowledge by its principal officer, and affix the corporate seal.

LOUISIANA.

Any conveyance or instrument may be acknowledged before a commissioner of Louisiana, whose certificate under seal will admit it to record there. This officer may also certify to the official character and functions of all public officers in the State for which he is appointed. **An acknowledgment made in conformity with the laws of any other State is valid in this State.** The official character of the person before whom the acknowledgment is made must, however, be properly verified.[x]

When they are not executed or acknowledged before a commissioner of Louisiana, they must be authenticated as follows:

1st. By some judge of a court having a seal, to have been taken before him, specifying the time and place where taken, or that the officer before whom it was subscribed was the proper officer, and that his attestation is in due form.

2d. The genuineness of the signature of such judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by a clerk of the court, under the seal thereof.

3d. The official character of the officer before whom it is subscribed may also be shown by the certificate of the governor, the secretary of state; the chancellor, or the keeper of the great seal of the State, or,

4th. It may be taken before any commissioner for Louisiana, duly appointed and commissioned by the governor, and the said commissioner may also certify the official capacity and acts of any judge, justice of the peace, or other public officer, holding a commission or acting under the authority of the State or Territory in which he resides, and for which he shall have been appointed.

The acknowledgment of deeds should contain name and title of the officer before whom executed, with the statement that signatures were affixed in the presence of two male witnesses over fourteen years of age, and that the parties signing declared the same to be their act and deed. Such acknowledgments can now be received by any notary public of any of the States or Territories, or of the District of Columbia, without any other evidence of authority than the seal of office, which should in all instances be affixed.

Conveyances, etc., by corporations are executed and acknowledged by the proper officer in the same form as individuals.[x]

Wherever a married woman joins with her husband in any act affecting his real estate, it is the duty of the officer before whom the act is passed to examine her, apart from the presence of her husband, touching the freedom of her action, and to inform her fully of the nature of her rights upon the property of her husband, and it must appear upon the face of the act that this has been done. In other cases, no particular form of words is required.[x]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Be it remembered, that on this day came before me, O. R. (*name and title of officer*), within and for the county and State aforesaid, duly commissioned and acting as such, A. B. and W. B. his wife, to me known personally (*or* proved such by two credible witnesses) to be the persons whose names are subscribed to the foregoing deed, and the said A. B. acknowledged that he had executed the said conveyance (*or other instrument*) for the consideration and purposes therein mentioned and set forth, and the said W. B. being by me first made acquainted with the contents of said instrument, in an examination apart from her husband, and fully advised of the nature of her rights upon his property, acknowledged that she executed the same freely and without compulsion or undue influence of her said husband.

Witness my hand and seal of office on this —— day of ——. (*Signature and title of officer.*)

MAINE.

Deeds in order to be recorded must be acknowledged, **if executed in this State,** before a J. P., or notary public; **but if executed out of this State,** before any justice of the peace, magistrate, or notary public in any of the United States, or by a commissioner appointed in any other State by the governor of this State; **in any foreign country,** by any United States minister or consul, or notary public. A wife must join in a deed of her husband to relinquish dower, or may do so by a separate instrument. If she joins with her husband, the acknowledgment of either is sufficient. If she executes a separate deed, she must acknowledge it. She need not be examined separate from her husband in order to acknowledge any deed. The husband must join with the wife in conveying *her* real estate, when it was deeded to her by him or his relatives, or paid for by his means, but not otherwise.[y]

The acknowledgment of any one grantor is sufficient, and the acknowledgment of the wife is the same as that of any other person.

Acknowledgment—General Form.

Officer without Seal.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, personally appeared the above-named (*grantors*) and acknowledged the foregoing instrument by them signed, to be their free act and deed.

Before me, J. P., *Justice of the Peace.*

The magistrate need not certify that he personally knows the grantor.

The deed of a corporation is acknowledged by the person authorized by the special vote or the general by-laws of the corporation, and in behalf of the corporation, to sign it; for example:

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, personally appeared the above-named (*agent or attorney*), and acknowledged the foregoing instrument to be the free act and deed of (*the corporation*).

Before me, J. P., *Justice of the Peace.*

Acknowledgment—Commissioner of Deeds, or other person having a Seal, out of this State.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, personally appeared before me (*give name and title*) the above-named A. B. (*grantor*), and acknowledged this instrument to be his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witnesses.

The following proof must be attached to the deed to which it relates:

State of ——, county of ——, ss.

On the —— day of ——, A. D. ——, at the request of C. D., the grantee in the foregoing deed, I caused A. B., the grantor, a resident of this county, to be legally summoned to appear before me on the —— day of ——, A. D. ——, to hear the testimony of —— and ——, subscribing witnesses to said deed, therein stating the date of said deed, the names of parties thereto, and of the subscribing witnesses; and on said —— day of ——, A. D. ——, said witnesses appeared and testified, and said grantor was (*or* was not) present; and I was satisfied by the testimony of said witnesses that they saw said deed duly executed by A. B., the grantor.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid. [*Seal.*] (*Signature and title of officer.*)

The summons must be issued and served at least seven days before the time of hearing.[z]

[x] See General Statutes.

[y] R. S. ch. 73, §§ 1, 2, 17; ch. 61, § 1; ch. 103, § 6

[z] R. S. ch. 73, §§ 18–23.

MARYLAND.

If acknowledged within the State, the acknowledgment may be made before a justice of the peace, judge of the orphans' court or of the circuit court of any county, or before the judge of the superior court, court of common pleas, or circuit court for Baltimore city. If acknowledged before a justice of the peace within the State, but out of the county or city in which the real estate or any part of it lies, the official character of the justice must be certified to by the clerk of the circuit or superior court under his official seal.

If acknowledged without this State, but within the United States, the acknowledgment may be made before: 1st, a notary public; 2d, a judge of any court of the United States; 3d, a judge of any court of any State or Territory having a seal; 4th, a commissioner of this State to take the acknowledgment of deeds.

If acknowledged without the United States, the acknowledgment may be made before any minister, consul-general, consul or consular officer of the United States; any notary public, or a commissioner of this State to take acknowledgment of deeds.[a]

Every officer, before whom any acknowledgment shall be made, shall give a certificate thereof, and indorse on, or annex to the deed, such certificate, and the certificate shall be recorded with the deed.

To every certificate of acknowledgment taken without this State, before a judge of any court having a seal, the seal of such court shall be affixed.

The certificate of acknowledgment shall contain the name of the person making the acknowledgment; the official style of the officer taking the acknowledgment; the time when it was taken, and a statement that the grantor acknowledged the deed to be his act, or made an acknowledgment to the like effect.

No separate examination of a married woman is required.[b]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

I hereby certify that on this —— day of ——, A. D. ——, before me (*here insert name and title of official*) personally appeared A. B. and W. B. his wife, and did each severally acknowledge the aforegoing deed (*or other instrument*) to be their act.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal the day and year above written.

[*Seal.*] (*Signature and title of officer.*)

MASSACHUSETTS.

Acknowledgment may be made before any justice of the peace, or notary public, in the State; or before any justice of the peace, magistrate, or notary public or commissioner, appointed for that purpose by the governor of this State, within the United States, or in any foreign country; or before a minister or consul of the United States in any foreign country.

Acknowledgments taken out of the State by any magistrate other than a commissioner for Massachusetts, or a minister of the United States, should have appended a certificate of the magistrate's appointment and authority made by the secretary of state or clerk of court of record.

The wife is not required to be examined separate and apart from her husband.

The certificate of acknowledgment need not state that the wife relinquishes her dower.

Letters of attorney made by husband and wife for the purpose of authorizing conveyances of her real estate, and not merely for the release of dower by the wife, must be acknowledged by both.

Acknowledgment—General Form.

Commonwealth of Massachusetts, county of Suffolk, ss.

Boston, March 1st, A. D. ——. Then personally appeared the above-named A. B., and acknowledged the foregoing instrument to be his free act and deed. Before me,

J. P., Justice of the Peace.

Acknowledgments by husband and wife are made in the same form, only saying "the above-named A. B. and W. B., and severally acknowledged the foregoing instrument to be their free act and deed."

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D.——, before me, the undersigned (*name and title of officer*), personally appeared A. B. and W. B., his wife, who executed the foregoing conveyance, and severally acknowledged the same to me to be their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.

Deeds made by non-residents of Massachusetts should be acknowledged, as the same cannot be proved before the commissioners by the subscribing witness.

If the grantor die or leave the State before acknowledging his deed, it may be proved by a subscribing witness before any court of probate or record. If the subscribing witnesses are dead, their handwriting or that of the grantor may be proved by competent evidence.

MICHIGAN.

Conveyances, etc., may be acknowledged **within this State** before any judge or commissioner of a court of record, or before any notary public or justice of the peace, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same under his hand.[c]

Sec. 1. . . . The acknowledgment of any married woman to a deed of conveyance or other instrument affecting real property, may be taken in the same manner as if she were *sole* (single, unmarried), Act of April 20, 1877.

Sec. 2. Any acknowledgment of any married woman to a deed of conveyance or other instrument affecting real property taken since the 4th day of August, in the year of our Lord 1875, in the same manner as if such married woman had been *sole*, is valid and effectual, and shall be so held in all courts and places, Act of April 20, 1877.

No conveyance of land, or instrument intended to operate as such conveyance, made in good faith and upon a valuable consideration, shall be wholly void by reason of any defect in any statutory requisite in the sealing, signing, attestation, acknowledgment, or certificate of acknowledgment thereof, etc.[d]

If any such conveyance shall be executed in any other State, Territory, or district, such deed may be executed according to the laws of such State, Territory, or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such State, Territory, or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this State for such purpose.[e]

In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this State for that purpose, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office in the usual form, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be; that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory, or district.[f]

If executed in a foreign country, it may be according to the laws of such country, and may be acknowledged before any notary public therein, or minister plenipotentiary, minister extraordinary, minister resident, *chargé d'affaires*, commissioner or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking it under his hand, and if before a notary public, his seal of office should be affixed to the certificate.

There is no statutory provision for the proof of deeds by subscribing witnesses out of this State.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, before me (*name and title of officer*) personally came A. B.

a-See General Statutes. b-Art. 45. c-Comp. Laws, 1343. d-Comp. Laws, 1351. e-Comp. Laws, 1342. f-Comp. Laws, 1343.

and W. B. his wife, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and seal the day and year above mentioned. [*Seal.*] (*Signature and title of officer.*)

MINNESOTA.

Acknowledgments may be taken within the State by judges of the Supreme, District and Probate Courts, and Clerks of the same; by Clerks of the United States District Court for Minnesota, members of the Legislature, Notaries Public, Justices of the Peace, Register of Deeds, County Commissioners and Auditors, Town Clerks, City Clerks, Village Recorders (General Laws, 1878, Ch. 49, p. 193); seals to be affixed wherever seals are used (G. S. 1878, Ch. 72; 2 Bissell, Ch. 40, Title 2, Secs. 8, 10).

Acknowledgments outside of State but within United States may be taken by Chief and Associate Justices of the Supreme Court of the United States, Judges of the Supreme, Superior, Circuit or other Court of Record of any State, District or Territory, of the United States; Clerks of above-mentioned Courts; Notaries Public, Justices of Peace, Commissioners appointed by the Governor of this State; none of above acknowledgments to be valid unless taken by the officer at the place or within the jurisdiction for which he has been regularly appointed or elected to such office, or to which the jurisdiction of the Court for which he acts extends. (G. S. 1878, Ch. 40, amending Law of 1868, Ch. 61, p. 100.) Officers taking acknowledgment of deeds under this section shall append to such deed a certificate of such acknowledgment, with its true date, and shall date and sign such certificate. (Id. Id. Sec. 8.) And unless said acknowledgments are taken before a Commissioner appointed by the Governor of this State for the purpose, or before a Notary Public, or Clerk of a Court, or some other officer having a seal, there shall also be attached, appended or indorsed on or to said deed a certificate of the Clerk or other proper officer of a Court of Record of the District or place where such acknowledgment was taken, under seal, to the effect that the officer taking the acknowledgment was qualified to do so, that he is acquainted with his handwriting and believes his signature to be genuine (Id. Id. Sec. 9): Provided however that the Certificate of any section of State or Territory attached to or indorsed on said deed, to the effect that any Justice of the Peace taking the acknowledgment, had been duly appointed by the Governor of said State or Territory, shall be sufficient (Amended Laws 1879, Ch. 65, Sec. 1).

If such deed is executed outside of the United States it must be executed according to the laws of the foreign country and acknowledged before a Notary Public therein, Minister Plenipotentiary or Resident, *Chargé de Affaires*, Commissioner, or Consul of the United States appointed for and resident therein, the same to be certified under their hand; but if taken before a Notary Public his seal of office must be affixed. (G. S., Ch. 40, p. 328.) Provided that if such deed be duly signed and sealed in presence of two witnesses, and acknowledged as aforesaid, it shall be valid whether executed in accordance with the laws of said country or not. (Id. as amended Laws of 1868, Ch. 64, Sec. 1, p. 104.)

Forms of Acknowledgment.

The laws of 1883, chap. 99, prescribe that the following forms of acknowledgment shall be sufficient to satisfy the requirements relating to the execution and recording of conveyances and other written instruments affecting real estate:—

1. Begin all acknowledgments with a caption showing the State and place; thus:

State of Minnesota, County of ——, ss.

2. All acknowledgments must bear the signature and title of the officer taking them.

3. In case of natural persons acting in their own right, the acknowledgment should read:— On this —— day of —— 189 , before me personally appeared A. B. (or A. B. and C. D.) to me known to be the person (or persons) described in, and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

4. In the case of natural persons acting as attorney, it should read:—

On this —— day of ——, 189 , before me personally appeared A. B. to me known to be the person who executed the foregoing instrument in behalf of C. D. and acknowledged that he executed the same, as the free act and deed of of said C. D.

5. In the case of corporations or joint stock associations, it should read:—

On this —— day of —— 189 , before me appeared A. B. to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association), of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association), by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

6. In case of a married woman joining her husband, Sec. 2, of Laws of 1883, reads:—

When a married woman unites with her husband in the execution of any such instrument and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release or dower or other instrument affecting real estate shall be required.

Deeds require two witnesses.

MISSISSIPPI.

In this State, acknowledgments must be made before any judge of a United States court, any judge of the State, supreme, or circuit court, any chancellor, any clerk of a court of record, who shall certify such acknowledgment, or proof, under the seal of his office; or any justice of the peace, mayor of any city, town, or village, or member of the board of supervisors, whether the lands conveyed be within his county or not.[a]

Out of this State, if the party executing a conveyance of lands in this State, is a *non resident*, acknowledgment or proof may be made and certified to by any of the judges of the supreme court of the United States, or a district judge of the United States, or justice of the supreme court or superior court of any State or Territory of the Union; or any justice of the peace, whose official character shall be certified to under the seal of some court of record in his county; or before any commissioner residing in such State or Territory, who may be appointed by the governor of this State to take acknowledgments and proof of deeds and other conveyances, or notary public or clerk of a court of record having a seal of office.[b]

A married woman, party to the conveyance, need not be examined apart from her husband.

The certificate of acknowledgment of a deed need not state that the wife relinquishes her dower, dower and courtesy having been abolished in the State.

In order to admit a deed to record, one of the witnesses thereto must make affidavit in the following form:—"C. D., one of the subscribing witnesses to the foregoing instrument, who being first duly sworn, deposes and says he saw the within A. B., whose name is subscribed thereto, sign and deliver the same to E. F. (or that he heard the said A. B. acknowledge that he signed and delivered the same to said E. F.), and that the said C. D., affiant, subscribed his name as a witness thereto in the presence of the said A. B."[c]

In all cases the officer taking the acknowledgment must add his signature and title, and affix his seal if he have one.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Personally appeared before me (*here insert name and title of officer*), the within-named A. B. and W. B. his wife, who acknowledge that they signed, and delivered the foregoing deed (*or* other conveyance), as their voluntary act and deed, on the day and year therein mentioned.

Given under my hand this —— day of ——, A. D.—— (*Signature and title of officer.*)

Or the acknowledgments may be certified separately

a-Code of 1892, § 2464. b-Id. § 2466. c-Id. § 2465.

Proof by Subscribing Witness

May be made when the grantor is unable or unwilling to acknowledge any instrument affecting real estate executed by him.

MISSOURI.

Conveyances, etc., must be acknowledged, **if executed in this State,** before a court having a seal, or some judge, justice, or clerk thereof, notary public, or justice of the peace of the county where the estate lies; **if executed out of this State,** then before a commissioner of this State, notary public, court of record of the United States or of any State or Territory having a seal, or clerk of any such court; and **if executed in a foreign country,** then before any court of any state, kingdom, or empire having a seal, or the mayor or chief officer of any city or town having an official seal, or before a minister or consul of the United States, or a notary public having a seal.[m]

The acknowledgment of the officers executing for the corporation should be certified, according to the form first above given, modifying it to describe the office and that the act is the act of the corporation by the officer or officers executing. The form of certificate of acknowledgment by a trustee or person not acting in his own right, should be as in the form first above given, modified to show the character of the grantor and that the act is done in that character.

Acknowledgment—General Form.

State of ——, county of ——, ss.

On this —— day of —— 189—, before me personally appeared —— and —— his wife, to me known to be the person —— described in and who executed the foregoing instrument, and acknowledged that —— executed the same as —— free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in ——, the day and year first above written.

My term expires —— 189—.

If person making acknowledgment is unmarried, omit "**and —— his wife,**" and add, **and the said —— further declare —— to be single and unmarried.**

Acknowledgment—By Attorney.

On this —— day of ——, 18—, before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

Acknowledgment—Corporations.

On this —— day of —— 18—, before me appeared A. B. to me personally known, who, being by me duly sworn (or affirmed), **did say that he is the president** (or other officer or agent of the corporation or association) **of** (describing the corporation or association), **and that the seal affixed to said instrument is the corporate seal of said corporation** (or association), **and that said instrument was signed and sealed in behalf of said corporation** (or association), **by authority of its board of directors** (or trustees), **and said A. B. acknowledged said instrument to be the free act and deed of said corporation** (or association).

(In case the corporation or association has no corporate seal, omit the words "**the seal affixed to said instrument is the corporate seal of said corporation** (or association), **and that,**" and add at the end of the affidavit clause the words, "**and that said corporation** (or association) **has no corporate seal.**")

(In all cases add signature and title of the officer taking the acknowledgment.)

Married Women.

When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release or dower, or other instrument affecting real estate, shall be required.

[m]-Gen. Stat. 444, 445. [n]-Gen. Stat. 444-446. [o]-See General Statutes, pp. 396, *et. seq.*, 443, § 50, p. 617, § 1.

Proof by Subscribing Witness.

If all the subscribing witnesses are dead or cannot be had, then proof can be made by at least two credible witnesses proving the handwriting of the grantor, and two or more credible witnesses proving the handwriting of at least one of the subscribing witnesses.[n]

MONTANA.

Every conveyance in writing of or affecting real property must be acknowledged or proved and certified as hereafter stated. The proof or acknowledgment may be made, **within the State,** before the secretary of the State, some judge or clerk of a court having a seal, a notary public, or justice of the peace, the county clerk and *ex officio* county recorder; **without the State,** but within the United States, by some judge or clerk of any court of the United States, or any State or Territory having a seal, a notary public, a justice of the peace, or commissioner appointed by the governor of the State for that purpose. If taken by a justice of the peace, his official character must be certified to under the seal of the court, tribunal, or officer within and for the county in which such justice of the peace may be acting, which has cognizance of his official character.[o]

Acknowledgment—General Form.

State (*or* **Territory**) **of ——, county of ——, ss.**

On this —— day of ——, A. D. ——, personally appeared before me (*name and title of officer*), **in and for said county, A. B., personally known to me** (*or* satisfactorily proved to me by the oath of W. T., a competent and credible witness for that purpose by me duly sworn) **to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.**

Witness my hand and seal.

[*Seal.*] (*Signature and title of officer.*)

Acknowledgment—Married Woman.

The acknowledgment of a married woman is the same in form as if she were unmarried, or as that of any other person.

An acknowledgment must not be taken unless the officer knows, or has satisfactory proof, that the person making the same is the person who executed the instrument.

All certificates of acknowledgment must be authenticated by the signature of the officer making them, followed by the name of his office and attested by his seal.

If made by a justice of the peace it must be accompanied by the certificate under the hand and seal of the county clerk of the county, that such justice is authorized to take acknowledgments, and that the signature of such justice is known to the such clerk.

If deed be executed by a corporation, the certificate should state that the officer executing was personally known as such, and that the instrument was executed fully, etc., as the act and deed of the corporation.[p]

NEBRASKA.

Acknowledgments or proofs of conveyances may be **taken in the State** by judges, clerks of courts, justices of the peace, and notaries public. The certificate of acknowledgment must be indorsed on the instrument, and show that the grantor acknowledged the same to be his voluntary act and deed, and that the officer taking the acknowledgment knew him to be the same person whose name was signed thereto, or had satisfactory evidence of that fact. If the grantor die before acknowledgment, or if for any cause his attendance cannot be procured to make the acknowledgment, or if he refuses to make it, proof of execution and delivery may be made by any competent subscribing witness thereto, before any officer authorized to take the acknowledgments; or if all the subscribing witnesses are out of the State, proof may be made by proving the handwriting of the grantor and of any subscribing witness. The deed, with the certificate of acknowledgment or proof, must be recorded in the county where the lands lie. Acknowledgments or proofs **taken out of the State, and in the United States,** must be taken in conformity to the law of the State or Territory in which taken, or by a commissioner of this State for that purpose. All such acknowledgments or proofs last mentioned taken by an officer having no seal of office, must be accompanied with a certificate of a clerk of a court

of record, or other proper officer of the district, under official seal, that the officer taking the same was the same as represented therein at the date thereof, that the signature is genuine, and the acknowledgment in conformity to law. There shall be affixed to certificate of acknowledgment made by commissioner as aforesaid, an official certificate of the secretary of Nebraska, stating that the commissioner was at the time duly authorized to take the same, and that the secretary is acquainted with his handwriting, has compared it, and his seal, and that he believes the signature and seal of the commissioner to be genuine. Deeds executed in **foreign countries** may be made according to the laws thereof, and acknowledged by any notary public, or by any ministerial officer, commercial agent, or consul of the United States appointed to reside therein. Deeds should state relinquishment of right of dower, if any, but the certificate of acknowledgment need not.[k]

No separate examination is required in taking wife's acknowledgment. Her deed may be acknowledged or proved same as a married man's. When proof of execution in lieu of acknowledgment is permitted, the same may be made by a subscribing witness thereto, who must state upon oath his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge that he had signed the same. And such proof shall not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.[l]

"It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds."[m]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, before me (*state name and title of officer*), duly appointed, commissioned (*or* duly elected), and qualified for and residing in said county, personally appeared A. B. and W. B. his wife, to me personally known (*or* by the oaths of [*one or more*] witnesses whose names are hereto subscribed, satisfactorily proved), to be the identical persons described in, and whose names are affixed to the foregoing conveyance as grantors, and they severally acknowledged the same to be their voluntary act and deed.

In testimony whereof, I have hereunto set my hand and official seal at ——, in said county, the —— day and year last above written.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, it satisfactorily appearing to me that the attendance of the said A. B., the grantor in the foregoing conveyance, cannot be procured in order to make acknowledgment thereof (*or* that the said A. B., the grantor, etc., is dead, *or*, having executed and delivered the foregoing conveyance refuses to make acknowledgment thereof) before me (*here insert name and title of officer*), duly appointed, commissioned, and qualified for and residing in said county, personally appeared W. T., to me personally known (*or* by the oaths of [*one or more*] witness, whose name is hereto subscribed, to me satisfactorily proved) to be the identical person whose name is subscribed to the foregoing conveyance as attesting witness, who being first duly sworn, on his oath says that his place of residence is at ——, in the county of ——, and State of ——, that he set his name to the foregoing conveyance as a witness; that he knew A. B., the grantor in said conveyance, and that he knew A. B. to be the identical person described therein, and who executed the same, and saw him sign (*or* heard him acknowledge that he had signed) the same.

In testimony whereof, I have hereunto set my hand and seal at ——, in said county, the day and year last above written.

[*Seal.*] (*Signature and title of officer.*)

NEVADA.

Every conveyance in writing affecting real estate within this State shall be acknowledged or proved, and certified as follows: **If within this State,** before some judge or clerk of a court having a seal, or some notary public or justice of the peace. **If without the State, but within the United States,** before a judge or clerk of a court having a seal, or some notary public or justice of the peace, or by any commissioner appointed by the governor of this State for that purpose; when taken before a justice of the peace, it shall be accompanied by the certificate of the clerk of a court of record of the county having a seal, showing the official character of the justice, and the genuineness of his signature. If taken **without the United States,** it shall be before some judge, or clerk of a court of a State, kingdom, or empire having a seal, or a notary public therein, or by a minister, commissioner, or consul of the United States appointed to reside therein.[n]

Proof of the execution of a conveyance shall be made, first, by the testimony of a subscribing witness; second, when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of at least one subscribing witness, given by a credible witness to each signature, under oath.[a]

The certificate of acknowledgment or proof must be under the hand and seal of office when taken by a judge or clerk, or an officer having a seal of office.[a]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, personally appeared before me (*name and title of officer*), in and for said county, A. B. and W. B. his wife, whose names are subscribed to the conveyed instrument as parties thereto, personally known to me to be the individuals described in and who executed the said annexed instrument as parties thereto, who each acknowledged to me that they, each of them respectively, executed the same freely and voluntarily, and for the uses and purposes therein mentioned. And the said W., wife of the said A. B., having been by me first made acquainted with the contents of said instrument, acknowledged to me on examination, apart from and without the hearing of her said husband, that she executed the same freely and voluntarily without fear or compulsion, or undue influence of her said husband, and that she does not wish to retract the execution of the same.

In testimony whereof, I have hereunto set my hand (and affixed my official seal), **the day and year first above written.**

[*Seal.*] (*Signature and title of officer.*)

When the grantor is unknown to the court or officer the certificate that he was "satisfactorily proved to be the person described in, and who executed the annexed instrument, by the oath of W. T., a competent and credible witness for that purpose by me duly sworn," and the said A. B. acknowledged, etc.

Proof by Subscribing Witness.

The certificate of proof by a subscribing witness shall set forth, *first*, that such subscribing witness was personally known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by the oath of a witness whose name shall be given in the certificate; *second*, the proof given by such witness of the execution of such conveyance, and of the fact that the person whose name is subscribed to such conveyance as a party thereto is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.[a]

NEW HAMPSHIRE.

All conveyances of real estate must be signed and sealed by the party granting the same, attested by two or more witnesses, acknowledged by the grantor before a justice, notary public, or commissioner, whether **within or without the State** (but if before a justice without the State his official character should be authenticated by the clerk of a court of record or by the secretary of state), or before a minister or consul of the United States in a foreign country, and recorded at length in the registry of deeds in the county in which

k-Rev. Stat. ch. 43. l-Rev. Stat. p. 281, § 7. m-Rev. Stat. p. 234, § 137. n-See General Statutes.

the lands are situated. No separate acknowledgment is required to be made by the wife, nor need she be examined apart from her husband. When the title is in the wife, the husband must acknowledge the deed in connection with her; joining in the conveyance, except the estate is held by the wife "in her own right to her sole and separate use free from the interference or control of her husband," in which case she may convey alone, although the husband's signature is even then preferable. The husband need not covenant as the warranty, but releases his right by courtesy under the statute.o

The identity of the grantors need not be certified by the magistrate, but if controverted, must be proven, like any other disputed matter.

The official character of the person taking the acknowledgment must be certified to in the same manner as that of persons taking depositions.p

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Personally appeared the above-named A. B. and W. B. his wife, and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this —— day of ——, A. D.——.

(*Signature and title of officer.*)

The certificate of acknowledgment need not state that the wife relinquishes her dower. She releases her dower in the deed, but need not covenant in the warranty. The above form is sufficient in all cases.

Any public or private corporation, authorized to hold real estate, may convey the same by any agent elected for that purpose and he shall convey, in his said capacity, and acknowledge the conveyance in the ordinary form, as above.

No proof by a subscribing witness will be admitted in evidence unless taken in the usual form of a deposition and upon due notice.

NEW JERSEY.

Acknowledgment and proof of deeds, mortgages, etc., must be made, **within this State**, before the chancellor, a justice of the supreme court, a master in chancery, judge of the court of common pleas, surrogate, register or commissioner of deeds; **out of this State**, before a judge of the United States supreme or district court, chancellor of State or Territory where taken; judge of supreme, superior, circuit, or district court of the State (all the above without the seal of such officer or court); a mayor or other chief magistrate of a city, under the seal of said city; a master in chancery of New Jersey; a commissioner of deeds for New Jersey residing in said State or Territory, under his seal; a judge of the court of common pleas or any officer authorized by the laws of said State or Territory to take acknowledgments of deeds of lands in and for such State or Territory; provided, that if taken before such common pleas judge, or other officer, there shall be annexed a certificate under seal of the State, Territory, or court of the county in which it is made, that the person before whom such acknowledgment is made is such officer and is authorized by the laws of such State or Territory to take acknowledgments, and that his signature is genuine.q

Acknowledgments and proofs by persons in foreign kingdoms may be made before any court of law, mayor, or other chief magistrate of any city, borough, or corporation, of said foreign kingdom, certified by said court, mayor, or other chief magistrate, in the manner such acts are usually authenticated; or before any ambassador, public minister, *chargé d'affaires*, or other representative of the United States, any consul or vice-consul for the time being, certified under the official seal of said consul or vice-consul; or before a master in chancery of New Jersey.q

The identity of the grantor must be established to the satisfaction of the officer; he must certify that he is satisfied.

An examination of the wife separate from her husband is necessary. Signature of wife must be acknowledged; it cannot be proved by subscribing witness.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, the subscriber (*here insert name and title of officer*), personally appeared A. B. and W. B. his wife, who I am satisfied are the grantors named in and who executed the within instrument of conveyance, and I having first made known to them the contents thereof, they did thereupon severally acknowledge before me that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed; and the said W. B., wife of the said A. B., being of full age, and by me privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threat or compulsion of or from her said husband.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

Acknowledgment—Corporation.

The deed of a corporation must be executed by an officer with express authority.

The form is as follows: "In witness whereof, the said (*the corporation*) hath caused its corporate seal to be affixed and its president (*or* other executive officer) to sign his name to these presents, the day and year first above written."

State of New Jersey, county of ——, ss.

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, before me, M. C., a master of the court of chancery of the State of New Jersey, personally appeared S. Y., to me known, who being by me duly sworn according to law, on his oath doth depose and say: that he is (the secretary *or other officer*) of (*the corporation*), the grantors in the foregoing deed named; that the seal affixed to the said deed is the corporate seal of the said (*corporation*); that it was so affixed by order of the said (*corporation*), that P. P. is the (president or other executive officer) of the said (*corporation*); that he saw the said P. P., as such (president, etc.) sign the said deed, and heard him declare, that he signed, sealed, and delivered the same as the voluntary act and deed of the said (*name of corporation*) by their order; and that this deponent signed his name thereto, at the same time, as a subscribing witness.

Subscribed and sworn before me, the day and year above written. (*Signature and official title.*)

Proof by Subscribing Witness.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, personally appeared before the subscriber, a (*name and title of officer*), W. T., who being by me duly sworn according to law, on his oath saith, that he saw A. B., the within-named grantor, sign, seal, and deliver the within indenture, as his voluntary act and deed, and that he, the said W. T., subscribed his name to the same, at the same time, as an attesting witness.

(*Signed*) W. T.

Sworn, and subscribed before me this —— day of ——, A. D. ——. In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*]

NEW MEXICO.

Conveyances may be acknowledged in the Territory before any judge, justice of the peace, notary public having a seal, or clerk of a court having a seal. **Out of the Territory, and in the United States**, before any United States court, the judge or clerk of any State or Territorial court having a seal, the clerk thereof to certify to the official character and genuineness of signature of the judge under the seal of the court, or a notary public with a seal. **Out of the United States**, before any court of any State, kingdom, or empire having a seal, or before the magistrate or supreme power of any city having a seal, before any court of record having a seal, before any notary public having a seal, before any consul or vice-consul of the United States having a seal, or before the judge of any court of record having a seal. In the last case the genuineness of the signature and official character to be certified by some officer having a seal of office. All

o-G. S. p. 338; 39 N. H. pp. 202–204; 45 Id. p. 454.

p-G. S. p 251. q-See Nixon's Digest, 144, *et seq.*, and General Statutes.

persons taking foreign acknowledgments must have their identity certified in the usual manner for establishing the identity of a foreign official.[q]

The examination of the wife, separate, apart, and independent of her husband is not necessary; the wife, however, is to be described as such. The deed of a corporation is acknowledged by the officer authorized by the by-laws to make it, and the corporate seal, if any, must be affixed to the certificate. Sub. 3, sec. 1. Laws of 1889.

Acknowledgment—Husband and Wife.

Territory of New Mexico, county of ——, ss.

On this —— day of —— in the year eighteen hundred and ——, before me personally appeared A. B. (or A. B. and C. D.; or A. B. and his wife E. F.) to me personally known, and known to me to be the same person (or persons) described in, and who executed the foregoing instrument, and he (she or they) thereupon acknowledged to me that he (she or they) executed the same as his (or their) free act and deed.

Witness my hand and notarial (or official) seal at said county of ——, the day and year last above written. (My commission expires ——, A. D. 18——.)

[Seal.] (*Signature and official title.*)

NEW YORK.

A conveyance, to be recorded by a county clerk, must be acknowledged by the party executing the same, or be proved by a subscribing witness thereto, as follows:

Conveyances executed **within the State** must be acknowledged before judges of courts of record within the jurisdiction of their respective courts, county judges, surrogates, notaries public, and justices of peace at a place within their counties, mayors, recorders, and commissioners of deeds of cities within their respective cities.

Without the State, before judges of United States courts, judges of the supreme, circuit, or superior court of any other State or Territory, at a place within the jurisdiction of their courts; before the mayor of any city, or before a New York commissioner, provided the certificate of such commissioner is accompanied by the certificate of the secretary of state of New York, attesting the existence of the officer, and the genuineness of his signature. When taken before commissioners of the State of New York, their certificate must state the day on which, and the city, town, and county within which, such proof and acknowledgment is taken.[r]

When made by any person residing out of the State, and within the United States, it may be taken before any officer of the State or Territory where made, authorized by its laws to take proof or acknowledgment, but the officer taking the same must know, or have satisfactory evidence, that the person making it is the individual described in, and who executed the instrument, and such officer must also attach a certificate, under the name and official seal of the clerk, register, recorder, or prothonotary of the county in which such officer resides, or any clerk of the court thereof, having a seal, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk, register, recorder, or prothonotary, is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine, and that such conveyance is executed and acknowledged in accordance with the laws of such State.[s]

In Canada, before judges of the highest courts, or the mayor of any city, and by any consul, vice-consul, deputy consul, consular agent, vice-consular agent, commercial agent, and vice-commercial agent of the United States, certified by him, under his seal of office, or the seal of the consulate to which he is attached. When taken before a judge of a court of record, a certificate must be attached, under the name and official seal of the clerk of the court, that there is such a court: that the judge before whom the proof or acknowledgment is taken is a judge thereof; that such court has a seal; that he is the clerk thereof; that he is well acquainted with the handwriting of such judge, and believes his signature genuine.[t]

In all cases the certificate of proof or acknowledgment must show that the officer taking the same either knows, or has satisfactory proof, that the person making such acknowledgment or proof is the same individual described in, and who executed the instrument, or a subscribing witness thereto. In the older forms, when the execution was by a resident married woman, the certificate stated a private examination. Acknowledgment or proof of conveyance by a non-resident married woman, joining with her husband, may be made as if she were sole.[u] No private examination is necessary, but, otherwise, the certificate of the officer must comply with the requirements of certificates in this State.

Every written instrument, except promissory notes, bills of exchange, and the last wills of deceased persons, may be proved or acknowledged, and read in evidence on the trial of any action, with the same effect and in the same manner as conveyances of real estate.[v]

Where the execution of a conveyance is acknowledged by the party in person, the officer taking the same should certify to the identity.[w]

Where the execution is proved by a subscribing witness, he must state his own place of residence, and that he knew the person described in and who executed the conveyance.[x]

Upon the application of any grantee in any conveyance, or of any person claiming under or through him, verified by oath, that a subscribing witness, residing in the county where the application is made, refuses to appear and testify, any officer authorized to take proofs or acknowledgments, except commissioners of deeds and justices of the peace, may issue a subpœna requiring such witness to appear and testify before him.[y]

For some later and simpler forms which have the approval of common usage, since a separate form for married women is no longer required, see p. 36.

Acknowledgment—General Form.

Party known to the officer.

Where a deed is acknowledged in this State, to be used or recorded in another State, the certificate should be headed with name of the State, as well as of the county.

If the instrument, the execution of which is to be acknowledged, is not a deed, it should be described as a "mortgage," "bond," "letter of attorney," "assignment," "instrument in writing," or whatever the case may require: with this alteration, the succeeding forms will be found sufficient in the transaction of ordinary business.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came A. B., to me known to be the person described in, and who executed the within (*or* above, *or* annexed) conveyance, and he acknowledged that he executed the same for the purposes therein mentioned.

(*Signature of the officer taking the acknowledgment, with his official title at length.*)

Another form.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came A. B., to me known to be the individual described in, and who executed the within (*or* above, *or* annexed) conveyance (*or* instrument), and acknowledged that he executed the same for the purposes therein mentioned.

(*Signature and title of officer.*)

Acknowledgment—General Form.

Identity of party is proven to the officer.

If the person by whose oath the identity is established is not a subscribing witness the words in italic in this and the following forms should be omitted.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and title of officer*), personally came A. B., proven to me satisfactorily to be the same person described in, and who executed the within conveyance, by the oath of S. W. (*subscribing witness*)

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q-See General Statutes. r-Laws, 1850, ch. 270; Laws, 1857, ch. 788. s-Laws, 1848, ch. 195; Laws, 1867, ch. 557. t-Laws, 1870, ch. 208. u-1 R. S. 758. v-Laws, 1833, ch. 271, § 9. w-1 R. S. 758, § 9; 11 Johns. 434; 2 Cowen, 552; 4 Wend. 561. x-1 R. S. 758, § 12; 7 Wend. 364; 1 Hill, 121. y-1 R. S. 758, §§ 13, 14. z-8 Cowen, 71; 7 Wend. 364.

thereto), who, being by me duly sworn, did depose and say, that he resides in the village of ——, (*or* town of ——), county of ——; that he is acquainted with the said A. B., and that he knew him to be the same person described in and who executed the within conveyance; and thereupon the said A. B. acknowledged that he executed the same.

O. R. (*official title.*)

Acknowledgment—Husband and Wife.

Within the State; known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came A. B. and W. B. his wife, to me known to be the individuals described in, and who executed the within (*or* above, *or* annexed) conveyance (*or* instrument), and severally acknowledged that they executed the same for the purposes therein mentioned. And the said W. B., on a private examination by me made, apart from her husband, acknowledged that she executed the same freely, and without any fear or compulsion of her said husband.

(*Signature and title of officer.*)

Acknowledgment—Husband and Wife.

Known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came A. B. and W. B. his wife, to me known to be the persons described in, and who executed the within conveyance, who acknowledged that they executed the same; and the said W. B. acknowledged, on a private examination by me made, apart from her husband, that she executed the said conveyance freely, and without any fear or compulsion of him.

C. D., *Commissioner of Deeds in and for said county.*

Acknowledgment—Husband and Wife.

Proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me, J. P., a justice of the peace in and for said county, personally came A. B. and W. his wife, both proven to me satisfactorily to be the same persons described in, and who executed the within conveyance, by the oath of S. W. (*subscribing witness thereto*), who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said A. B. and W. his wife, and that he knew them to be the same persons described in, and who executed the within conveyance; and, thereupon, they severally acknowledged before me that they executed the same; and the said W. acknowledged, on a private examination by me made, apart from her husband, that she executed the said conveyance freely, and without any fear or compulsion of him.

J. P., *Justice of the Peace.*

Acknowledgment—Husband and Wife.

Husband known, and Wife proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came A. B. and W. his wife; the said A. B. being known to me to be the same person described in, and who executed the within conveyance; and the said W. being proven to me satisfactorily to be the same person described in, and who executed the within conveyance, by the oath of S. W. (*subscribing witness thereto*), who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said W., the wife of the said A. B., and that he knew her to be the same person described in, and who executed the said conveyance; and, thereupon, the said A. B. and the said W. his wife, severally acknowledged that they executed the same; and the said W. acknowledged, on a private examination by me made, apart from her husband, that she executed the said conveyance freely, and without any fear or compulsion of him.

C. C., *Commissioner, etc.*

Acknowledgment—By two Husbands and their Wives.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. B. and W. his wife, and C. D. and W. W. his wife, known to me to be the individuals described in, and who executed the within conveyance, and acknowledged they executed the same; and the said W. and W. W., severally, each for herself, acknowledged, on a private examination by me made, apart from her husband, that she executed the same freely, without any fear or compulsion of him.

J. P., *Justice of the Peace.*

Acknowledgment—By Wife in a separate Certificate.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came W. B., wife of A. B., described in the within conveyance, the said W. being known to me to be the individual described in, and who executed the said conveyance, and she acknowledged, on a private examination by me made, apart from her husband, that she executed the same freely, without any fear or compulsion of him.

J. P., *Justice of the Peace.*

Acknowledgment—By two or more Parties.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. B. and C. D., to me known to be the individuals described in, and who executed the within conveyance, and they severally, each for himself, acknowledged that they executed the same.

J. P., *Justice of the Peace.*

Acknowledgment—By five Persons.

Three known and two identified.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. B., C. D., and E. F., to me known to be three of the individuals described in, and who executed the within conveyance; and also came G. H. and I. J., satisfactorily proven to me to be two of the individuals described in, and who executed the within conveyance, by the oath of S. W. (*subscribing witness thereto*), who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said G. H. and I. J., and that he knew them to be two of the individuals described in, and who executed the within conveyance: and thereupon the said A. B., C. D., E. F., G. H., and I. J. severally acknowledged before me that they executed the same for the purposes therein mentioned.

J. P., *Justice of the Peace.*

Acknowledgment—By one of several Parties.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. B., to me known to be one of the individuals described in, and who executed the within conveyance, and acknowledged that he executed the same.

J. P., *Justice of the Peace.*

Acknowledgment—By Attorney.

State of —— —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. A., known to me to be the same person described in, and who executed the within conveyance, and acknowledged that he executed the same as the act and deed of A. B., therein described, by virtue of a power of attorney duly executed by the said A. B., bearing date the —— day of ——, in the year ——, recorded in the office of the clerk of the county of ——, in Book — of Powers of Attorney, page —, on the —— day of ——, in the year ——.

J. P., *Justice of the Peace.*

Acknowledgment—By Attorney.

Known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. A., known to me to be the attorney in fact of A. B., the individual described in, and who executed the within conveyance by his said attorney; and the said A. A. acknowledged that he executed the same as the act and deed of the said A. B.

J. P., *Justice of the Peace.*

Acknowledgment—By Attorney.

Proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. A., proven satisfactorily to me to be the same person described in, and who executed the within conveyance as the attorney in fact of A. B., by the oath of S. W. (*subscribing witness thereto*), who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said A. A., and that he knew him to be the individual described in, and who executed the said conveyance as the attorney in fact of A. B., and thereupon the said A. A. acknowledged before me that he executed the same as the act and deed of the said A. B. J. P., *Justice of the Peace.*

Acknowledgment—To confirm Deed.

Executed during Infancy.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came A. B., to me known to be the individual described in, and who executed the within conveyance, and thereupon duly acknowledged that the said conveyance was formerly executed by him when he was an infant under the age of twenty-one years; that he has since arrived at full age, and is desirous of confirming his former execution thereof; and that he now acknowledges that he executed the same as and for his act and deed.

J. P., *Justice of the Peace.*

Acknowledgment—By an Executor or Trustee.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came E. X., known to me to be the executor of the last will and testament (*or* trustee of the estate) of M. D., mentioned and described in the within conveyance, and the said E. X. acknowledged before me that he executed the same as such executor (*or* trustee), as aforesaid.

J. P., *Justice of the Peace.*

Proof of Deed.

Executed by a Monied Corporation.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and title of officer*), personally came P. P., the president of the —— County Bank, to me known, who, being by me duly sworn, did depose and say, that he resides in the village of ——, in said county; that he is the president of the —— County Bank; that he knows the corporate seal of the said bank; that the seal affixed to the within conveyance is such corporate seal; that it was so affixed by order of the board of directors of the said bank; and that he signed his name thereto by the like order, as president of said bank. (*If the conveyance is proven by a cashier, or the secretary of a company, and executed by him and the president, substitute* secretary, *or* cashier, *for* president, *and the name of the company for the bank, in the foregoing, and then add:* And he, the said P. P., further says, that he also knows S. W., the president of the said bank (*or* company), and that the signature of the said S. W., subscribed to the said conveyance, is in the genuine handwriting of the said S. W., and was thereto subscribed in the presence of the said P. P., by the like order of the said board of directors.)

J. P., *Justice of the Peace.*

Proof of Deed.

By a Religious Corporation.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and title of officer*), personally came C. C., to me known, who, being by me duly sworn, did depose and say, that he resides in the town of ——, in said county, and is the clerk of the Corporation of the Rector, Churchwardens, and Vestrymen of the Protestant Episcopal Church of St. Paul (*or*, the Corporation of the Trustees of the First Methodist Episcopal Society), in the town of —— aforesaid; that the seal affixed to the within conveyance is the corporate seal of the said corporation, and that it was affixed by order of the said corporation. (*If necessary, add clause proving the handwriting of the subscribers to the conveyance.*)

J. P., *Justice of the Peace.*

Acknowledgment—By a Sheriff.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came S. F., sheriff (*or* late sheriff) of the county of ——, to me known to be the same person described in, and who executed the within conveyance, and acknowledged that he executed the same as such sheriff. J. P., *Justice of the Peace.*

Acknowledgment—By a Deputy Sheriff.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came D. S., known to me to be the individual described in, and who executed the within conveyance, as the general deputy of S. F., sheriff of the county of ——, and acknowledged that he executed the said conveyance as such general deputy as aforesaid.

J. P., *Justice of the Peace.*

Proof within the State, by Subscribing Witness.

Known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came W. T., subscribing witness to the within (*or* above, *or* annexed) conveyance (*or* instrument), with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of ——, that he was acquainted with A. B., and knew him to be the person described in, and who executed the said conveyance (*or* instrument); and that he saw him execute (and deliver) the same; and that he acknowledged to him, the said W. T., that he executed (and delivered) the same, and that he, the said W. T., thereupon subscribed his name as a witness thereto. (*Signature and title of officer.*)

Certificate of Proof.

By Subscribing Witness known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came W. T., subscribing witness to the within conveyance, to me known, who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he knows A. B., the individual described in, and who executed the said conveyance; that he was present and saw the said A. B. sign, seal, and deliver the same as and for his act and deed, and that the said A. B. then acknowledged the execution thereof; whereupon the said W. T. became the subscribing witness thereto. J. P., *Justice of the Peace.*

Acknowledgment—By Subscribing Witness.

Proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came E. F. and S. W., and the said E. F., to me known, having been by me duly sworn, did depose and say, that he resides in the town of —— in said county; that he is acquainted with the said S. W., the subscribing witness to the within conveyance, and that he knew him to be the same person, which is to me satisfactory evidence thereof; and the said S. W., being by me duly sworn, did depose and say, that he resides in the town of ——, in the county of ——, and knows A. B., the individual described in, and who executed the said conveyance; that he was present and saw the said A. B. execute the same, and that he, the said S. W., thereupon became the subscribing witness thereto. J. P., *Justice of the Peace.*

Acknowledgment—By Subscribing Witness.

Grantors residing in another State.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came S. W., to me known, who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he knows A. B. and W. his wife, the individuals described in, and who exe-

cuted the within conveyance; that they severally reside in the town of ——, in the State of ——, that he was present and saw them sign, seal, and deliver the said conveyance, as and for their act and deed, and that he thereupon became the subscribing witness thereto.

J. P., *Justice of the Peace.*

Acknowledgment—By Subscribing Witness.

Proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came E. F. and S. W.; and the said E. F., to me known, having been by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said S. W., the subscribing witness to the within conveyance, and that he knew him to be the same person, which is to me satisfactory evidence thereof; and the said S. W., being by me duly sworn, on his oath said, that he resides in the town of ——, in the State of ——, that he knows A. B. and W. his wife, the individuals described in, and who executed the within conveyance; that they severally reside in the town of ——, in the State of ——, that he was present and saw them sign, seal, and deliver the said conveyance, as and for their act and deed, and that he thereupon became the subscribing witness thereto.

J. P., *Justice of the Peace.*

Acknowledgment—By Subscribing Witness as to the Husband.

And Acknowledgment by the Wife, both being known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D.——, before me (*name and official title*), personally came S. W., to me known, who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he knows A. B., one of the individuals described in, and who executed the within conveyance; that he was present and saw the said A. B. execute the same, and that he, the said S. W., thereupon became the subscribing witness thereto. At the same time, also appeared before me, W. B., the wife of the said A. B., to me personally known, who, on a private examination by me made, apart from her husband, acknowledged that she executed the within conveyance freely, without any fear or compulsion of her said husband.

J. P., *Justice of the Peace.*

Acknowledgment—By Subscribing Witness as to the Husband.

And Acknowledgment by the Wife, both proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came S. W., to me known, etc. (*Follow the preceding form to the end, omitting the words* "to me personally known" *in the acknowledgment of the wife, and then add*): And at the same time, also appeared before me E. F., to me personally known, who being by me duly sworn, did depose and say, that he resides in the town of ——, in the county of ——, that he knows the said S. W. to be the same person who was a subscribing witness to the within conveyance; and that he also knows the said W. B., who made the aforesaid acknowledgment, to be one of the individuals described in, and who executed the said conveyance, which is to me satisfactory evidence thereof. J. P., *Justice of the Peace.*

Acknowledgment—By Subscribing Witness.

To Deed executed by an Attorney.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came S. W., to me known, who being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he knew A. B., the person described in, and who executed the within conveyance as the attorney in fact of E. F., therein named; that he was present and saw the said A. B. execute the same as such attorney, and that he, the said S. W., thereupon became the subscribing witness thereto.

J. P., *Justice of the Peace.*

Proof of the Execution of a Deed.

Where the Subscribing Witnesses are Dead.

The statutes provide that proof of the execution of a conveyance where the subscribing witnesses are dead shall be made before any officer authorized to take proofs and acknowledgments of deeds, other than commissioners of deeds (justices of the peace being included in this designation), and county judges not of the degree of counsel in the supreme court. The evidence establishing the death of the witnesses, and of the handwriting of such witnesses, or of either of them, and of the grantor, with the names and places of residence of the witnesses examined before the officer, must be set forth in his certificate. The conveyance having been thus proved and certified, may be recorded in the proper office, *provided* the original deed is deposited in the same office, to remain there for the inspection of all persons desiring to examine it; such record and deposit will be constructive evidence of the execution of the said conveyance to all subsequent purchasers, although such conveyance, nor the record thereof, nor the transcript of the record can be read in evidence.*

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came G. H., to me known, who, being by me duly sworn, and the within conveyance being shown to him, did depose and say, that he knew the parties therein described; that he was well acquainted with A. B., the grantor; that he had frequently seen him write, and knew his handwriting, and that the name of the said grantor subscribed to the said conveyance is in the proper handwriting of the said A. B. And the said G. H. further on his oath said, that he was well acquainted with S. W., one of the subscribing witnesses to the said conveyance, and with his handwriting; that the said S. W., at the time of the date of said deed, resided in the town of ——, in the county of ——, and has been dead about one year, and that the name of the said S. W., deceased, subscribed as a witness to said conveyance, is in his proper handwriting. And the said G. H. further deposed and said, that at the time of the date of said conveyance, he was, also, and for several years had been, acquainted with one E. F., a shoemaker, who then resided in the said town of ——, in the county of ——, and in the neighborhood of the said grantor; that the said E. F. died at the town of ——, aforesaid, in the year ——, and since the date of said conveyance; that he, the said G. H., was not acquainted with the handwriting of the said E. F.; that he has never known or heard of any other person of the name of E. F. (*if necessary, insert here* "residing in the neighborhood of the said grantor"), and that he cannot say in whose handwriting the name of the said E. F. is subscribed to the said conveyance.

And I hereby certify, that the aforesaid deposition of the said G. H. is to me satisfactory evidence of the death of all the witnesses to the within conveyance, and of the handwriting of S. W. one of the said witnesses, and of the handwriting of A. B., the grantor therein named.

S. C., *Supt. Court Com. in and for the county of* ——.

Proof of Execution of Acknowledgment.

By Subscribing Witness known to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came S. W., subscribing witness to the above certificate, to me known, who, being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with A. B.; that he knew him to be the same person described in, and who executed the above certificate; that he saw him sign the same; that the said A. B. acknowledged the execution thereof in his presence; and that he subscribed his name as a witness thereto.

J. P., *Justice of the Peace.*

* 1 R. S., 761, §§ 30 to 33, inclusive, and amendments.

Proof of Execution of Acknowledgment.

By Subscribing Witness proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me personally came L. M., to me known, and S. W.; and the said L. M., being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said S. W., and that he knew him to be the same person who is the subscribing witness to the above certificate, which is to me satisfactory evidence of his identity; and the said S. W., being by me duly sworn, did depose and say, that he resides in the town of ——, in the county of ——; that he is acquainted with A. B.; (*follow preceding form to the end.*) J. P., *Justice of the Peace.*

Acknowledgment—of Satisfaction.

To be written on the Mortgage.

I, A. B., the mortgagee within named (*or*, the assignee of the within-named mortgagee), do hereby certify that the within mortgage is fully paid, satisfied, and discharged.

Dated the —— day of ——, A. D. ——, A. B.

Executed in presence of C. D.

Add an acknowledgment same as preceding form.

Acknowledgment—of Satisfaction.

By Individual proven to the officer.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and title of officer*), personally came A. B., satisfactorily proven to me to be the same person described in, and who executed the above certificate, by the oath of C. D., to me known, who, being by me duly sworn, did depose and say, that he resides in the town of ——, in said county; that he is acquainted with the said A. B., and that he knew him to be the same person described in, and who executed the above certificate, which is to me satisfactory evidence thereof: and thereupon the said A. B. acknowledged before me, that he executed the said certificate.

J. P., *Justice of the Peace.*

Acknowledgment—of Satisfaction.

By a Corporate Company, with proof of execution.

I, P. P., president of the Bank of ——, do hereby certify, that a certain mortgage bearing date the —— day of ——, A. D. ——, made and executed by A. B. and W. his wife, to C. D., and by the said C. D. assigned to the said Bank of ——, by assignment dated the —— day of ——, A. D. ——, and recorded in the office of the clerk of the county of ——, in book No. — of mortgages, page —; and which said mortgage was recorded in the office of the clerk of the county of —— aforesaid, in book No. — of mortgages, pages — and —, on the —— day of ——, A. D. ——, is fully paid, satisfied, and discharged.

In testimony wherof, the said Bank of —— has caused its corporate seal to be hereunto affixed, the —— day of ——, A. D. ——.

[*Seal.*] P. P., *President.*

Executed in presence of W. S.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me (*name and official title*), personally came P. P., in the above certificate mentioned, president of the Bank of —— aforesaid, to me known; and the said P. P., being by me duly sworn, did depose and say, that he resides in the town of ——, in the said county; that the seal affixed to the above certificate is the corporate seal of the said Bank of ——, and was affixed thereto by the order of the board of directors of said bank; and that he subscribed his name thereto by the like order.

J. P., *Justice of the Peace.*

Acknowledgment—of Satisfaction.

By an Executor, Administrator, or Trustee.

I, E. X., executor of the last will and testament of D. D., deceased (*or*, administrator of the goods, chattels, and credits which were of D. D., deceased; *or*, trustee of the estate of D. D., etc.), do hereby certify that a mortgage made and executed by E. F. to the said D. D., in his lifetime (*or*, to me as such trustee as aforesaid), bearing date, etc. (*follow the preceding forms as the case may require*). E. X.

Executed in presence of W. S.

Acknowledgment—Satisfaction of Judgment.

In a Court of Record.

Satisfaction of judgments in courts of record may be acknowledged by the attorney within two years after filing the record of the judgment.[c]

Supreme Court, (*or* —— Common Pleas).

A. B. } Of —— term, A. D. ——.
vs. } Satisfaction for $——.
C. D. } Satisfaction is acknowledged between A. B., plaintiff, and C. D., defendant, in said action, for —— dollars. Judgment docketed the —— day of ——, A. D. ——.

A. B., (*or*, A. A., Attorney for plaintiff).

Subscribed and acknowledged before me, the —— day of ——, A. D. ——, by A. B., known to me (*or*, made known to me), to be the plaintiff in the above entitled cause (*or*, the attorney for the plaintiff in the above entitled cause).

J. P., *Justice of the Peace.*

Acknowledgment—Satisfaction of Judgment.

In a Justice's Court, where a Transcript is filed in the County Clerk's Office.[d]

County Clerk's office.

A. B. } Judgment rendered in favor of the
vs. } plaintiff against defendant, before
C. D. } J. P., Esq., a justice of the peace in and for said county, for —— dollars, and —— cents, debt (*or*, damages), and costs.

Transcript filed and judgment docketed, the —— day of ——, A. D. ——.

Satisfaction of the above-mentioned judgment is hereby acknowledged. A. B.

Subscribed and acknowledged before me, the —— day of ——, A. D. ——, by A. B., known to me to be the plaintiff above named (*or*, made known to me by the oath of W. S., to be, *or*, known to me to be one of the plaintiffs, etc.)

J. P., *Justice of the Peace.*

Authentication of the County Clerk, etc.

To be annexed to the Certificate of Acknowledgment or Proof, taken according to the laws of another State.

State of ——, —— county, ss.

I, C. C., clerk (recorder, register, *or* prothonotary), of said county (*or* of —— court of said county), do hereby certify that A. B., who subscribed the foregoing certificate of acknowledgment (*or* proof), was at the time of taking such acknowledgment (*or* proof) a notary public (*or other officer*), residing in said county, and duly authorized to take and certify the same by the laws of said State, and that the same is taken and certified in all respects as required by the laws of said State. That I am well acquainted with the handwriting of said A. B., and verily believe that the signature attached to the foregoing certificate is the genuine signature of said A. B.

Witness my hand and official seal, this —— day of ——, A. D. ——.

[*Official seal.*] C. C., *Clerk, etc.*

Modern Forms Approved and in Common Use.

A separate form for married women is no longer required.

State of New York, county of ——, ss.

On this —— day of ——, in the year ——, before me personally came H. S. (and O. S., his wife), to me personally known to be the same person(s) described in, and who executed the foregoing instrument, and (severally) acknowledged that (t)he(y) executed the same.

(*Name, title and seal of officer.*)

Form for a Corporation.

State of New York, county of ——, ss.

On this —— day of ——, in the year ——, before me personally came A. G. to me, to me known, who, being duly sworn, did depose and say that he resided at, in ——, in N. Y.; that he is president of (*name of corporation*), the corporation named in, and which executed, the above instrument; that the seal affixed to said instrument

c-2 R. S. 362. d-2 R. S. 248, § 128.

was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(*Name, title and seal of officer.*)

Where the corporation has no seal the fact must be stated in the acknowledgment.

NORTH CAROLINA.

Where the grantor or maker and the subscribing witness to any deed conveying lands in this State, or the maker of any letters of attorney, or other instruments conveying the same, **shall reside beyond the limits of the State, but within the United States,** they shall acknowledge the same before a judge, clerk of a court of record, notary public having a notarial seal, mayor of a city having a seal, or J. P. of the State in which such grantor, etc., resides. These officers can also take the private examination of a married woman, to which they must certify under their respective seals. If the instrument is acknowledged or proven before a J. P., a certificate from the clerk of the court of record of the county in which such J. P. resides, must be appended to the effect that such J. P. was acting J. P. at the time of taking the acknowledgment, etc., and that his genuine signature is affixed to the probate.[x] Any commissioner of affidavits for the State of N. C., appointed by the governor thereof, in any of the States and Territories of the U. S., or in the Dis. of Col., may also take and certify the acknowledgment or probate of deeds or other instruments.

Where the grantor or maker and the subscribing witness reside beyond the limits of the United States, the acknowledgment or probate may be before the chief magistrate of any city in the country where the grantor or witness is resident; or before any ambassador, minister, consul, or commercial agent of the United States; and where such proof or acknowledgment is certified under the corporate seal of such chief magistrate, or under the official seal of such ambassador, minister, consul, or commercial agent, and where such certificate is affixed to the seal or other instrument, and the same is exhibited before the probate judge having jurisdiction, he shall adjudge that such deed or other instrument is duly proved or acknowledged, and shall thereupon order its registration where such registration is necessary.[z]

When a deed, power of attorney, or other instrument shall affect the rights of a married woman, it must be jointly executed by both husband and wife, must be acknowledged by, or proved as to both, and she must be examined privily and apart from her said husband touching her voluntary assent thereto. If the wife reside in some other State, her acknowledgment and privy examination must be before a commissioner appointed by the probate judge having jurisdiction, or a commissioner of affidavits for the State of North Carolina, appointed by the governor thereof, for the State in which the wife resides; and a certificate of such acknowledgment and examination must be returned to the probate judge of the proper county.[x]

Whenever the subscribing witness to any instrument required or allowed to be registered, shall be a non-resident, or shall be dead, and the maker shall also be a non-resident or dead, the proof of the handwriting of such witness and that of the maker, before the judge of probate of the county where the instrument is sought to be registered, shall be sufficient evidence of the execution thereof to admit the same to registration, and in case such maker shall have subscribed with a mark only, the proof of the signature of such witness shall be sufficient. Whenever any such instrument shall not have a witness, and the maker thereof shall be a non-resident or dead, proof of his handwriting shall be sufficient to admit the same to registration.[y]

The certificate of acknowledgment must state that the wife relinquishes her dower.

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

Before me (*name and title of officer*), this day personally appeared A. B. and W. B. his wife, grantors named in the foregoing deed of conveyance (*or other instrument*), and the said deed being also produced and exhibited before me, the said A. B. and W. B. acknowledged the execution thereof by them as their act and deed for the purposes therein expressed, and the said W. B., being by me privately examined, separate and apart from her said husband, touching her free consent in the execution of the said deed of conveyance, in her examination declared to me that she executed the same freely, voluntarily, and without compulsion or restraint upon the part of her said husband, or any other person whatsoever, and did still voluntarily assent thereto.

In testimony whereof, I have set my hand and affixed my official seal this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.

State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, personally appeared W. T., the subscribing witness to the foregoing deed, to me personally known, who on oath duly proves the execution thereof for the purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year above mentioned.

[*Seal.*] (*Signature and title of officer.*)

The certificate of acknowledgment of husband or wife on the sale of the husband's land is the same form as the above, leaving out the closing words, "and did still," etc., and inserting in lieu thereof the following, "and this she does in relinquishment of her dower in the land mentioned in said deed."[x]

OHIO.

Any instrument of writing, by which any land, tenement, or hereditament is conveyed or otherwise affected or incumbered in law, must have the signing acknowledged[a] by the grantor or grantors, maker or makers, in the presence of two witnesses, before a judge of the supreme court or of the court of common pleas, a J. P.,[b] notary public, mayor,[c] or other presiding officer of an incorporated town or city, a commissioner of Ohio,[d] clerk of court, probate judge, county surveyor, a consul of the U. S. resident in any port or country,[e] who[f] must certify such acknowledgment[g] on the same sheet on which such deed, mortgage, or other instrument of writing may be printed or written and must subscribe his name to such certificate.[h]

When a husband and wife, she being eighteen years of age[i] or upward, executes within this State any deed, mortgage, or other instrument of writing for the conveyance or incumbrance of the estate of the wife,[j] or her right to dower[k] in any land, tenement, or hereditament, situate within this State, such deed, mortgage, or other instrument of writing must be *signed* by the husband and wife; and such signing must be attested and acknowledged as aforesaid; no separate examination of the wife is required.[l]

All deeds, mortgages, powers of attorney, and other instruments of writing for the conveyance or incumbrance of any lands, tenements, and hereditaments situate within this State, executed and acknowledged, or proved in any other State, Territory, or country in conformity with the laws of such State, Territory, or country, or in conformity with the laws of this State, is as valid as if executed in this State, in conformity with the laws relating thereto.[m]

Acknowledgment—With Dower.

State of Ohio, —— County, ss.

Be it remembered, that on the——day of——, in the year of our Lord One Thousand Eight Hundred and Ninety ——, before me, the subscriber, a —— within and for said county, personally came ——, the grantors in above conveyance, and acknowledged the signing thereof to be their voluntary act and deed for the purpose therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my —— seal on the day and year aforesaid.

[*Seal.*] (*Official title.*)

x-See General Statutes. y-Act 1870–71, ch. 271. z-See Battle's Rev. ch. 35. a-9 Ohio, 121; 19 Id. 406. b-2 Ohio St. 373; 1 Ohio, 1; 11 Id. 475, 479. c-3 Id. 154; 10 Id. 142. d-S. & C. ch. 75, § 12. e-S. & C. ch. 34, § 26. f-2 Ohio, 55; 3 Id. 140; 9 Id. 168; 10 Id. 189; 6 Id. 247. g-13 Id. 260 h-17 Id. 542; S. & C. ch. 34, § 15. i-10 Ohio, 37, 42. j-17 Id. 105; 9 Id. 121; 7 Ohio St. 37; 10 Ohio, 305; 6 Ohio St. 466. k-16 Ohio, 91, 323; 7 Id. (pt. 1) 194; 3 Ohio St. 78. l-5 Ohio St. 319. m-Id. § 5; 3 Ohio, 107; 9 Id. 121; 2 Id. 234; 3 Id. 488; 2 Id. 124; 10 Id. 188; 11 Id. 475.

Acknowledgment—Without Dower.

State of Ohio, —— County, ss.

Be it remembered, that on the —— day of ——, in the year of our Lord One Thousand Eight Hundred and Ninety ——, before me, the undersigned, a —— within and for said County, personally came —— the grantor in the above conveyance, and acknowledged the signing thereof to be —— voluntary act and deed for the purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my —— seal on the day and year aforesaid.

[*Seal.*] (*Official title.*)

Acknowledgment—By Attorney.

State of Ohio, —— County, ss.

Be it remembered, that on the —— day of ——, in the year of our Lord One Thousand Eight Hundred and Ninety ——, before me, the subscriber, a —— within and for said County, personally came ——, by —— Attorney in fact, the grantor —— in above conveyance, and acknowledged the signing thereof to be —— voluntary act and deed for the purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my —— seal on the day and year aforesaid.

[*Seal.*] (*Official title.*)

Acknowledgment—Of Administrator, Executor, or Guardian.

State of Ohio, —— County, ss.

Be it remembered, that on the —— day of ——, in the year of our Lord One Thousand Eight Hundred and Ninety ——, before me, the subscriber, a —— within and for said County, personally came ——, (executor of the last Will and Testament of —— deceased), or (Administrator of the estate of —— deceased), or (Guardian of the person and estate of —— minor heir of —— deceased), the grantor —— in above conveyance, and as such —— acknowledged the signing thereof to be —— voluntary act and deed for the purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my —— seal on the day and year aforesaid.

[*Seal.*] (*Official title.*)

The within deed approved by me this —— day of —— 189—

[*Seal.*] (*Probate Judge.*)

Conveyances, etc., cannot be proved by subscribing witnesses, but must be acknowledged by the grantors in the presence of such witnesses.

OKLAHOMA.

Acknowledgments may be taken and proved before a judge or clerk of the supreme or district court, a mayor of a city, a register of deeds, a justice of the peace, a United States circuit or district court commissioner, a county clerk or auditor, or a notary public **within the Territory. Outside**, but within the United States, they may be taken before a justice, judge or clerk of any court of record, notary public, or other officer authorized by law to take acknowledgments, or a commissioner authorized by the Territory.

If a homestead pass by deed, the husband and wife must join in the execution, but they need not join in other conveyances.

Lease not to exceed one year need not be in writing. All conveyances must be recorded as against third parties. A quit claim deed conveys all right, title and interest of the maker in and to the described premises. Grantees must give grantors twenty days' notice of suit.

Statutory Form of Acknowledgment.

Territory of Oklahoma, county of ——, ss.

Before me (*title of officer*), in and for said county and Territory, on the —— day of ——, 19—, personally appeared —— and ——, to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that (t)he(y) executed the same as his (*their*) free and voluntary act and deed for the uses and purposes therein set forth.

(*Name, title and seal of officer.*)

OREGON.

Conveyances, etc., executed in any other State, Territory, or district of the United States, may be executed according to the laws of such State, Territory or district, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer, authorized by the laws of such State, Territory, or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of Oregon for such purposes.•

Unless the acknowledgment be taken before a commissioner appointed by the governor of Oregon for that purpose, or before a Notary Public, certified under his notarial seal, or before the clerk of a court of record, certified under the seal of the court, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory or district.• A married woman must join with her husband in making a deed, in order to extinguish her dower.

Acknowledgment—General Form.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, personally came before me (*name and title*), in and for said county, the within-named A. B. and W. B. his wife, to me personally known to be the identical persons described in, and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and seal this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title of Officer.*)

PENNSYLVANIA.

Conveyances, etc., executed in the State, must be acknowledged before justices of the supreme court of Pennsylvania, judges of the courts of common pleas, mayor, of Philadelphia, Pittsburgh, Allegheny, Scranton, Williamsport, Lock Haven and Carbondale, the recorders of deeds, and notaries public, and all justices of the peace.

Out of the State, before the mayor or chief magistrate of the city, town, or place where the deed is executed (under the public seal); any justice or judge of the supreme or superior court, or court of common pleas; or of any court of probate or court of record of any State or Territory in the United States (certified under the hand of the judge and the seal of the court); before any judge of the United States supreme court, or of any United States district court, before any officer or magistrate of any State or Territory in the United States, who is authorized by the laws of his own State or Territory to take acknowledgments therein. The proof of such authority is the certificate of the clerk or prothonotary of any court of record in such State, under seal of the court that the officer taking such acknowledgment is duly qualified to take the same; before ambassadors and other public ministers of the United States (under official seal); consuls and vice-consuls of the United States (under cousular seal); before any notary public in any State or Territory of the United States, or in any foreign county; before commissioners appointed by the governor in any State, Territory, or foreign country, whose commissions last five years unless sooner revoked. Where the person making the acknowledgment is in the military service of the United States, before any person holding the rank of major, or any higher rank in the said military service under a commission from the governor of Pennsylvania. The seal is *prima facie* evidence of its own genuineness.•

Acknowledgments, taken by commissioners of deeds out of the State, need not be certified, except under their own seals.•

No deed or contracts relating to real estate by a wife,

•—See General Statutes.

whether it be her own or her husband's, is binding upon her unless acknowledged.P The wife must acknowledge on separate examination, and her signature cannot be proved.P

A deed by a corporation should be executed by its corporate seal attested by the president and secretary.P

Acknowledgment—General Form.

State of Pennsylvania, —— county, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me, one of the justices of the peace in and for the said county, personally appeared the above-named A. B., and acknowledged the foregoing —— to be his act and deed, and desired that the same might be recorded as such according to law.

In testimony whereof, I have hereunto set my hand and seal the day and year above written.

J. P., *Justice of the Peace.* [*Seal.*]

Acknowledgment—Husband and Wife.

State of Pennsylvania, —— county, ss.

On this —— day of ——, A. D. one thousand eight hundred and ——, before me (one of the justices of the peace in and for said county), came the above-named A. B. and W. B. his wife, and severally acknowledged the within written indenture to be their act and deed, and desired that the same might be recorded as such according to law. She, the said W. B., being of full age, and by me examined separate and apart from her husband, the full contents thereof being first made known to her, declaring that she did voluntarily, and of her own free will and accord, seal, and as her act and deed delivered the said indenture without any coercion or compulsion on the part of her said husband.

In testimony whereof, I have hereunto set my hand and seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

Acknowledgment—Husband and Wife.

State of Pennsylvania, —— county, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me (*name and title of official*), duly commissioned in and for said county, came A. B. and W. B. his wife, and acknowledged the foregoing indenture to be their act and deed, and desired the same to be recorded as such. She, the said W., being of lawful age, and by me examined separate and apart from her said husband, and the contents of said deed being first fully made known to her, did thereupon declare that she did voluntarily and of her own free will and accord, sign and seal, and as her act and deed, deliver the same without any coercion or compulsion of her said husband.

Witness my hand and seal the day and year aforesaid.

[*Seal.*] (*Signature and title of officer.*)

Acknowledgment—By Attorney.

State of Pennsylvania, —— county, ss.

Before me, one of the justices of the peace in and for the said county, personally came the above-named A. B., and in his own name, and in the names of his constituents, the above-named C. D. and E. F., in due form of law, acknowledged the above written indenture to be his own act and deed, and the act and deed of his constituents, the said C. D. and E. F., by him, the said A. B., done and executed by virtue of a letter of attorney to him for that purpose, granted to the end that the same might be as such recorded.

Witness my hand and seal the —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title.*)

Acknowledgment—Before Commissioners.

State of Pennsylvania, city of Philadelphia, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before the subscriber, C. R., commissioner for the State of Delaware, resident in said State of Pennsylvania, to take acknowledgments of deeds, etc., personally appeared A. B. and W. his wife, named in this indenture, and severally acknowledged said indenture to be their act and deed respectively, and desired that it might be recorded. And that on the same day the said W., wife of the said A. B., being privately examined by the subscriber, apart from her said husband, acknowledged that she executed the said indenture willingly, without compulsion, or threats or fear of her husband's displeasure.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[*Seal.*] (*Signature and title.*)

State of Pennsylvania, city of Philadelphia, ss.

Be it remembered, and it is hereby certified, that on this —— day of ——, A. D. ——, before me, C. R., commissioner for the State of Maryland, resident in the State of Pennsylvania, to take acknowledgments, etc., personally appeared A. B. and W. B. his wife, they being known to me (*or* they being satisfactorily proven by oral testimony under oath received by me) to be the persons named and described as and professing to be parties to the foregoing indenture or instrument of writing, and do severally acknowledge the same to be their act and deed. The said W. B., having signed and sealed the said instrument or indenture before me, out of the presence and hearing of her said husband, and being by me examined out of such presence and hearing, "whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of ill usage by her husband, or by fear of his displeasure," declareth and saith, that she doth.

In testimony whereof, etc.

[*Seal.*] (*Signature and title.*)

State of Pennsylvania, city and county of Philadelphia, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, C. R., Esq., commissioner duly authorized by the governor of Alabama, personally appeared A. B., the grantor in the above and foregoing deed named, who acknowledged the same to be his voluntary act and deed, signed, sealed, and delivered, on the day and year therein above mentioned, to the above-named ——, for the purposes therein expressed.

Witness my hand and seal the day and year aforesaid.

[*Seal.*] (*Signature and title.*)

State of Pennsylvania, county of Philadelphia, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me (C. R., commissioner for Massachusetts within the State of Pennsylvania, duly authorized to take acknowledgments of deeds and other instruments under seal), personally appeared the within-named A. B. and W. B. his wife, and acknowledged the foregoing instrument, by them subscribed, to be their free act and deed.

In testimony whereof, I have hereunto set my hand and seal the day and year above written.

[*Seal.*] (*Signature and title.*)

State of Pennsylvania, county of Philadelphia, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me, C. R., commissioner for Maine within the State of Pennsylvania, duly authorized to take acknowledgments of deeds and other instruments under seal, personally appeared the above-named A. B. and W. B. his wife, and acknowledged the within instrument (by them subscribed) to be their free act and deed.

In testimony whereof, I have hereunto set my hand and seal the day and year above written.

[*Seal.*] (*Signature and title.*)

Acknowledgment—Single Grantor.

City and county of New York, ss.

On this —— day of ——, A. D. ——, before me, came C. R., a resident of ——, to me known to be the person described in and who executed the within instrument in writing, and who acknowledged duly to have executed the same, and this to me is satisfactory proof of the execution of the said written instrument.

In testimony, etc.

[*Seal.*] (*Signature and title.*)

P See General Statutes.

Acknowledgment—Grantor and Wife.

City and county of New York, ss.

On this —— day of ——, A. D. ——, before me, came A. B. and W. his wife, residents of ——, to me known to be the persons described in and who executed the within instrument in writing, and who acknowledged duly to have executed the same, and the said W. (the wife) having been separately examined by me, acknowledged that she executed the said instrument of her own free will and accord, all which is to me satisfactory proof of the execution of the said written instrument by the parties aforesaid.

In testimony, etc.

[*Seal.*] (*Signature and title.*)

Proof by a Witness.

City and county of New York, ss.

On this —— day of ——, A. D. ——, before me, came W. S., a resident of ——, to me personally known as such (*or* proved to me by the oath of ——, a resident of ——, [who is personally known to me as such] to be the same person), and being sworn, deposeth, that he was present and saw A. B. duly execute the within instrument in writing, that this witness has known the said A. B., and knows him to be the person described in and who executed the said instrument, and this is satisfactory proof to me of the execution of the said instrument. In testimony, etc.

[*Seal.*] (*Signature and title.*)

Acknowledgment—By a Corporation.

State of Pennsylvania, —— county, ss.

Before me, one of the justices, etc., personally appeared A. B., Esq., president of the above-named corporation, who, being duly sworn, deposeth and saith, that he was personally present at the execution of the above written indenture, and saw the common seal of the said (*name of corporation*) duly affixed thereto, that the seal so affixed is the common and corporate seal of the said ——, and that the above written —— was duly sealed and delivered, by, as, and for the act and deed of the said corporation of the ——, for the uses and purposes therein mentioned. And that the name of this deponent subscribed to the said deed as president of the said corporation, in attestation of the due execution and delivery of said deed, is of this deponent's proper handwriting.

Sworn and subscribed before me this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title.*)

Acknowledgment—Renunciation of Dower.

Renunciations of inheritance and dower are indorsed upon the deed.

State of Pennsylvania, etc.

I, C. S. C., commissioner appointed under the act of the General Assembly of the State of South Carolina, of the —— day of ——, A. D. ——, to take renunciations of dower and inheritance, etc., in the State of Pennsylvania, do hereby certify, to all whom it may concern, that W. B., the wife of the within-named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named A. B., his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to, all and singular the premises within mentioned and released.

Given under my hand and seal this —— day of ——, A. D. ——. [*Seal.*] (*Signature and title.*)

Acknowledgment—Renunciation of Inheritance.

State of Pennsylvania, city of Philadelphia, ss.

I, C. S. C., commissioner appointed under the act of the General Assembly of the State of South Carolina, of the —— day of ——, A. D. ——, to take renunciations of dower and inheritance, etc., in the State of Pennsylvania, do hereby certify unto all whom it may concern, that W. B., the wife of the within-named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she did actually join her said husband in executing the within release, and that the same was positively and bona fide executed by them at least seven days before this her examination, and that she did then and still does at this time freely, voluntarily, and without any manner of compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named A. B., his heirs and assigns, all her estate, interest, and inheritance, in all and singular the premises within mentioned and released.

Given under my hand and seal this —— day of ——, A. D. ——. [*Seal.*] (*Signature and title.*)

Acknowledgment—Sheriff's Deed.

State of Pennsylvania, —— county, ss.

Be it remembered, that this —— day of ——, A. D. ——, in the open court of common pleas of said county, and before the judges of the said court, came A. B., high sheriff of said county, and acknowledged the above deed poll to be his act and deed, and desired that acknowledgment of said deed might be entered of record among the proceedings of the court, and the same was thereupon entered accordingly.

In testimony whereof, I have hereunto set my hand and caused the seal of the said court to be affixed the day and year above mentioned.

[*Seal.*] (*Signature and title.*)

Acknowledgment—Another Form.

State of Pennsylvania, —— county, ss.

Acknowledged by A. B., high sheriff of the county of ——, in open court of common pleas, in and for the said county, the —— day of ——, A. D. ——, and entered among the proceedings of the court.

Witness my hand and the seal of my office, the day and year above written.

[*Seal.*] (*Signature and title.*)

Acknowledgment—By Special Partners.

State of Pennsylvania, —— county, ss.

Before me, one of the justices in and for said county, personally appeared the above-named A. B., C. D., and E. F., who severally, in due form of law, acknowledged the foregoing certificate as and for theirs, and each of their act and deed, to the end that the same might be recorded as such.

Witness my hand and seal this —— day of ——, A. D. ——. [*Seal.*] (*Signature and title.*)

Acknowledgment—Writing in English, Copy in another Language.

State of Pennsylvania, —— county, ss.

Before me, J. P., one of the justices of the peace in and for the said county, personally appeared the within A. B., who in my presence did acknowledge the foregoing —— ——, whereof the annexed purports to be a true translation, to be his voluntary act and deed, and by him delivered to the within-named C. D., for the purposes therein mentioned —— the name and seal thereunto prescribed and affixed being the proper hand and seal of him, the said A. B.

In testimony whereof, I have hereunto set my hand and seal this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title.*)

Probate of a Deed by a Witness.

There must be *two witnesses* to a deed of real estate, one of whom must take this affidavit to be indorsed on the deed to entitle it to record in South Carolina.

One witness is sufficient for personal property.

State of Pennsylvania, etc.

Personally appeared before me, C. S. C, commissioner appointed under the act of the General Assembly of the State of South Carolina, of the —— day of ——, A. D. ——, to take acknowledgment or proof of deeds, etc., in the State of Pennsylvania, W. S., and made oath that he saw the within-named A. B. sign, seal, and as his act and deed deliver the within written deed, and that he with C. D. witnessed the execution thereof.

In testimony, etc.

[*Seal.*] (*Signature and title*)

Proof by Subscribing Witness.

Proof of the execution of a deed may be made by the

affidavit of a subscribing witness. Powers of attorney relating to real estate must be acknowledged the same as deeds.p

State of Pennsylvania, —— county, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me (*name and title of official*), duly commissioned in and for said county, personally appeared W. S., one of the subscribing witnesses to the execution of the above indenture, who being duly sworn (*or* affirmed) according to law, doth depose and say that he did see A. B., the grantor above named, sign and seal, and as his act and deed deliver the above indenture (deed *or* conveyance), for the use and purposes therein mentioned, and that he did also see N. S. subscribe his name thereunto as the other witness of such sealing and delivery, and that the name of this deponent thereunto set and subscribed as a witness is of this deponent's own proper handwriting.p W. S., *Witness.*

Sworn (*or* affirmed) to and subscribed before me the day and year aforesaid.

Witness my hand and official seal.

[*Seal.*] (*Signature and title.*)

State of Pennsylvania, —— county, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me (*name and title of officer*), personally came W. T., who being duly sworn (*or* affirmed) according to law, doth depose and say, that he was personally present and did see the common or corporate seal of the above-named (*name of corporation*) affixed to the foregoing indenture (*or* deed poll). That the seal so affixed is the common or corporate seal of the said (*name of corporation*), and was so affixed by the authority of the said corporation as the act and deed thereof. That the above-named P. P. is the president of the said corporation, and did sign the said indenture (*or* deed poll) as such in the presence of this deponent. That this deponent is the secretary of the said corporation, and that the name of this deponent above signed in attestation of the due execution of the said indenture (*or* deed poll) is of this deponent's own proper handwriting. T. R., *Treasurer (or other officer).*

Sworn to and subscribed before me.

[*Seal.*] (*Signature and title.*)

RHODE ISLAND.

Conveyances, etc., executed in this State, must be acknowledged before a senator, judge, justice of the peace, notary public, or town clerk, and recorded or lodged to be recorded in the office of the town clerk of the town where the land lies.p

If the grantor or grantors die or remove from the State before acknowledgment, the supreme court, or court of common pleas, on proof of signature, may order the deed recorded.p

Executed out of this State, a conveyance of lands within this State, or instrument relating thereto executed without the limits of this State and within the United States, may be acknowledged before any judge, justice of the peace, mayor, or notary public in the State where the same is executed, or by any commissioner appointed by the governor and duly qualified thereunto; and if without the limits of the United States, before any ambassador, minister, *chargé d'affaires*, recognized consul, vice-consul, or commercial agent of the United States, or by any commissioner appointed and qualified as aforesaid, in the country in which such deed or instrument is executed.q

Acknowledgment of any deed hereafter made, need not be in any set form, but shall be made by all the parties grantors, including married women, even though releasing dower only, and the certificate thereof shall express the ideas that the grantors respectively making the acknowledgment were each and all known to the magistrate taking the acknowledgment, and known by the magistrate to be the parties executing the instrument, and that they acknowledged said instrument to be their free act and deed. No other acknowledgment shall be required of married women.r

Acknowledgment—State of ——, county of ——, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me (*name and title of officer*), personally appeared A. B. and W. B. both being known to me, and known by me to be the parties executing foregoing instrument, and the said A. B. and W. B. acknowldeged the same by them signed, to be their free and voluntary act and deed, and that they do not wish to retract the same.

In testimony whereof, I have set my hand and seal at —— the day and year above written.

[*Seal.*] (*Signature and title of officer.*)

SOUTH CAROLINA.

Before any deed or instrument in writing can be recorded in the proper office within this State, the execution thereof shall first be proved by the affidavit in writing of a subscribing witness to such instrument taken before some officer within this State competent to administer an oath, or before a commissioner, or commissioners, appointed by *dedimus* issued from the court of common pleas of the county in which the instrument is to be recorded; or, if taken without the limits of this State and within the United States, before a commissioner of deeds of this State, or before a clerk of a court of record, who shall certify the same under his official seal, or before a notary public, who shall affix thereto his official seal, and accompany the same with a certificate as to his official character from the clerk of a court of record of the county in which the affidavit is taken; or, if taken without the United States, before a consul, vice-consul or consular agent of the United States of America.

(Gen. Statutes 1882—Sec. 1777).

Proof before Subscribing Witness.

State of ——, county of ——, ss.

Personally appeared before me, W. T., and made oath that he (or she) saw the within-named A. B. (or parties to the deed) sign, seal and as his (her or their) act and deed, deliver the within-written deed; and that he (or she) with N. S., witnessed the execution thereof.

[*Signed*] W. T., *Witness.*

Sworn to before me, this —— day of ——, A. D. 189 .

[*Seal.*] (*Signature and title of officer.*)

Renunciation of Dower.

State of ——, county of ——, ss.

I (*name and title of officer*), do hereby certify unto all whom it may concern, that W. B., the wife of the within-named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within-named C. D., his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released. (*Signature of wife.*) W. B.

Given under my hand and seal this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and title of officer.*)

TENNESSEE.

Probate of conveyances, etc., is by not less than two subscribing witnesses. *Acknowledgment* is by maker himself, in which case there is no need of subscribing witnesses. Such probate or acknowledgment is evidence *prima facie* only in the courts, of the execution of the instrument. In the absence properly accounted for of the original instrument, a copy from the office of registry with the certificates of probate or acknowledgment, is *prima facie* evidence of the contents and execution of the original.t

The essential substance of the certificate of probate is, the oath of the two subscribing witnesses that they are acquainted with the maker or grantor, and that in their presence he acknowledged the deed, etc., to be his act and deed on the day it bears date, or some designated time; the essential substance of a certificate of acknowledgment is that the officer before whom it is taken is personally acquainted with the maker, and that he (the

p-See General Statutes. q-General Statutes, 162. r-Id. ch. 173. s-See General Statutes. t-Code, § 2071.

grantor) acknowledged the execution of the instrument for the purposes contained. Practically the clerk or other officer in or out of the State, if not personally acquainted with the acknowledger, is made so at the time by any means which will satisfy him to certify that he is personally acquainted, or rather, which will make the officer personally acquainted. The essential substance of the certificate of the execution of the deed by a wife is that she appeared before the officer privately and apart from her husband, and acknowledged the execution of the deed to have been done by her freely, voluntarily, understandingly, without compulsion or constraint from her husband, etc.[v]

Probates and acknowledgments may be made **within the State** of Tennessee, before clerks of county courts and their deputies, and notaries public. **In any other State or Territory** of the United States before a commissioner of Tennessee appointed by the governor of Tennessee for such State or Territory, or notary public of such State or Territory, or any court of record, or any clerk of any court of record of such State or Territory. If made **out of the United States**, before a commissioner of Tennessee, appointed for such country, or a notary public of such country, or a consul, minister, or ambassador of the United States in such country.[w]

Certificates of probate, etc., made by commissioners, notaries, consuls, ministers, or ambassadors, shall be under their official seals.[x] If made by a court of record, the copy of the entry on the record shall be verified by the certificate of the clerk of the court under his seal of office; if made before a clerk of a court of record, his certificate shall be under seal of office, and the official character of the clerk shall be verified by the certificate of the presiding judge of the court.[y]

Acknowledgment—General Form.[z]

State of ——, county of ——, ss.

Before me, C. R., a commissioner of the State of Tennessee, appointed, qualified, and commissioned to take probate of deeds, etc., for registration and use in the State of Tennessee, personally appeared A. B., the within-named bargainor (*or other name*), with whom I am personally acquainted, and who acknowledged that he executed the within deed (*or other instrument*) for the purposes therein contained.

Witness my hand and seal of office this —— day of ——, A. D. ——.

[*Official seal.*] (*Signature and title of officer.*)

Proof by Subscribing Witness.[a]

State of ——, county of ——, ss.

Before me, C. R. (*as in above form*), personally appeared W. T. and N. S., subscribing witnesses to the within deed (*or other instrument*), who being first sworn, deposed and said that they are acquainted with A. B., the bargainor (*or as the name may be*), and that he acknowledged the same in their presence to be his act and deed on the day it bears date (*or stating the time as proved by the witnesses*).

Witness my hand and seal of office at ——, this —— day of ——, A. D. ——.

[*Official seal.*] (*Signature and title of officer.*)

Acknowledgment—Husband and Wife.[b]

State of ——, county of ——, ss.

Before me, C. R., commissioner, etc. (*as in foregoing forms*), personally appeared A. B. and W. B. his wife (*here follows a certificate of probate or acknowledgment as to the husband, as shown in the preceding forms: then goes on*), and the said W. B., wife of said A. B., with whom I am personally acquainted, having appeared before me privately and apart from her said husband, acknowledged the execution of said deed to have been done by her freely, voluntarily, and understandingly, without compulsion or constraint of her said husband, and for the purposes therein expressed.

Witness my hand and seal of office, etc. (*as in preceding forms*).

[*Official seal.*] (*Signature and title of officer.*)

TEXAS.

Acknowledgments.

In this State acknowledgments can be taken before some notary public, a clerk of the district court and a judge or clerk of the county court, when conveyance is executed within the State.

Acknowledgment made without the State but within the United States may be made before either: 1st. A clerk of some court of record having a seal. 2d. A commissioner of deeds duly appointed under the laws of this State. 3d. A notary public.

Acknowledgment made without the United States may be before either: 1st. A minister, commissioner, or *chargé d' affaires* of the United States, resident and accredited in the country where the proof or acknowledgment is made. 2d. A consul-general, consul, vice-consul, commercial agent, vice commercial agent, deputy consul or consular agent of the United States, resident in the country where the proof or acknowledgment is made. 3d. A notary public.

Form of Acknowledgment of Husband and Wife.

State of Texas, county of ——, ss.

Before me (*here insert the name of and character of the officer*), on this day personally appeared A. B. and C. D., wife of said A. B., known to me to be the persons whose names are subscribed to the foregoing instrument of writing, and acknowledged to me that they executed the same for the purposes and considerations therein expressed. And the said C. D., wife of the said A. B., having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said C. D., wife of said A. B., acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this —— day of ——, 1894.

Notary Public in and for
—— County, Texas.

Form of Certificate of Acknowledgment by a Witness.

State of Texas, county of ——, ss.

Before me (*here insert the name and character of officer*), on this day personally appeared A. B., known to me (or proved to me on the oath of ——) to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw C. D., the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he executed the same for the purposes and considerations therein expressed), and that he signed the same as a witness at the request of the grantor (or person who executed the same).

Given under my hand and seal of office this —— day of ——, A. D. 1894.

(*Signature and title of officer.*)

UTAH.

Conveyances, etc., may be acknowledged or proved **in the Territory** before a judge or clerk of a court having a seal, notary public, or county recorder, or by justice of the peace of county where lands are situate.[f]

Out of the Territory, and within the United States, before a judge or clerk of a court of the United States, or of any State or Territory having a seal, or a notary public, or a commissioner of deeds for Utah Territory. **Out of the United States,** before a judge or clerk of any court of any state, kingdom, or empire having a seal, or any notary public, or any minister, commissioner, or consul of the United States appointed to reside therein. A legally appointed deputy of any of the above-mentioned officers may take the proof or acknowledgment in name of principal. The forms for acknowledgment or proof by subscribing witnesses are the same as given for California, above, which see, except that a married woman may convey any of *her* real

v-See Code. w-Code, §§ 2039, 2039 *a*, *b*, *c*, *d*; Act of 1870, ch. 71, §§ 1-4. §§ 2040, 2051. x-Code, § 2043. y-Code, §§ 2045, 2046. z-Code, § 2042. a-Code, § 2058.

f-See General Statutes.

estate, or interest therein, by conveyance, executed and acknowledged and certified in the same manner as a *feme sole*, or other person. Whenever all the subscribing witnesses are dead, out of the jurisdiction, or cannot be had, the signature of the grantor or subscribing witnesses may be proved by proving handwriting.[f]

VERMONT.

Acknowledgment may be made "before a justice, town clerk, notary public, master in chancery, county clerk, judge or register of probate." Rev. Laws, sec § 1927.

Acknowledgments or proofs without the state are valid, "if certified agreeably to the laws of the State, province or kingdom in which such acknowledgment or proof is taken," * * * may be acknowledged or proof taken "before a justice of the peace, magistrate, or notary public within the United States, or in a foreign country, or before a commissioner appointed for that purpose by the governor of this State, or before a minister, *chargé d'affaires*, consul or vice-consul of the United States, in a foreign country." Rev. Laws, sec § 1946. The separate acknowledgment or private examination of the wife is not required.[f]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

At ——, this —— day of ——, A. D. ——, personally appeared A. B. and W. B. his wife, the signers and sealers of the above written instrument, and acknowledged the same to be their free act and deed.

Before me, (*Signature and title of officer.*)

Proof by Subscribing Witness.

In certain cases where deed is not acknowledged, proof of execution may be made by the subscribing witnesses before any judge of the supreme or county court in this State; and if the witnesses are dead or out of the State, the deed may be proved before such court by proving the handwriting of the grantor, and of any subscribing witness, or adducing other evidence to the satisfaction of the court. If a grantor refuses to acknowledge his deed, any person claiming under him may cite him before a justice of the peace to hear the testimony of the subscribing witnesses, and if the deed is proved to the satisfaction of the justice by one or more of the subscribing witnesses, he shall so certify, which shall be equivalent to a due acknowledgment by the grantor. These proceedings must be had in this State.[f]

VIRGINIA.

The court or clerk of any county or corporation in which real estate lies, or personalty generally may be at the time being, shall admit any deed or contract respecting it to record as to any person whose name is signed thereto, upon a certificate of his acknowledgment before a justice, a commissioner in chancery, or notary public within the United States, written on or annexed to it, to the following effect:[g]

Acknowledgment—General Form.

State of ——, county of ——, ss.

I, J. P., a justice of the peace (*or* notary public, *or* commissioner in chancery of the —— court of) of the county (*or* corporation) aforesaid, in the State (*or* Territory, *or* District) of ——, do certify that A. B. (*or* A. B. and W. B., etc.) whose name (*or* names) is (*or* are) signed to the writing above (*or* hereto annexed), bearing date on the —— day of ——, A. D. ——, has (*or* have) acknowledged the same before me in my county (*or* corporation) aforesaid.

Given under my hand this —— day of ——, A. D. ——. (*Signature and title of officer.*)

Or upon a certificate of acknowledgment of such person, before any commissioner appointed by the governor, within the United States, so written or annexed, to the following effect:

State of ——, county of ——, ss.

I, C. R., a commissioner appointed by the governor of the State of Virginia for the said State (*or* Territory, *or* District) of ——, certify that A. B. (*or* A. B. and W. B.), whose name (*or* names) is (*or* are) signed to the writing above (*or* hereto annexed), bearing date on the —— day of ——, A. D. ——, has (*or* have) acknowledged the same before me in my State (*or* Territory, *or* District) aforesaid.

Given under my hand this —— day of ——, A. D. ——. (*Signature and title of officer.*)

Or upon a certificate of the clerk of any county or corporation court in this State, or his deputy, or of the clerk of any court out of this State and within the United States, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, , or before the court of which he is clerk; or upon a certificate under the official seal of any minister plenipotentiary, *chargé d'affaires*, consul-general, consul, vice-consul, or commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate.[g]

Admission to record of writing from husband and wife; effect on right of wife.

When a husband and his wife have signed a writing, purporting or contracting to convey any estate, real or personal, or any writing authorizing another to convey, or contract to convey, any such estate, such writing may be admitted to record as to each of them, according to the provisions above, and when it shall have been so admitted to record as to the husband as well as the wife, or if it be a writing executed under a power of attorney, when such writing, as well as such power of attorney, shall have been so admitted to record, it shall operate to convey from the wife her right of dower in the real estate embraced therein, and pass from her and her representatives all right, title, and interest of every nature which, at the date of such writing, she may have in any estate conveyed or embraced therein, as effectually as if she were, at the date, an unmarried woman. Such writing shall not operate any further upon the wife or her representatives by means of any covenant or warranty contained therein which is not made with reference to her separate estate as a source of credit, or which, if it relate to her said right of dower or to any estate or interest conveyed other than her own, is not made with reference to her separate estate as a source of credit.

Conveyance by married woman of her separate estate; how signed; when and where admitted to record.

Nothing contained in the preceding section shall be so construed as to impair or affect any right or power a married woman has, by her sole act, to convey or transfer any estate real or personal which is her separate estate; and any writing, which is to be or may be recorded, signed by a married woman, though not signed by her husband, conveying or transferring any estate, real or personal, which is her separate estate as aforesaid, may be admitted to record as to her, in the same manner as if she were unmarried.

Or, if the wife be without the United States, she may appear before any minister plenipotentiary, *chargé d'affaires*, consul-general, consul, vice-consul, or commercial agent, appointed by the government of the United States to any foreign country, or before any court of such country, or the mayor or other chief magistrate of any city, town, or corporation therein, who shall examine her, and make such explanation as is above required where the wife is in the United States, and if then she make such acknowledgment as is so required, the person having such appointment, or such mayor or chief magistrate, or the proper officer of such court, shall give a certificate, under his official seal, of the said examination, explanation, and declaration, to the effect required where the wife is within the United States, and upon or annexed to such writing in like manner.[h]

WASHINGTON.

Dower and courtesy are abolished. Private seals of grantors abolished. Acknowledgments taken beyond the United States may be by ministers, secretaries of legation, consuls and vice-consuls appointed by the United States government, or by the courts, mayors

f-See General Statutes. g-See Code, ch. 111. h-Code, ch. 111, § 2503.

and chief magistrates of foreign jurisdictions. Conveyances executed in any other State or Territory of the United States, of lands in this State, may be executed and acknowledged as deeds are within this State; and the execution thereof may be acknowledged before any person authorized to take acknowledgments by the laws of the State or Territory wherein the acknowledgment is taken, or a commissioner of this State. All deeds must be in writing, signed by grantors, and duly acknowledged.

Acknowledgments of deeds and mortgages may be taken by a judge of the supreme court, judge of the superior court, justice of the peace, county auditor, or his deputy, a clerk of the superior or supreme court, or his deputy, or a notary public.[j]

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

On this —— day of ——, A. D. ——, before me (*name and title of officer*), personally appeared A. B. and W. B., his wife, personally known to me to be the identical persons described in, and who executed the foregoing conveyance, and I having first made known to them the contents thereof, they did thereupon severally acknowledge before me that they executed the same as their voluntary act and deed, for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year first above mentioned.

[*Seal.*] (*Signature and title of officer.*)

WEST VIRGINIA.

Deeds in this State must be executed under seal, must be acknowledged, unless proved by two witnesses.[k]

Any deed, mortgage, deed of trust, power of attorney, or contract in writing made in respect to real estate or goods and chattels, including leases for more than five years, shall be admitted to record as to any person whose name is signed thereto, upon a certificate of his acknowledgment before a justice, notary public, recorder, prothonotary, clerk of any court within the United States, or commissioner appointed within the same by the governor of this State, written on or annexed to the same; or proved by two witnesses as to him before the proper clerk of the county court or before the proper officer in foreign countries.[k]

If executed out of the United States, the certificate must be under the official seal of a minister plenipotentiary, *chargé d' affaires*, consul-general, consul, vice-consul, or commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of such county, or of the mayor or other chief magistrate of any city, town or corporation therein.

Acknowledgment—Single Persons.

No form is prescribed by law for proving the execution of a conveyance, etc., by witness.

The two following forms for certificates of acknowledgment are prescribed by the statute.[l] The officer is not thereby required to certify that the grantors are personally known to him. The question of identity as to the grantors who appear before him is left to the officer certifying the acknowledgment. The wife *must* in all cases acknowledge the deed before the officer in person. Deeds, etc., can only be *proved by witnesses*, before the proper recording officer of the county where they are admitted to record; or when executed out of the United States, before a minister plenipotentiary, or other officer above mentioned, having authority to take acknowledgments in foreign countries.[m]

Form of Acknowledgment—Before a Commissioner.

State of ——, county of ——, ss.

I, C. R., a commissioner appointed by the governor of the State of West Virginia for the said State (*or* Territory *or* District) of —— (*or* I, J. P., a justice of the county aforesaid, and District of ——; *or*, I, etc., *giving other official designation*), do certify that A. B., whose name (*or* names) is (*or* are) signed to the writing above (*or* hereto annexed) bearing date on the —— day of —— A. D. ——, has (*or* have) this day acknowledged the same before me, in my said ——.

Given under my hand this —— day of ——, A. D. ——. [*Seal.*] (*Signature and title of officer.*)

Acknowledgment—Husband and Wife.

State of ——, county of ——, ss.

I, C. R., a notary public for the said county of ——, do certify that A. B. and W. B., his wife, whose names are signed to the above writing, bearing date on the —— day of ——, 189 , have this day acknowledged the same before me in my said county.

Given under my hand this —— day of ——, 189

(*Signature and title of officer.*)

Acknowledgment—Corporation.

State of West Virginia, —— county, to wit:

I, C. R., a notary of the said county of ——, do certify that A. B. personally appeared before me in my said county, and being by me duly sworn, did depose and say that he is the president of the corporation described in the writing above, bearing date the —— day of ——, 18—, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the seal of the said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said —— acknowledged the said writing to be the act and deed of said corporation.

Given under my hand, this —— day of ——, 18 .

(*Signature and title.*)

Acknowledgment—Certificate of Proof of Deeds, etc., by two Witnesses.

State of West Virginia, county of ——, ss.

In the clerk's office of the county court of —— county (*or* consulate of the United States of America, at ——, etc.), I, C. C., clerk of the county court of —— county (*or*, I, C. L., consul of the United States of America, at ——, etc.), do hereby certify, that the foregoing deed, bearing date on the —— day of ——, A. D. ——, was this day proved before me as to A. B., the grantor (*or* one of the grantors) therein, by W. T. and N. S., two witnesses thereto, who declared upon oath before me that it was his act and deed, and that they had seen him execute it.

Given under my hand, etc.

[*Seal.*] (*Signature and title.*)

WISCONSIN.

Conveyances, etc., executed within this State, of lands or any interest in lands therein, must be executed in the presence of two witnesses, who shall subscribe their name to the same as such, and the persons executing must acknowledge the execution before any judge or court commissioner, clerk of a circuit court, county clerk, notary public, or justice of the peace; and the officer taking the acknowledgment must indorse a certificate of the acknowledgment, and the true date of making it, under his hand.[n]

Deeds conveying land, or any interest in land situated in this State, if executed in any other State, Territory, or District of the United States, may be executed according to the laws of such place, and the acknowledgment may be before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer there authorized by law to take the acknowledgment of deeds therein, or before a commissioner appointed by the governor of this State for such purpose, and if executed within the jurisdiction of any military post outside of the State then it may be acknowledged before the commanding officer. But in all such cases, except the acknowledgment be made before a commissioner appointed by the governor, or a notary public (his seal of office affixed), there must be attached to the deed a certificate of the clerk, or the commandant of a military post, or other proper certifying officer of a court of records of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowl-

j-See General Statutes, ch. —, § 3. k-See General Statutes, ch. —, § 5. l-Code, ch. 72, 73, 74. m-Code, ch. 73, §§ 2, 3. n-See General Statutes, ch. 73, §§ 3, 4.

edgment was, at the date thereof, such officer as he is therein represented to be, that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory, or District. If such deed be executed in any foreign country, it may be executed according to its laws, and acknowledged before any notary public, with his seal annexed, or other officer authorized by law there to take such acknowledgments, or any minister extraordinary or resident *chargé d'affaires*, commissioner, or consul of the United States, appointed to reside therein, and certified by him.[y]

A married woman's conveyance, whether by her sole deed or by her joining with her husband to convey her estate or release her dower, must be executed and acknowledged as if she were sole. She may bar her dower, if eighteen years of age, by simply joining in her husband's conveyance; and she may, by letter of attorney, executed in like manner, appoint an attorney, who may be her husband. to sell or convey her estate, or bar her dower in land, and his deed as her attorney shall be effectual.

Deeds of lands within the State may be executed by corporations created under the laws of the State, and shall be signed by the president, or other authorized officer of the corporation, and sealed with the seal of the corporation, and countersigned by the secretary or clerk thereof; and the person signing such deed may acknowledge execution thereof before any officer authorized by law to take acknowledgments.[a] The common practice is for the officers signing the deed to acknowledge the same, and make oath that they are such officers, that the seal is the seal of the corporation, that they have signed and acknowledged such deed, and affixed the seal by order of the board of directors, trustees, or other managing board of the corporation. New York forms are followed, which see.[y]

Acknowledgment—Husband and Wife.

State of ——, county of——, ss.

Personally came before me this —— day of —— 189 , the above (or within) named A. B. and W. B., his wife (or, if an officer, adding name of office) to me known to be the persons who executed the foregoing (or within) instrument, and acknowledged the same.

[*Seal.*] (*Signature and title of official.*)

No separate examination of wife is necessary

The notary or justice may acknowledge in the form prescribed by the law of the State where the acknowledgment is taken, and affix certificate of clerk of court.

No statutory provision for proof by subscribing witness out of this State. It is made by a proceeding in court on summons to refusing grantor, if to be found, etc.[y]

WYOMING.

If any deed or mortgage shall be executed in any other State, Territory, or District of the United States, the same may be executed according to the laws of such State, Territory, or District, by any officer authorized by the laws of such State, Territory, or District to take the acknowledgment of deeds or mortgages therein, or before any commissioner appointed by the governor of this State for that purpose. In the cases where deeds and mortgages are executed and acknowledged outside of this State, and the officer before whom the acknowledgment is taken has no seal, such deed or mortgage shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment at the date thereof was such officer as he is therein represented to be, that he knows the signature of such person subscribed thereto to be genuine, and that the deed or mortgage is executed according to the laws of such State, Territory, or District.[y] Every notary public, J. P. and com. of deeds shall add to his certificate the date when his commission or term of office expires.

When any married woman not residing in this State shall join her husband in any conveyance of real estate situated within this State, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her makes her the same as if she were sole.[z]

ACQUIESCENCE. See ACTS; AGENCY; CONTRACTS; ELECTION.

ACQUIESCENCE is a quiet consent or silent submission with apparent content: It is distinguished from avowed or express consent on the one hand, and opposition or open discontent on the other. It is a silent appearance of consent. A failure to make any objections.

Acquiescence in the acts of an agent, or one who has assumed that character, will be equivalent to an express authority for those acts.[a] It is a ratification, and like it relieves the person who has acted, of all responsibility, for it is now made the act of him who has acquiesced in it. Where a person is bound to choose between a paramount right and a testamentary disposition, his acquiescence in a state of things which indicates a choice, when he was aware of his rights, will, in the absence of proof to the contrary, be evidence of such choice.[b]

Acts of acquiescence which will constitute an implied choice or election are to be decided by the circumstances of each case, rather than by any general principle or test.[c]

Acquisition. See DESCENT; GIFT; PROPERTY, ETC.; PURCHASE.

Acquittal. See CONTRACTS; CRIMINAL LAW.

Acquittance. See CONTRACTS; RECEIPTS.

ACTS. See ACCIDENT; AGENCY; AUTHORITY; CRIMINAL LAW; EVIDENCE; LEGISLATION; STATUTE LAW.

AN ACT is something done, and for which the person doing is responsible. Something done by an individual as a private person or as an officer. Something done by a body of persons, as, an association, a corporation, legislature, council, or a court. It includes not merely physical acts, but also decrees, orders, judgments, awards, edicts, laws, resolutions, and determinations.

Acts indicate the intention;[d] the act does not make a person guilty unless the intention be guilty also. This, however, applies only in criminal cases, in civil matters it is otherwise.[e]

Acts of God wrong no one, in other words, no one is responsible for inevitable accidents.[f] See ACCIDENT.

Agents. The act of the agent within the scope of his authority is the act of his principal; but beyond such authority the agent alone is responsible, unless the act be ratified by such principal. See AGENCY.

Anticipation. The doing or taking of a thing before its proper time will not vitiate the act or discharge the obligation if no loss or damage occur, and the act be in good faith.

Authority. To act for another, there must be a lawful delegation of power; to act for one's self, one must be under no legal disability. This authority may be coupled with an

y-See General Statutes. z-Laws, 1859, ch. 37. a-2 Bouv. Inst. *n.* 1309; 2 Kent Comm. 478; Story Eq. Jur. § 255; Liverm. Ag. 45; Paley Ag. (Lloyd Ed.) 41; 4 Wash. C. C. 559; 4 Mass. C. C. 296; 3 Pet. 69, 81; 6 Mass. 193; 3 Pick. 495; 1 Johns. Cas. 110; 2 Id 424; 12 Johns. 300; 3 Cow. 281. b-See 2 Roper Leg. 439; 1 Ves. ch. 335; 2 Id. 371; 12 Id. 136; 3 P. Wms. ch. 315. c-1 Swanst. ch. 282, *n.* and numerous cases there cited. d-8 Co. 291; Broom Max. 270; 13 Johns. 414. e-Broom Max. 270, 275, 329; 7 T. R. 514; 3 Bingh. N. C. 34, 468; 5 M. & G. 639, 368, 229; 5 Id 380; 9 Cl. & F. 531; 4 N. Y. 159, 163, 195; 2 Bouv Inst. *n.* 2211. f-2 Bl. Comm. 122; Co. 97 *b*; 5 Id. 87. Co. Litt. 206 *a*; 4 Taunt. 309; 1 T. R. 33.

interest or not; it may be express or implied, general or special, limited or unlimited. See AGENCY.

Begun. An act already begun, whose completion depends upon the will of the parties, may be recalled; but if it depends upon the consent of a third person, or on a contingency, it cannot be recalled.[g]

Children. An infant is protected against his contracts, but not against his frauds or other torts.[h] With regard to the responsibility of infants for crimes, the rule is that no infant within the age of seven years can be guilty of felony or be punished for any capital or less offence, for within that age an infant is, by presumption of law, *doli incapax* (incapable of mischief or crime), and cannot be endowed with any discretion; and against this presumption no averment can be received. This legal incapacity, however, ceases when the infant attains the age of fourteen years, after which period his act becomes subject to the same rule of construction as that of any other person. Between the ages of seven and fourteen years an infant is deemed *prima facie* (without proof to the contrary) to be *doli incapax;* but in this case the maxim "malice supplies the want of mature years" applies.[i] See INFANTS.

Coercion. Direct or positive coercion takes place when a man is by physical force compelled to do an act contrary to his will. Implied coercion exists where a person is legally under subjection to another, and is induced in consequence of such subjection to do an act contrary to his will.

As will is necessary to the commission of a crime, or the making of a contract, a person coerced into either has no will on the subject, and is not responsible.[j] The command of a superior to an inferior,[k] of a parent to a child,[l] of a master to his servant, or a principal to his agent,[m] may amount to coercion. So of a man who falls into the hands of the enemies of his country, and they compel him, through fear of death, to fight against it. See CRIMINAL LAW.

Compulsion is forcible inducement to the commission of an act.

Acts done under compulsion are not, in general, binding upon a party; but when a man is compelled by lawful authority to do that which he ought to do, that compulsion does not affect the validity of the act; as, for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of compulsion. But if the court compelled a party to do an act forbidden by law, or had not jurisdiction over the parties, or the subject-matter, the act done by such compulsion would be void.

Constraint. It is a general rule that when one is compelled to enter into a contract, or to perform any contract, there is no effectual consent, though ostensibly there is a form of it. In such a case the act or contract will be voidable or of no effect. But the constraint to thus annul or vitiate the act or contract must be "such as would shake a man of firmness and resolution."[n]

Corporations and bodies politic. The acts of a corporation or body politic are to be treated as the acts of any other persons.

Criminal acts. See CRIMINAL LAW.

Diligence is the doing things in the proper time.[o] There are three degrees of diligence:[p] 1. Ordinary diligence is that degree of diligence which men of ordinary prudence exercise in respect to their own concerns. 2. Great or extraordinary diligence is that which very prudent persons take of their own concerns. 3. Slight diligence is that degree of diligence which men, habitually careless, or of little prudence, generally exercise in the management of their own business.

In the execution of every contract, trust, or undertaking some one of these degrees of diligence is applicable.

Duress *by imprisonment* exists where a person actually loses his liberty. If one be illegally deprived of his liberty until he sign and seal a bond or the like, he may allege this duress, and avoid the bond.[p] But if a man be legally imprisoned, and, either to procure his discharge, or, on any other fair account, seal a bond or deed, this is not by duress of imprisonment, and he is not at liberty to avoid it.[q] Where the proceedings at law are a mere pretext, the instrument may be avoided.[r]

Duress by threats (which is either for fear of loss of life, or else for fear of mayhem, or of loss of limb) must be upon a sufficient reason.[s] In this case a man may avoid his own act. A man may avoid his own act by reason of menaces for fear of—1. Loss of life; 2. Loss of member; 3. Mayhem; 4. Imprisonment.[t] Restraint of goods under circumstances of hardship will avoid a contract.[u] In case of duress the act is considered involuntary.[v]

The violence and threats must be such as are calculated to operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation, or fortune. The age

g-Bac. Max. Reg. 20; see Story Ag. § 424. h-Latch. 21; 3 Wend. 391; 3 M'Cord, 257; 16 Vt. 390; 15 Me. 233; 21 Wend. 615, 620; 6 Hill, 592, 594; 3 Foster N. H. 516; 1 Gray, 506. He is even liable for his own torts, though he act by his father's command; 10 Vt. 71; or through the agency of a third person; 16 Mass. 389. i-1 Russ. Cr. 2, 3, 31; Ala. (N. S.) 323. j-1 East. Pl. Cr. 225; 5 Blackf. 73; 2 Dall. 86; 5 Q. B. 279; 1 Dav. & M. 367. The law upon the responsibility of married women for crime is fully stated in 1 Bennett & H. Lead. Cr. Cas. 76–87. k-1 Wash. C. C. 209, 220; 12 Met. (Mass.) 56; 1 Blatch. C. C. 549; 13 How. 115. l-Broom Max. (2d Ed.) 11. m-13 Mo. 246; 14 Id. 137, 340; 3 Cush. 279; 11 Met. (Mass.) 66; 5 Miss. 304; 14 Ala. 365; 22 Vt. 32; 2 Denio, 341; 14 Johns. 119. n-Erskine Inst. 3, 1, 16; 4, 1, 26; 1 Bell Comm. B. 3, pt. 1, ch. 1, § 1, art. 1, p. 295. o-Story Bailm.; 5 Kas. 433, 467. p-2 Bay, 211; 9 Johns. 201; 10 Pet. 107. q-Co. 2d Inst. 482; 3 Caines, 168; 6 Mass. 511; 1 Lev. 69; 1 Hen. & M. 350; 17 Me. 338. r-Al. 92; 1 Bl. Comm. 136. s-1 Bl. Comm. 131. t-Co. 2d Inst.; 2 Rolle Abr. 124; Bac. Abr. *Duress Murd.* A.; 2 Str. 856; Foster C. N. L. 322; 2 Ld. Raym. 1578; Savigny Dr. Rom. § 114. u-2 Bay, 211; 9 Johns. 201; 10 Pet. 137; but see 2 Met. (Ky.) 445; 2 Gall. C. C. 337. v-Wolffius Inst. § 5.

sex, state of health, temper, and disposition of the party, and other circumstances calculated to give greater or less effect to the violence or threats, must be taken into consideration. Violence and threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the husband, the descendants or ascendants of the party are the object of them. If the violence used be only a legal restraint, or the threat only of doing that which the party using them had a right to do, they will not invalidate the contract. A just and legal imprisonment, or threats of any measure authorized by law, and the circumstances of the case, are of this description.[w] But mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; and arrest, without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidate a contract made under their pressure.

The above rules all relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it.[x]

Fraud annuls all acts, obligations, and contracts into which it enters, and the law relieves the party defrauded. If both parties act fraudulently, neither can take advantage of the fraud of the other. If one acts fraudulently, he cannot set his own fraud aside for his own benefit. See FRAUD.

Idiots, lunatics, and non compotes mentis are in general absolved from all responsibility for their civil and criminal acts. They have no will, hence the exception. There are exceptions, however, to this rule. See MEDICAL LAW.

Judicial acts are those which belong to a judge and his jurisdiction, and over which he alone can exercise the functions of his office, and for which he is answerable to no other jurisdiction or power. But that which belongs neither to him nor to his jurisdiction he cannot lawfully take cognizance of; if he does, his acts are absolutely void.[y] A judicial act before one not a judge is void; as to a ministerial act, from whomsoever it proceeds, let it be valid.[z]

Ministerial acts are those which are performed under the authority of a superior, as opposed to judicial; thus, the sheriff or constable is bound to obey the judicial commands of the court.

When an officer acts in both a judicial and ministerial capacity, he may be compelled to perform ministerial acts in a particular way; but when he acts in a judicial capacity he can only be required to proceed, the manner of so doing is left entirely to his judgment.[a]

Misconduct. The wrongful riding of the horse of another, without his leave or license, and thereby causing its death or injury, is an act for which the party is responsible in damages. The unlawful act or behavior of a person intrusted with the administration of justice, by which the rights of the parties and the justice of the case may have been affected, will impair and render void the proceeding affected by it. The unjust performance of some act which a party had no right, or which he contracted not, to do, will create no obligation for recompense therefor, but will render the party performing the act liable for the damages incurred.

Necessity is that which must be, and cannot be otherwise. It is irresistible power, compulsive force, physical or moral.

Where a person's actions are determined by causes beyond his control, he acts from necessity, and is not a free agent. Whatever is done through necessity, is done without any intention; and as the act is without will, and is compulsory, the agent is not legally responsible.[b] "Necessity has no law," it is itself a law which cannot be avoided nor infringed.[c] Notwithstanding this, no person can plead necessity in excuse for crime.

Negligence is the want of due diligence, a lack of care, an omission to do. It consists of the following degrees: 1. Ordinary negligence is the want of ordinary diligence. 2. Slight negligence is the want of great diligence. 3. Gross negligence is the want of slight diligence.

In general, where a party has caused an injury or loss to another by his negligence he is responsible for all the consequences.[d] A person who, during a dark night, drives his carriage on the wrong side of the road, by which he commits an injury upon another, is responsible for the consequences of his negligence.[e] See BAILMENTS.

Non-performance is the neglect or failure to perform that which by one's act or contract, or by the requirements of the law, it becomes his duty to do.

Human action is exactly conformable to the laws which require us to obey them; their non-performance involves us in the natural consequences which follow. The neglect to comply with the terms of our contract makes us responsible for the breach.

Where a legislative act requires a person to do a thing, its non-performance will subject the party to punishment.[f]

Notice is information given of some act done

w-See Norris Peakes, Ev. 440, and cases cited; also 6 Mass. 506, for the general rule at common law. x-Id. 1853; see generally, 2 Watts, 167; 1 Baily, 84; 6 Mass. 511; 6 N. H. 508; 2 Gail. C. C. 337. y-Merlin Rep. z-Lofft, 458. a-See 10 Me. 377; Bac. Abr. J. P. (E); 1 Com. 295; 3 Id. 107; 9 Id. 275; 12 Id. 464. b-Bac. Max. Reg. 5. c-Dig. 10, 3; 10, 1; Com. Dig. Pl.; 3 M. 20; 3 M. 30. d-Hob. 134; 3 Wils. 126; Chitty Pl. 129, 130; 2 H. & M. 423; 1 Strange, 596; 3 East. 596. e-3 East. 593; 1 Campb. 497; 2 Id. 466; 5 B. & P. 119; see Gale & W. Easements; 6 T. R. 659; 1 East. 106; 4 B. & Ald. 590; 1 Taunt. 568; 2 Stant. 272; 2 Bingh. 170; 5 Esp. 35, 263; 5 B. & C. 550. Whether the incautious conduct of the plaintiff will excuse the negligence of the defendant, see 1 Q. B. 29; 4 Perr. & D 642; 3 C. B. 9. f-See 1 Russell Crimes, 48.

or to be performed, official, public, or private, to the public or an individual or individuals, corporations, companies, associations, etc., by words, writing, or printing. See ADVERTISEMENT; NOTICE.

Obedience is the compliance with a command, prohibition, or known law and rule of duty prescribed. To constitute obedience, the act or forbearance to act must be in submission to authority; the command must be known to the person, and his compliance must be in consequence of it.

A child, an apprentice, a pupil, a mariner, and a soldier, respectively owe obedience to the lawful command of the parent, the master, the teacher, commander or captain of the ship, and the military officer having command, and in case of disobedience, submission may be enforced by correction.

Officers who obey the command of their superiors having jurisdiction of the subject matter are not liable for their acts. A sheriff or constable may, therefore, justify a trespass under an execution, where the court has jurisdiction, although such execution was irregularly issued.[g]

Officers acting in the scope of their jurisdiction and authority are justified in all their acts; exceeding this they become liable as a private individual.

Omission is a neglect or failure to do something which a person has power to do, or which duty required to be done, or which the law requires.

When a public law enjoins duties upon certain officers, and they neglect to perform them, they may be indicted for the omission. The omission by private individuals may be productive of loss or injury.

Omission may be innocent when no duty demands performance, and criminal when the duty is neglected.

Overt acts are open *acts* as distinguished from secret design or intention not carried into effect.

The mere contemplation or intention to commit a crime, although a moral sin, is not an act amenable to the law. The mere speculative wantonness of a licentious or mischievous imagination, however dangerous or even sanguinary in its object, can in no case amount to a crime; but the instant any overt act is manifested the offender becomes amenable to the law. See CRIMINAL LAW.

Perfidy is the violation of faith in agency, office, allegiance, connubial engagements, and transactions in the highest official circles. It is the act of one who has engaged his faith to do a thing and does not do it, but does the contrary.[h]

Performance is the act of doing something previously contemplated or stipulated for the execution or completion of a thing. It is the act by which one is exonerated from the obligation of his contract or undertaking, previously made or entered into.

Personal representatives, while acting in such capacity and within the scope of their authority, are liable only as such. Where they exceed that authority they become personally and individually responsible for their acts.

Persuasion is the persuading or the influencing the mind with arguments or reasons offered, or by anything that moves the mind or passions, or inclines the will to a determination.

While the persuasion is confined within those limits which leave the mind free it may be used to influence another. But if such persuasion so far operates on the mind of the person influenced that he will be deprived of a perfectly free will, it will vitiate his act.

Public acts. See STATUTE LAW.

Publication is the publishing or offering to public notice, notification to the people at large, either by words, writing, or printing. The act by which a thing is made public.

To become effectual, awards, wills, laws, etc., must be published, *i. e.*, made known. In this manner, also, public and judicial sales are announced, the service of legal process made, and many other acts proclaimed.

Publicity is the state of being public, open to the knowledge of the community, performance or transaction of business in the view of all persons who choose to be present.

Courts must be open to the public; there can be no secret tribunal, except the grand jury, which acts in the interest of the public, and whose functions are merely for investigation, and not trial.

The acts of the legislature must be made public before they are of effect. They are, in general, made public either by their being placed upon a record provided for that purpose, and at all times open to public inspection, or by being made public through the medium of newspapers, or by distribution to the various officers by law entitled to them.

Ratification is the giving sanction and validity to something done by another. An agreement to adopt an act performed by another for us.

As a general rule, a person may elect whether he will adopt an unauthorized act or not. But having once ratified the act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and he becomes bound as if he had originally authorized the act. See AGENCY; CONTRACTS.

Reasonable acts are those governed by and under the influence of reason. They are such as the law requires.

When an act is unnecessary, a party cannot be required to perform it as a reasonable act, and a court will neither enforce its performance nor give a remedy for its non-performance.

Refusal is the denial of anything demanded, solicited, or offered for acceptance; failure to perform a duty or agreement. In some cases a neglect to perform a duty which a party is

[g] Wolff, § 390. [h] Chitty Pr. 75; Hammond N. P. 48. [i] 9 Price Exch. 43; Yelv. Platt Cov. 342, 157.

required by law, or his agreement, to do, will amount to a refusal.

Refusal is also the right of taking in preference to others: the choice of taking or refusing. Option. Pre-emption. Thus a person has the *refusal* of a horse or a house, or the refusal of a place of business or an employment.

Servants are those persons who engage, hire, or let their services to another, to be employed at any work or occupation whatever, for the benefit of their employer, and for compensation, subject to the conditions of their employment.

A master is responsible for the tortuous acts of his servant, *which were done in his service*. The responsibility of the master grows out of, and begins and ends with, his control of the servant. On this ground rests the well-established distinction between the *negligence* of the servant and his *wilful and malicious trespass*; the act in either case being done in the course of his employ. For the former the master must answer; for the latter he is not held liable, unless the trespass is proved to have been authorized or ratified by him.[i] The master is responsible for what is done by one who is his servant in fact, for the reason that he has such servant under his constant control, and may direct him from time to time as he sees fit; and therefore the acts of the servant are the acts of the master, because the servant is at all times only an instrument; and one is not liable for a person who is servant only by construction, excepting so far as this essential element of control and direction exists between them. When a master gives general directions to his servant, trusting to his discretion, the master may be liable for his servant's misuse of his discretion; but if he gives specific directions, and the servant transcends them, the master is not liable.[j] Where the negligent party exercises a distinct and independent calling, his employer is not liable,[k] and, if the negligence be committed in the performance of a piece of work undertaken in consequence of a *special contract*, in such case the contractor is solely responsible.[l]

Skill is the familiar knowledge of any occupation, art, or science, with readiness and dexterity in its execution, performance, or application to practical purposes.

Every person who purports to have skill in a business, and undertakes for hire to perform it, is bound to do it with ordinary skill, and is responsible civilly in damages for want of it.[m] In some instances they will be responsible criminally.[n] See MEDICAL LAW.

The degree of skill and diligence required rises in proportion to the value of the article and delicacy of the operation.[o] See BAILMENTS.

Stultification is the state of being mentally incapacitated from performing an act. To allege or prove to be insane, for the purpose of avoiding some act or contract.

The rule laid down by the old authorities,[p] that no man should be allowed to stultify himself—that is, plead disability through mental unsoundness—was soon doubted as law,[q] and has been completely overturned,[r] still this defence is frequently interposed.

Time.

When an act is to be done within a certain period from a particular time, as, for example, within ten days, one day is to be taken inclusive and the other exclusive.[s]

Transfer is the act by which the owner of a thing delivers it to another person with the intention of passing his rights in it to the latter; to make over, to pass, to convey, to sell, to give.

The title to land is conveyed by deed, the property in a bill of exchange is transferred by indorsement, stocks are transferred by assignment, or entering the same under the name of the purchaser in the proper book.

Uncertainty is the want of certainty; that which is unknown or vague.

When the act to be performed is so vague in its terms that it cannot be certainly understood, it is of no effect. The act must be certain in its essence, quality, and quantity, and that is certain which may be made certain.[t]

Certainty is required in contracts, wills, pleadings, judgments, and indeed in all the acts on which courts have to give judgment; and if they be so vague and uncertain as not to be understood, they are, in general, invalid.[u] See CONTRACTS.

Vacation is the making void, or of no validity; annulling.

An entry which has been made upon a public record, through fraud or imposition, may, upon application, be vacated. A charter, a franchise, an office of trust, etc., may be vacated.

Void, Voidable. *Void acts* are those having no legal or binding force, such as are null, of no effect, not sufficient to bind parties or to convey or support a right. *Voidable acts* are those which may be annulled or made void, or may be adjudged invalid, void, or of no effect. They have force and effect in consequence of some inherent quality only, but may be legally annulled or avoided. A contract between an infant and adult is voidable, because it may be avoided or confirmed on the infant's coming of age.

Wife. The acts of the wife are considered the acts of her husband. For her crimes, however, she is liable as if she were a single woman. Where she commits a crime in the

i-1 East. 106; 4 B. & Ald. 590; 8 A. & E. 512; 1 Mo. & P. 241; 3 C. & P. 167; 30 E. L. & E. 167; 17 Mass. 479; 19 Wend. 343; 2 Comst. 479; 27 Conn. 274; 7 N. H. 227; 8 T. R. 531; 14 How. 468; 7 Cush. 385. j-28 Ills. 434. k-12 A. & E. 737; 4 Q. B. 298; 2 Mich. 368; 11 Wis. 180. l-7 Q. B. 960; 9 Exch. 702. m-11 M. & W. 483. n-2 Russell Crimes, 288. o-Jones Bailm. 91; 2 Kent Comm. 458, 463; 1 Bell Comm. 459; 2 Ld. Raym. 909, 918; Story Bailm. § 431, *et seq.*; 2 Greene Ev. § 144. p-Litt. § 405; 4 Co. 123; Cro. Eliz. 398. q-1 Hogg, 414; 2 Sharsw. Bl. Comm. 292. r-4 Kent Comm. 451. s-See Hob. 139; Cowp. 714; Dougl. 463; 2 Mod. 280; 3 Penn. St. 200; 1 S. & R. 43; 3 B. & Ald. 581; 3 East. 407; Com. Dig. Estates (G 8), Templ. (A) Chitty Pr. 69, 147. t-Co. Litt. 43. u-1 Russ & M. 116; 1 Chitty Pr. 123; 2 Martin (N. S.) 520.

presence of her husband, unless it is of a very aggravated character, she is presumed to act by his coercion, and, unless the contrary is proved, she will, in the absence of a statute to the contrary, be held irresponsible.

Writing is the forming of letters and characters upon paper, parchment, cloth, wood, stone, or other material, for the purpose of recording the ideas which the words or characters express. Printing is construed to mean writing.

Many contracts must be in writing, all deeds for the conveyance of real estate must be in writing. Records, bonds, bills of exchange, and many other obligations and undertakings, must be made in writing.

Act of God. See ACCIDENT.
Act in Pais. See PRACTICE.
Action at Law. See PRACTICE.
Actual Damages. See DAMAGES.
Actuary. See CORPORATIONS; INSURANCE.
Ad Valorem. See DUTIES.
Addition. See NAME.
Address. See LEGISLATION, PLEADING.
Ademption. See LEGACY.
Adjourned Term. See PRACTICE.
Adjournment. See PRACTICE.
Adjudication. See JUDGMENT.
Adjustment. See INSURANCE.
Administering Poison. See CRIMINAL LAW.
Administration. See ESTATE; GOVERNMENT.
Administrator. See PERSONAL RELATIONS
Admiral. See OFFICE AND OFFICERS.
Admiralty. See COURTS.
Admissions. See CORPORATIONS; EVIDENCE; PRACTICE.
Admonition. See PRACTICE.
Adolescence. See AGE; INFANTS.
Adoption. See CHILDREN.
Adult. See AGE; INFANTS.
Adulteration. See CRIMINAL LAW.
Adulterator. See CRIMINAL LAW.
Adulterine. See ADULTERY; CHILDREN.
Adultery. See CRIMINAL LAW.
Advancement. See GIFT.
Advances. See AGENTS; LOAN.
Adventure. See MERCANTILE LAW.
Adverse Enjoyment. See REAL PROPERTY.
Adverse Possession. See REAL PROPERTY.
Advertisement. See NOTICE; PRACTICE.
Advice. See MERCANTILE LAW.
Advisement. See PRACTICE.
Advocate. See AGENCY; ATTORNEYS; PRACTICE.
Affection. See CONSIDERATION; PAYMENT.
Affiance. See MARRIAGE.

AFFIDAVITS. See EVIDENCE; PRACTICE; WITNESS.

AN AFFIDAVIT is a statement or declaration reduced to writing and sworn or affirmed to before some officer who has authority to administer an oath. It differs from a deposition in this: that in the latter the opposite party has an opportunity to cross-examine the witness, whereas an affidavit is always taken *ex parte*.[v]

A counter affidavit is an affidavit made in opposition to one already made. Its essential requisites are the same as an affidavit.

Amendments at common law, independent of any statutory provision on the subject, are, in all cases, in the discretion of the court, for the furtherance of justice. An amendment where there is something to amend by, may be made in a criminal, as in a civil case.[w] But such amendment must be by leave of the court, and upon the terms prescribed.

An affidavit amended by order of the court must be re-sworn to, or it is no affidavit.[x]

Amounts, Descriptions, etc. An affidavit should be positive as to parties; as to a claim,[y] its nature, how it arose, upon what it is grounded, and the amount.[z] If the amount is uncertain, still *some amount* must be stated.[a]

The names of all the deponents should be mentioned.[b] In general, an affidavit must describe the deponent sufficiently to show that he is entitled to offer it; for example, that he is a party, or agent or attorney of a party, to the proceeding;[c] and this matter must be stated, not by way of recital, or as mere description, but as an allegation in the affidavit;[d] the affidavit should show that they were severally sworn.[e]

The jurat is that part of an affidavit where the officer certifies that the same was "sworn" before him.

The jurat should state the day on which it was sworn;[f] it need not specify the place where it was sworn, as the venue sufficiently shows that.[g] The jurat should be in special form where deponent is illiterate;[h] or blind;[i] otherwise, the common form is sufficient.[j] Where a deponent is a marksman, the fact of the affidavit having been read over to him, and his understanding it, should be stated in the jurat.[k]

The jurat must be signed by the officer with the addition of his official title.[l] An affidavit should show on its face that it was made before some officer competent to take affidavits.[m]

Seal. In the case of some officers the statutes conferring authority to take affidavits require also his seal to be affixed.

Whenever an officer has an official seal he should affix it.

Signature of affiant. The affidavit should be subscribed by the deponent or deponents.[n] The absence of the party's signature does not prove that he was not sworn; for it is not necessary to constitute an affidavit, unless required by statute that the party making should sign it.[o] But there must be an official authentication.[p]

Surplusage in an affidavit, not inconsistent with the substantial averments required by the statute, will not vitiate it.[q]

Title of the action. The affidavit must intelligibly refer to the cause in which it is made; in other words, it should show by its title who is plaintiff and defendant,[r] and the court in which the action is pending. The strict rule of common law is, that it must contain the exact title of the action. When there is no proceeding pending, the affidavit must not be

v-Gresly Eq. Ev. 413. w-12 Ad. & E. 217; 2 Pick. 550; 4 T. R. 457; 4 Burr. 2568. x-Phil. (N. C.) L. 199 y-5 T. R. 364; Id. 83. z-8 T. R. 27; 7 East. 194; 11 Id. 315; 2 Wils. 224; 2 M. & S. 603. a-11 Ohio, 263. b-2 Chitty, 19; 18 Eng. C. L. R. 235. c-7 Hill, 77; 4 Denio, 71; Id. 258. d-3 N. Y. 41; 8 Id. 158. e-5 M. & G. 291; 44 Eng. C. L. R. 159; 1 Duer, 62; 11 N. Y. Leg. Obs. 313. f-7 Chitty, 228; 18 Eng. C. L. R. 69; see 7 How. Pr. 446. g-1 Tidd, Pr. 496; 45 Barb. 594; 1 Abb. Pr. (N. S.) 258; 30 How. Pr. 161; 12 Wend. 223; 3 Hill, 461. h-1 Tidd Pr. 495; 3 Moult. Ch. Pr. 551. i-5 Paige, 242. j-3 Edw. 239. k-3 Dowl. Pr. Cas. 599. l-1 Denio, 429; 3 Caines, 128; see also 6 Cow. 728. m-6 How. Pr. 305. n-Newl. Ch. 165; 11 Paige, Ch. 173. o-4 Sm. & Marsh, 579. 8 Iowa, 310; 28 Ga. 27. p-2 Rob. (La.) 132; 3 Scam. 536; 8 Ga. 521; 7 Port. 483; 3 Ala. 709. q-6 S. & M. 276; 11 Barb. 520; 33 Miss. 190; 34 Id. 269; 1 La. An. 725; 12 Ohio St. 335. r-12 How. Pr. 401.

entitled; but a superfluous title may be disregarded as not affecting the substantial rights of the party.[s]

Venue is the place where the affidavit is taken and must be stated—(thus, State of ——, —— county, ss.) to show that it was taken within the officer's jurisdiction;[t] and an omission of the venue from an affidavit is fatal. The venue is an essential part of every affidavit, and *prima facie* evidence of the place where it was taken.[u] If, by the venue, it appears that the affidavit was taken at a place beyond where the officer was authorized to act, it will not be received by the court.[v]

The title of an action is generally as follows:

State of ——, —— county. } ss. In the —— Court.

A. B., plaintiff, vs. C. D., defendant. } Affidavit for (*state what*).

Venue is substantially the same everywhere, though stated differently in different states and countries. Examples are as follows:

State of ——, —— county, ss. (*or* sct. *or* to-wit).

State of ——, city, (*or* department, district, parish, town, township, *or other place, where the officer resides and the affidavit is made.*)

Territory of ——, city (*or* town) of ——, ss.

Province of ——, dominion of ——, etc.

Kingdom of ——, city (*or* port) of ——, etc.

Empire of ——, port of ——, etc.

AFFIDAVIT FORMS.

The affiant or deponent is sufficiently described in an affidavit, thus:

That A. D. is (the agent *or* attorney of ——) a party (*or* one of the parties) to this proceeding (*or* matter).

The common form of jurat is either of the following forms;

Subscribed and sworn to before me this —— day of ——.

(*Officer's signature and official title.*)

Sworn to and subscribed this —— day of ——.

(*Officer's signature and official title.*)

Commencement of an Affidavit.

An affidavit to be effectual in law must be made before some competent court or officer, having authority to administer an oath; and this oath must be administered within the court or officer's jurisdiction. Thus, if it is administered in Allen county, by a court or officer of Brown county, it would be insufficient, the court or officer having no jurisdiction for this purpose in the latter county. The affidavit for general purposes would commence thus:

State of ——, —— county, ss.

A. B., being duly sworn, says (*or* alleges) that, etc.

If the affidavit is to be used in a foreign country it should commence thus:

United States of America, State of, etc.

Another form:

State of ——, —— county, ss. (sct. *or* to-wit).

Be it remembered, that on this —— day of ——, etc.

Or commence thus:

On this —— day of ——, before me, the subscriber, one of the justices of the peace in and for said county, personally came (*or* appeared) A. B., of ——, and being by me duly sworn (*or* being by me sworn according to law) says (*or* alleges, *or* deposes, *or* deposeth and saith) that, etc.

If an affidavit is to be used in a civil or criminal action or suit, it should state the title of the action, thus:

State of ——, —— county, } ss. In the —— court.

A. B., plaintiff, vs. C. D., defendant. } Affidavit (of ——, for) ——.

State of ——, county of ——, ss.

A. B., being duly sworn, says (*or* alleges) that, etc.

It will be observed that a "statement of venue" is twice made in this form. The first relates to the court in which the action is pending, the second to the place where the affidavit is taken.

Conclusion of an Affidavit.

In order that the affidavit shall be effectual it must bear upon its face the evidence of its being duly made. This is done by the officers' bearing witness to and affirming its having been so made, by his solemn declaration to that effect. This is called the jurat, to which his signature is absolutely necessary. An officer's official title should always accompany his signature.

General Form of Conclusions or Jurats.

Sworn (*or* affirmed) before me, this —— day of ——. (*Officer's signature and official title.*)

Subscribed and sworn to before me this —— day of ——. (*Officer's signature and title.*)

In testimony whereof, I have hereunto set my hand (and affixed my official seal), this —— day of ——. [*Seal.*] (*Officer's signature and title.*)

If an affiant is blind or illiterate it should be thus:

Subscribed and sworn to before me, this —— day of ——, A. D. ——, the same having been in my presence (*or* by me) read to this affiant, he being blind (*or* illiterate), and understanding the same. [*Seal.*] (*Signature and official title.*)

If an affiant is a foreigner it should be thus:

Subscribed and sworn to before me, this —— day of ——, A. D. ——, I having first sworn I. R., an interpreter, to interpret truly the same to this deponent, who is a foreigner, not understanding the English language, and he having so interpreted the same to said deponent.

[*Seal.*] (*Signature and official title.*)

Affidavit—General Forms.

If made in a legal proceeding, set out *the caption or title of the pleadings*, which consist of:[w] 1. The name of the State and county in which the action is brought. 2. The name of the court. 3. The names of the parties, plaintiff and defendant.

State of ——, —— county (city of ——), ss.

A. B. (of ——), being duly sworn, says (*or* alleges, *or* deposes and says):

That, etc. (*setting out the matters to be alleged*).

(*Signature of affiant.*)

Sworn (*or* affirmed) before me, this —— day of ——, A. D. ——. (*Signature of officer.*)

Another:

A. B., plaintiff, *vs.* C. D., defendant. } In the —— court.

State of ——, —— county, ss.

A. B. (and C. D.), being duly sworn (*or* affirmed), says (*or* severally say, each for himself):

That he is plaintiff (*or*, that he is the agent [*or* attorney] of the plaintiff) in the above entitled action.

That, etc. (*stating the facts*). (*Signed:*) A. B.

Subscribed and sworn to before me, this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and official title.*)

Another.

State of ——, —— county, to wit.

A. B., of ——, being duly sworn, says, That he has been informed, and believes it to be true that, etc. (*setting out the matters of information, etc.*), and further says not. A. B.

Sworn to this —— day of ——, A. D. ——, before me, C. D. (*Official title.*)

Affidavit—Accounts.

See ACCOUNTS.

By administrator, assignee, executor guardian, trustee, etc.

State of ——, —— county, ss.

Before me, the undersigned, one of the justices of the peace of said county, personally appeared A. T. (administrator, assignee, executor, guardian, *or* trustee, *as the case may be*), aforesaid, who does depose and say, that the above account is just and true to the best of his knowledge and belief.

(*Signed*) A. T.

Sworn and subscribed, this —— day of ——, A. D. ——. J. P., *Justice of the Peace.*

s-4 How. Pr. 95. t-1 Barb. Ch. 601; 18 Barb. 408, and cases there cited. u-6 How Pr. 394; 18 Barb. 407, 408, and cases there cited; 8 Paige, 428; 1 Barb. Ch. 218. v-2 How. Pr. 86; Id. 127; Id. 181; 18 Barb. 408, and cases there cited. w-1 Chitty Pl. 261, 527, 528; 1 Arch Pl. 72, 168; Steph. Pl. 440; 1 Marsh, 341

Another.

State of ——, —— county, ss.

A. T., being duly sworn, says:

That he is administrator of the estate of D. D., of ——, deceased; *or*

(That he is the assignee of the estate of I. T., of ——, insolvent (*or* B. T., of ——, bankrupt); *or*

(That he is the executor (*or* one of the executors) of the last will and testament of D. D., of ——, deceased); *or*

(That he is guardian of the (person and) estate of I. D., minor heir of D. D., of ——, deceased); *or*

(That he is trustee of the —— trust fund, of ——, etc.)

That the above (annexed, foregoing, *or* within) account (and the schedules therein referred to) contain a full and true, complete and perfect account of his administrator- (assignee- executor- guardian- *or* trustee-) ship, to the best of his knowledge and belief. (*Signed.*) A. T.

Subscribed and sworn to before me this —— day of ——, A. D. ——.

C. C., *Clerk.* (*Signature and official title of officer authorized to administer oath.*)

Another.

State of ——, —— county, ss.

A. T. (administrator of the estate [*or* executor of the last will and testament] of D. D., deceased, *or* assignee of I. T., insolvent, *or* B. T., bankrupt, *or* guardian of the [estate and] person of I. D., minor heir of D. D., deceased, *or* trustee of the ——fund, etc.), swears that the foregoing account presented is just and true;

Or, Swears that the foregoing account is just and true (*or* correct) as he verily believes;

Or, Swears that the foregoing account is a full and correct exhibit of his doings as such (administor, etc.);

Or, Swears that the foregoing is a full and accurate account of his (administration, etc.) of said estate. A. T.

Sworn (*or* affirmed) to and subscribed by said A. T., before me this —— day of ——, A. D. ——.

(*Signature and official title.*)

Another.

Date ——. The city (county *or* township) of ——, Dr. to A. B. & Co.

Date.			$	c.
	1,	To 1000 Blank Licenses.		
	1,	To 1 " Record.		
	1,	To, etc.		

State of ——, —— county, ss.

I, the undersigned, do solemnly swear that the above account is just and correct; is due and remains unpaid (and that the charges therein are the customary and usual retail [*or* wholesale *or* market] prices therefor). (*Signed*) A. B.

Subscribed and sworn to before me this —— day of ——, A. D. ——. E. F. (*Official title.*)

If the officer administering the oath have an official seal it should also be annexed.

Another.

State of ——, —— county, ss.

On this —— day of ——, A. D. ——, before me, the subscriber, one of the justices of the peace in and for said county, personally came A. B., of ——, and being (duly) sworn (according to law) deposes and says:

That the above account, as stated, is just and true.

That the above sum of —— dollars is now justly due and owing to this deponent by the above-named C. D.

That he, the said A. B., has never received the same, or any part thereof, either directly or indirectly, nor any person for him, by his direction or order, knowledge or consent. A. B.

Sworn and subscribed before me this —— day of ——, A. D. ——. J. P., *Justice of the Peace.*

Affidavit—Acknowledgment.

State of ——, —— county, ss.

Be it remembered, that on this —— day of ——, A. D. ——, before me, O. R., a ——, in and for said county, personally came W. T., one of the subscribing witnesses to the above (annexed, foregoing, *or* within) instrument of writing, and being (duly) sworn (*or* affirmed) says:

That he, the said W. T. and N. S., the subscribing witnesses to said instrument of writing, were (on the —— day of ——) both present and did see the above-named A. B. sign (and seal), and as his act and deed acknowledge and deliver said instrument.

That thereupon said W. T. and N. S. did subscribe their names as witnesses to the same.

In testimony whereof, I have hereunto set my hand and affixed my official (*or* notarial) seal the day and year first above written.

[*Seal.*] O. R. (*official title.*)

Affidavit—Arbitration.

See Agency, Arbitration.

Affidavit—Arrest.

See Arrest, Pleading, Practice.

Affidavit—Assets.

State of ——, —— county, ss.

A. B., being duly sworn, says (*or* alleges):

That he is the owner of the (in fee) of the following described (unencumbered) real estate, to wit (describing it); all of the aggregate value o' —— dollars.

That he is the owner (absolutely) of the following described (unencumbered) personal property, to wit (*describing it*); all of the aggregate value of —— dollars.

That he is worth —— dollars over and above all his debts, exemptions and liabilities.

(*Signed*) A. B.

Subscribed and sworn to before me this —— day of ——, A. D. ——. O. R. (*official title*).

[*Seal.*]

Affidavit—Attachment.

See Attachment, Pleading, Practice.

Affidavit—Defence.

See Defences, *post.*

A. B. } In the —— court.
vs.
C. D. }

State of ——, —— county, ss.

C. D., being duly sworn, says:

That he is the (agent *or* attorney of the) defendant in the above entitled action.

That he (said defendant) has a just and legal defence to the whole (*or* part) of the plaintiff's demand in said action.

That the (character *or*) nature of said defence is as follows (*describing defence*). (*Signed*) C. D.

Subscribed and sworn to, etc.

Affidavit—Foreign.

To be used in a foreign country or state.

State of ——, } ss. Affidavit concerning ——.
—— county, }

(Be it known, *or*) Be it remembered that on this —— day of ——, A. D. ——, before me, O. R., a ——, in and for ——, residing at the ——, of ——, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared (*or* came) A. B., of ——, and being by me duly sworn (*or* affirmed) did depose and say:

That, etc. (*setting forth the matters and things sworn or affirmed*). (*Signature of deponent.*)

In testimony whereof, I have hereunto set my hand and affixed my seal of office the day and year first above written.

[*Seal.*] (*Signature of officer and his official title.*)

Affidavit—Notices, Etc.

Of service of notice.

See Publication, below.

(Title of the action, *if any.*)

State of ——, —— county, ss.

A. B., being duly sworn, says:

That he served a (——, of which the within is a true copy, *or*) copy of the within —— on the within-named C. D., on the —— day of ——, A. D. ——, at — o'clock, — m., by leaving the same at (his [last], usual place of residence, *or* at his dwelling-house, *or* at his office, *or* counting-room, store, shop, etc.) in —— (in the presence of ——, a ——), etc. A. B.

Subscribed and sworn to this —— day of ——. A. D. ——. (*Signature and official title.*)

Affidavit—Partners.

Limited or special partnership. To be indorsed on the back of certificate of partnership.

State of ——, —— county, ss.

A. B., being duly sworn, says, that he is one of the general partners of the within-named partnership, and that the amount of money contributed by each of the within-named special partners to the common stock thereof, is as follows: E. F., —— dollars, G. H., —— dollars, which said amounts have been actually and in good faith contributed and applied to the same.

A. B.

Subscribed and sworn to before me this —— day of ——, A. D. ——. J. P., *Justice of the Peace.*

Affidavit—Petition.

See PLEADINGS.

State of ——, —— county, ss.

A. B., being duly sworn, says:

That the facts set forth in the above (foregoing, *or* within) petition are true to the best of his knowledge and belief (*or*, as he verily believes).

Subscribed and sworn to, etc. A. B.

Affidavit—Publication.

See PUBLICATION.

State of ——, —— county, ss.

P. P., being duly sworn, says, that he is the printer of (*or is in the employ of P. P., the printer of*) the —— ——, a newspaper published in, and of general circulation in said county; and that the notice, of which the annexed is a true copy, was published for — consecutive (days *or*) weeks in said newspaper—commencing on the —— day of ——, A. D. ——.

P. P.

Subscribed and sworn to before me this —— day of ——, A. D. ——.

J. P., *Justice of the Peace.*

Affidavit—Signature.

See SIGNATURE.

(*Of witness, deceased or absent, to a conveyance, etc.*

State of ——, —— county, ss.

Be it remembered, that on the —— day of ——, A. D. ——, before me, the undersigned, O. R., a ——, in and for said county, personally appeared (*or* came) E. T., who being duly sworn (*or* affirmed), deposes and says:

That S. W., one of the subscribing witnesses to the within ——, is (now absent from this State, *or* deceased), etc.

That he has frequently (and between the —— day of ... — and the —— day of ——) seen said S. W. write.

That he is well acquainted with the handwriting of said S. W.

That (he verily believes that) the name of said S. W., signed to the same as one of the attesting witnesses, is the individual and proper handwriting of said S. W. E. T.

Subscribed and sworn to, etc.

Affidavit—Sureties.

State (*or* Commonwealth) of ——, —— county, ss.

We, the undersigned, sureties on the within (*or annexed*) undertaking, do solemnly swear that we are residents of said county and State, and that we are each of us severally worth —— dollars beyond the amount of our debts, exemptions, and liabilities, and have property therein subject to execution equal to said sum. So help us God.

S. R.
T. Y.

Subscribed and sworn to before me, this —— day of ——, A. D. ——.

(*Signature and official title.*)

Affiliation. See CHILDREN.
Affinity. See MARRIAGE.
Affirmance. See CONTRACTS.
Affirmation. See PRACTICE.
Affirmative. See ISSUE; PRACTICE.
Affirmative Pregnant. See PLEADING.
Affray. See CRIMINAL LAW.
Affreightment. See MARITIME LAW.
Aforesaid. See PRACTICE.
Aforethought. See CRIMINAL LAW.

q-Prof. Parker Lect. 1851. r-1 Liverm. Ag. 6, 614. s-2 Kent. Comm. 614. t-1 Liverm. Ag. 44; Paley Ag. 172; Co. Litt. 207 *a.*; Story Ag. (4th ed.) 102; Broom Max. 715; 2 Bouv. Inst. 25; 4 Id. 26; 8 Wheat. 363; 7 Exch. 726; 10 Id. 845; 9 C. B. 532, 607; 14 Id. 53. u-Paley Ag. 31; 1 Liverm. Ag. 49, 50, 396; Story Ag. § 258; 12 Johns. 300; 5 Cow. 281; 4 Wash. C. C. 549; 14 S. & R. 30. v-Story Ag. § 17; 21 Wend. 279; 9 N. H. 263; 3 Blackf. 436. w-2 Kent Comm. 612; 3 Chit. C. L. 104; 9 Ves. Ch. 250; 11 Mass. 27, 97, 288; 1 Binn. 450; 4 Johns. Ch. 667. x-2 Kent Comm. 613; 15 East. 400; 1 Wash. 19; 5 Day, 556. y-1 Liverm. Ag. 35; Paley Ag. 157; Story Ag. §§ 49, 51; 5 Binn. 613; 1 Wend. 424; 9 Id. 54, 68; 12 Id. 525; 14 S. & R. 331 z-Holt, 278; 4 Campb. 88; 3 Esp. 60; 1 Gray 147.

Against the Form of the Statute, etc. See CRIMINAL LAW.

Against the Will. See CRIMINAL LAW.

Age. See PERSONAL RELATIONS.

AGENCY. See ASSIGNMENT; ATTORNEYS; CONTRACTS; PARTNERSHIP.

AGENCY is a relation between two or more persons, by which one party, usually called the agent or attorney, is authorized to do certain acts for, or in relation to the rights of property of, the other, who is denominated the principal, constituent, or employer.[q] The business of the agency may concern either the property of the principal, of a third person, or of the principal and a third person, or of the principal and the agent, but must not relate solely to the business of the agent. A contract in relation to an illegal or immoral transaction cannot be the foundation of a legal agency.[r]

The agency must be antecedently given, or subsequently adopted; and in the latter case there must be an act of recognition, or an acquiescence in the act of the agent, from which a recognition may be fairly implied.[s] If, with full knowledge of what the agent has done, the principal ratify the act, the ratification will be equivalent to an original authority, according to the maxim, "subsequent ratification is equivalent to prior command."[t] An intention to ratify may be presumed from the silence of the principal, who has received a letter from the agent, informing him of what has been done on his account.[u]

The authority may be general when it extends to all acts connected with a particular business or employment; or special when it is confined to a single act.[v] If the powers are special, they form the limits of the authority; if general, they will be more liberally construed, according to the necessities of the occasion and the course of the transaction.

The creation of an agency, when express, may be either by deed, in writing not by deed, or by a verbal delegation of authority.[w] When the agency is not express it may be inferred from the relation of the parties and the nature of the employment, without proof of any express appointment.[x] In most of the ordinary transactions of business the agency is either conferred verbally, or is implied from circumstances. But where the act is required to be done in the name of the principal by deed, the authority to the agent must also be by deed, unless the principal be present, and verbally or impliedly authorize the agent to fix his name to the deed.[y]

Adoption or Confirmation. As agency may be presumed from repeated acts of the agent, adopted and confirmed by the principal previously to the contract in which the question is raised,[z] so such agency may be confirmed and established by a subsequent ratification; where

any one contracts *as agent* without naming a principal, his acts enure to the benefit of the party, although at the time uncertain and unknown, for whom it shall turn out that he intended to act, provided the party thus entitled to be principal ratify the contract.[r] And, on the other hand, if the principal accept, receive, and hold the proceeds or beneficial results of such contract, he will be estopped from denying an original authority, or a ratification.[s] And if a party does not disavow the acts of his agent as soon as he can after they come to his knowledge, he makes these acts his own.[t] An adoption of the agency in part adopts as to the whole.[u]

A principal discharges his agent from responsibility for deviation from his instructions when he accepts the benefit of his act.[v] He may reject the transaction altogether;[w] and if he advanced money on goods which his agent purchased in violation of his authority he is not bound to return the goods to the agent when he repudiates the sale, but has a lien on them, and may hold them as the property of the agent.[x] But he must reject the transaction at once, and decisively, as soon as fully acquainted with it. For, if he delays in doing this, that he may have his chance of making a profit, or if he perform acts of ownership over the property, he accepts it and confirms the doings of the agent.[y]

An agent is one who undertakes to transact some business, or manage some affair, for another, by the authority and on the account of the latter, and to render an account of it.[z]

The term agent is one of a very wide application, and includes a great many classes of persons to which distinctive appellations are given, as factors, brokers, attorneys, cashiers of banks, auctioneers, clerks, supercargoes, consignees, ships' husbands, masters of ships, and the like.[a]

A general agent is one authorized to transact all his principal's business, or all his business of some particular kind,[b] or at some particular place.[c]

A special agent is one authorized to do one or more special things,[b] in pursuance of particular instructions, or within restrictions necessarily implied from the act to be done.[c]

The importance of the distinction lies in the rule, that if a special agent exceeds his authority, the principal is not bound;[d] but if a general agent exceeds his authority the principal is bound,[e] provided the agent acted within the ordinary and usual scope of the business he was authorized to transact, and the party dealing with the agent did not know that he exceeded his authority.[f] Any specific authority must be strictly pursued; as, for example, one known to be the agent to settle claims, and with specific authority to this effect, cannot be supposed to have authority to commute them.[g] The general rule is, as to the public, that the authority of a general agent may be regarded by them as measured by the usual extent of his employment.[h]

APPOINTMENT. An agent, generally, may be appointed by parol, and so authorized to do anything which does not require him to execute a deed for his principal.[i] He may be authorized by parol to make and sign contracts in writing, and may be authorized without writing to make even those contracts which are not binding upon his principal unless in writing signed by him.[j] A parol ratification is equivalent to an original authority.[k] An authority is presumed or raised by implication of law, on the ground that the principal has justified the belief that he has given such authority, in cases where he has employed a person in his regular employment,[l] as, where one sends goods to an auctioneer, or to a common repository room for sale, the bailee has an implied authority to sell.[m] Such presumptions frequently arise in the case of a wife,[n] or of a domestic servant,[o] or of a son who has been permitted for a considerable time to transact a particular business for his father,[p] as to sign bills, etc. It must be remembered,

r-6 Man. & G. 242; 5 B. & C. 909; 13 East. 274; 12 M. & W. 226; 1 Br. & B. 282; 2 M. & Sel. 485; 5 Met. 192; 2 Q. B. 143; 5 East. 491; 14 Jur. 142. s-1 L. Raym. 224, 225; 11 Mod. 72; 13 Ga. 46; 21 Conn. 142. 627; 4 T. R. 211, 217; 18 Me. 436; 32 Q. B. 780; 9 Pet. 607; 8 Gil. & Johns. 248, 323; 7 Hill (N. Y.) 128; 6 Pick. 198; 26 Wend. 192. t-14 Serg. & Rawle, 27; 8 How. 134; 10 Paige, 126; 16 Penn. 289; 1 Gray, 139. u-2 Stra. 859; 4 T. R. 211; 7 East. 164; 7 B. & C. 310; 1 Scott N. R. 685; 13 N. H. 145; 1 Comst. 447; 8 Pick. 56; 19 Id. 300; 23 Vt. 565; 9 Ga. 70; 2 La. An. 375, 324; 5 Esp. 77; 4 Tyr. 485; 7 B. & C. 310; 12 Johns. 300; 4 Mason, 206. v-2 Freem. 48; 1 B. & C. 186. w-10 East. 158; 2 Ves. Sen. 644; Ambl. 740; 1 J. J. Marsh. 285–294; Sugden Pow. ch. 9, § 8; 5 Yerger, 71; 1 Smedes & M. 17; 1 Cr. & J. 316. x-1 Ves. Sen. 510; 7 Ves. 240–247. y-1 B. & C. 186; Ves. Sen. 509. z-1 Liverm. Ag. 67; 2 Bouv. Inst. 3. a-The terms "agent" and "attorney" are often used synonymously. Thus, a letter or power of attorney is constantly spoken of as the formal instrument by which an agency is created.—Paley Ag. (Dunlap's ed.) 1 *n*. b-But it is not always easy to find a precise rule which determines with certainty between these two kinds of agency. A manufacturing corporation may authorize A to purchase all their cotton, and he is then their general agent for this special purpose, or to purchase all the cotton they may have occasion to buy in New Orleans, and then he may be called their general agent for this special purpose in that place. Or to purchase the cargoes that shall come from such a plantation, or shall arrive in such a ship or ships, or five hundred bales of cotton, and then he would be regarded as their particular agent for this particular transaction. c-41 Ind. 288. d-3 M. & W. 178; 7 Id. 427; 8 Id. 505; 1 Esp. 111; 2 Cr. & M. 391; 4 M. & W. 155; 5 Id. 645; 1 Y. & J. 457; Ambl. 495; 21 Penn. St. 507; 13 N. H. 538; 24 How. 536. e-12 C. L. & F. 248–273; 10 Mod. 199; Malloy B. ch. 10, § 27. f-4 La. An. 409; 4 H. & N. (Exch.) 851. g-1 Wash. C. C. 454; 11 Barb. 652; 7 B. & C. 283; 5 M. & W. 235; 5 Bing. 442; 1 Taunt. 347; 7 M. & W. 157; 1 V. & Coll. 394; 1 East. 335; 5 B. & Ald. 204; 6 T. R. 591; 2 H. Bl. 618; 11 Gratt 269; Id. 281; 4 Esp. 114; 13 Mass. 178; 1 Pick. 215; 17 Mass. 58; 4 Watts, 222; 10 Johns. 114; 4 La. An. 409; 7 M. & W. 595. h-15 East. 38; Id. 400; 26 Vt. 118. i-2 Kent Com. 612; 9 Cl. & F. 818, 850; 5 Taunt. 307; 14 S. & R. 331; 5 Mass. 11; 5 Binn. 613. j-8 Pick. 9; 1 Binn. 450; 1 Sch. & L. 22; 9 Ves. 234–250. By a provision of the Statute of Frauds, an agent to assign or grant any lease, estate, or interest of, in, or out of lands, exceeding one year in duration, must be authorized thereto in writing. k-4 Bing. 722. l-16 Barb. 72; 2 Mich. 109; 26 E. L. & E. 536. m-15 East. 38. n-7 Bingh. 565; 3 M. & W. 505; 2 C. R. & J. 493; 3 Nev. & M. 422; 8 C. & P. 506; 22 Q. B. 460. o-5 Esp. 75; 2 M. & W. 181. p-2 Stark. 368.

however, that an agent employed for a *special* purpose derives from this no *general* authority from his principal.[q]

Many persons who are disqualified from acting for themselves, such as infants, aliens, outlaws, and others, may yet act as agents in the execution of a naked authority.[r] Persons *non compos mentis* cannot be agents for others; nor can a person act as agent in a transaction wherein he has an adverse interest or employment.[s] And whenever the agent holds a fiduciary relation he cannot contract with the same general binding force with his principal as when such relation does not exist.[t]

Del Credere Commission is one under which an agent, in consideration of an additional premium, engages to insure to his principal not only the solvency of the debtor but the punctual discharge of the debt, and he is liable, in the first instance, without any demand from the debtor.[u]

AUTHORITY is the lawful delegation of power by one person to another.

Express authority is that given explicitly, either in writing or verbally.

Implied authority is that which the conduct of person possessing the power warrants, and which the law presumes.

General authority is that which authorizes the agent to do everything connected with a particular business.[v]

Special authority is that which is confined to an individual transaction.[w]

Limited authority is that where the agent is bound by precise instructions.

Unlimited authority is that where the agent is left to pursue his own discretion.

Authority coupled with an interest is an authority given to an agent for a valuable consideration, or which forms a part of a security.

Naked authority is that where the principal delegates the power to the agent wholly for the benefit of the former.[x]

The right on the part of the agent to act is termed his authority or power. In some instances the authority or power must be exercised in the name of the principal, and the act done is for his benefit alone. In others, it may be executed in the name of the agent, and if the power is coupled with an interest on the part of the agent, it may be executed for his own benefit.[y]

Construction of. An authority is to be so construed as to include, not only all the necessary and proper means of executing it with effect, but also all the various means which are justified or allowed by the usages of trade.[z]

Delegation of. All persons, not under legal disability, may delegate to another authority to act for them in a matter which is lawful, and otherwise capable of being delegated.[a] But when a bare power or authority has been given to another, the latter cannot, in general, delegate that authority, or any part of it, to a third person, for the obvious reason, that the principal has relied upon the intelligence, skill, and ability of his agent, and cannot have the same confidence in a stranger.[b] A power to delegate his authority may, however, be given to the agent by express terms of substitution;[c] and sometimes such power is implied, us in the following cases: *First.* When, by the law, such power is indispensable in order to accomplish the end proposed, as when goods are directed to be sold at auction, and the law forbids such sales except by licensed auctioneers.[d] *Second.* When the employment of such substitute is in the ordinary course of trade, as where it is the custom of trade to employ a ship-broker, or other agent, for the purpose of procuring freight, and the like.[e] *Third.* When it is understood by the parties to be the mode in which the particular thing would or might be done.[f] *Fourth.* When the powers thus delegated are merely mechanical in their nature.[g]

An authority may be delegated by deed for any purpose whatever; for whenever an authority by parol would be sufficient, one by deed will be equally so. When the authority is to do something, which must be performed through the medium of a deed, then the authority must also be by deed, and executed with all the forms necessary to render the instrument perfect; unless, indeed, the principal be present, and verbally or impliedly authorize the agent to fix his name to the deed; as, if a man be authorized to convey a tract of land, the letter (or power) of attorney must be by deed.[h] But a written authority is not required to authorize an agent to sign an unsealed paper; or a contract in writing not under seal, even where a statute makes it necessary that the contract, in order to bind the party, shall be in writing, un-

q-15 M. & W. 517; 16 Law J., C. P. 240; 3 Exch. 268; 5 Sanf. 121. r-1 Liverm. Ag. 32; Co. Litt. 252, *a*; Story Ag. § 1. s-2 Ves. Ch. 317; 11 Clark & F. Ho. L. 714; 3 Beav. Rolls 783; 2 Campb. 203; 2 Chitty Bail. 205; 30 Mc. 431; 24 Ala. (N. S.) 358; 3 Denio, 575; 19 Barb. 595; 20 Id. 470; 6 La. 407; 7 Watts, 472. t-Paley Ag. 33–38; Story Ag. § 9; 1 Liverm. Ag. 416–433; 1 Story Eq. Jur. §§ 308, 328; 4 Mylne & C. 134; 14 Ves. Ch. 290; 3 Sumn. C. C. 476; 2 Johns. Ch. 251; 11 Paine Ch. 538; 5 Me. 420; 6 Pick. 198; 4 Conn. 717; 10 Pet. 269. u-1 T. R. 112; Paley Ag. 39; Parsons' Contr.; Story Ag. v-Story Ag. § 17. It empowers him to bind his employer by all acts within the scope of his employment; and it cannot be limited by any private order or direction not known to the party dealing with him. Paley Ag. 199–201. w-Story Ag. 19; 5 East. 400, 508; 6 Cow. 354. Such authority does not bind the employer, unless it is strictly pursued; for it is the business of the party dealing with the agent to examine his authority; and, therefore, if there be any qualification or express restriction annexed thereto, it must be observed, otherwise the principal is discharged. Paley Ag. 202. x-A naked authority may be revoked; an authority coupled with an interest is irrevocable. y-Prof. Parker Lect. 1857; 1 Domat. *b.* 1 tit. 15; Introd. Story Ag. § 3; see *post*, tit. "Attorneys." z-Story Ag. §§ 58, 60; 1 Liverm. Ag. 103, 104; 6 S. & R. 146; 10 Wend. 218; 11 Ill. 177. a-Com. Dig. *Atty. c.* 1; 9 Co. 75, *b*; Story Ag. § 6. b-Story Ag. § 13; 1 Liverm. Ag. 54, 66; 2 Kent. Comm. 633; 5 Pet. 390; 3 Story C. C. 411, 425; 1 McMull. 453; 15 Pick. 303, 307; 26 Wend. 485; 11 Gill & J. 58; 5 Ill. 127, 133. c-1 Liverm. Ag. 54, 56; 1 Hill, 505. d-6 S. & R. 386. e-2 M. & S. 301; 2 B. & P. 438; 3 Johns. Ch. 167, 178; 6 S. & R. 386. f-3 Chitty C. L. 206; 9 Ves. Ch. 234, 251, 252; 1 M. & S. 484; 2 Id. 301, 303, *n*. g-1 Hill, 501; Bunb. 166; Sugden Prs. 176. h-1 Liverm. Ag. 35; Paley Ag. (Lloyd Ed.) 157; Story Ag. 49, 51; 3 Chitty C. L. 195; 1 Binn. 613; 14 S. & R. 331; 2 Pick. 345; 5 Mass. 11; 5 Wend. 424; 9 Id. 54, 68; 12 Id. 525; 11 Ohio, 223.

less the statute positively requires that the authority shall also be in writing.[r]

For most purposes the delegation may be in writing, not under seal, or verbally, or by the mere employment of an agent; or it may be implied from the conduct of the employer, in sanctioning the credit to a person acting in his name.[s] When, however, the act is required to be done under seal, the delegation must also be under seal, unless the principal is present and verbally or impliedly authorizes the act.[t]

Dissolution of. In general, an authority is revocable from its nature, unless it is given for a valuable consideration, is part of a security, or coupled with an interest.[u] It may, in general, be revoked at any moment before the actual exercise of it;[v] and a revocation may be express or implied.

The authority may be renounced by the agent before any part of it is executed, or when it is in part executed.[w] If, by the express terms of the commission, the authority of the agent be limited to a certain period, it will manifestly cease as soon as that period has expired. The authority of the agent is, by the fact itself, positively determined by the completion of the purpose for which it was given.

Extent. The authority of an agent, unless the contrary clearly appears, is presumed to include all the necessary and usual means of executing it with effect.[x] Where, however, the whole authority is conferred by a written instrument, its nature and extent must be ascertained from the instrument itself, and cannot be enlarged by parol evidence.[y]

Generally, in private agencies, when an authority is given by the principal[z] to two or more persons to do an act, and no several authority is given, all the agents must concur in doing it, in order to bind the principal, though one die or refuse.[a] The words "jointly *and* severally," and "jointly *or* severally," have been construed as authorizing all to act jointly, or each one to act separately, but not as authorizing any portion of the number to do the act jointly.[b] But where the authority is so worded that it is apparent the principal intended to give power to either of them, an execution by a part will be valid.[c] And generally, in commercial transactions, each one of several agents possesses the whole power. For example, on a consignment of goods for sale to two factors (whether they are partners or not) each of them is understood to possess the whole power over the goods for the purposes of the consignment.[d] In public agencies an authority executed by a majority will be sufficient.[e]

Where a principal has held one out as his general agent, or authorized parties to so regard him by continued acquiescence and confirmation, the principal cannot limit or qualify his own liability by instructions, or limitations given by him to his agent, and not made known in any way to parties acting with such agent.[f] And where an agent is employed to transact some specific business, and only that, yet he binds his principal by such subordinate acts as are necessary to, or are usually and properly done in connection with the principal act, or to carry the same into effect.[g] And he has a reasonable discretion as to the execution of his authority.[h] But an agent is not at liberty to exercise this discretion in the choice of a mode of performing the duty imposed on him, if some other mode, and that only, is fixed either by usage or by the orders of his principal, if he is a general agent; or if he is a particular agent, by the principal's orders alone; for then he must adopt the very mode and no other. An authority to sell does not carry with it authority to sell on credit, unless such be the usage of the trade; but if there be such usage, then the agent may sell on credit, unless specially instructed and required to sell only for cash.[j] And if he sells for credit, having no authority to do so, he becomes personally responsible to his principal for the whole debt.[k] So is he also if he blends his accounts of his principal with his own, or takes a note payable to himself.[l] Where the authority is oral and is known to the party dealing with the agent, usage may enlarge and affect the authority or contract; but usage has not this power where the whole authority is in writing, and this is known to the party dealing with the agent,[m] for such instrument must be strictly followed.[n] If an agent to whom goods are intrusted for a particular purpose, sell the same to a person, or in a manner not within the scope of his authority, the principal may disaffirm the sale and recover the goods of the vendee, if he has not justified the vendee in believing the

r-Paley Ag. (Lloyd Ed.) 161; 2 Kent Comm. 613, 614; Story Ag. § 50; 1 Chitty C. L. 213; 6 Ves. Ch. 250; 8 Ired. 74. s-Paley Ag. 2, 161. t-Story Ag. § 51; 5 Cush. 483. u-Story Ag. §§ 476, 477; Liverm. Ag. 303, 309; Paley Ag. 184, 185; 2 Kent Comm. 643; 2 Mass. C. C. 244, 342. v-See tit. Agents. w Story Ag. § 478; Story Bailm. § 202. x-1 Liverm. Ag. 105; Story Ag. §§ 58, 85, 86; 5 Bingh. 442; 2 H. Bl. 618; 10 Wend. 218; 6 S. & R. 146; 11 Ill. 177; 9 Met. (Mass.) 91; 22 Pick. 85; 15 Miss. 365; 9 La. 387; 11 N. H. 424; 6 Ired. 252; 10 Ala. (N. S.) 386; 21 Id. 488; 1 Ga. 418; 1 Sneed, 497; 8 Humph. 509; 15 Vt. 155; 2 McLean C. C. 543; 8 How. 441. y-Story Ag. §§ 76, 79; Paley Ag. (Lloyd's Ed.) 179, n. 5; 1 Taunt. 347; 5 B. & Ald. 204; 7 Rich. 45; 1 Pet. 264; 3 Cranch. 415. z-7 N. H. 253; 1 Dougl. (Mich.) 119; 11 Ala. (N. S.) 755; 1 Bos. & P. 229; 3 T. R. 592. a-Paley Ag. 177; Story Ag. § 42; 3 Pick. 322; 2 Id 345; 6 Id. 198; 12 Mass. 185; 23 Wend. 324; 6 Johns. 39; 9 W. & S. 56; 10 Vt. 532; 12 N. H. 226; 1 Gratt. 226. b-Paley Ag. (Lloyd's Ed.) 177, note.

c-Co. Litt. 49, *b*; Dyer, 62; 5 B. & Ald. 628. d-1 Liverm. Ag. 79; Story Ag. § 44; 3 Wils. 94, 114; 20 Pick. 59; 24 Id. 13. e-1 Co. Litt. 181, *b*. Com. Dig. *Atty. c.* 15; Bac. Abr. *Authority* C; 1 T. R. 592. f-15 East. 38; Id. 400; 22 Wend. 348; 10 N. H. 538; 1 Met. 193; 10 Mod. 109; 5 Esp. 64; 1 Id. 350; 11 How. Pr. 80; 15 Penn. 172; 18 Id. 224; 7 M. & W. 151. g-6 M. & W. 461; 5 Esp. 75; 5 Bing. 442; 4 Campb. 163; 15 M. & W. 489; 17 Ill. 177; 1 Sneed. 497; 5 Hill (N. Y.) 16; 12 Q. B. 765; 1 Exch. 475. h-3 M'Lean, 156; 1 Woodb. & M. 76, 89. i-Ambl. 495; 7 M. & W. 595. j-12 Mod. 514; 1 Camp. 258; 6 Johns. 69; 5 Cowen, 473; 1 Bay, 294; 26 Wend. 223; 7 Rich. L. 525; 1 Greenl. 172, 179. k-1 Nott & M'Cord, 517; 4 Dallas, 389; 12 Mod. 514; 1 Campb. 258; 3 B. & Ald. 616; 3 Foster (N. H.) 360; 2 Stra. 1178; 5 T. R. 604; 5 Ves. 211; 5 Johns. Ch. 417; 20 Ala. 578. l-1 Dev. & B. 291; 1 Wash. C. C. 194, S. C. 445; 5 Leigh. 456; 7 Mass. 36; 6 Cowen, 181. m-7 B. & C. 278, S. C, 1 Man. & R. 66; 1 Pet. 264. n-26 Wend. 192.

authority of the agent.[o] If the principal sells goods by an agent, and the agent makes a material misrepresentation which he believes to be true, and his principal knows to be false, this is the falsehood of the principal, and avoids the sale.[p] The acts of an authorized agent are the acts of the principal.[q]

Exercise of. An agent who has bare power or authority, from another, to do an act, must execute it himself, and cannot delegate his authority to a sub-agent; for the confidence being personal, it cannot be assigned to a stranger.[r] But the principal may, in direct terms, authorize his agent to delegate the whole, or any portion of his authority to another; or the power to appoint a sub-agent may be implied, either from the terms of the original authority, from the ordinary custom of trade, or from the fact that it is indispensable in order to accomplish the end.[s]

When the authority is special, it must, in general, be strictly pursued, or it will be void, unless the variance be merely circumstantial;[t] as, if it be to do an act upon condition, and the agent does it absolutely, it is void; and *vice versa*. If the person do less than the authority committed to him, the act is void; but if he does that which he is authorized, and more, it is good for that which is warranted, and void for the rest. Both of these rules, however, have many exceptions and limitations.[u] An authority given, by the act of the principal, to two or more persons, cannot be executed by one, though one die or refuse;[v] it being in such case construed strictly, and understood to be joint, and not several.[w] And an authority given to three, *jointly and severally*, is not, in general, well executed by two; but it must be done by one, or by all.[x] These rules apply to an authority of a private nature, saving in commercial transactions, which form an exception. Where, however, the authority is of a public nature, it may be executed by a majority.[y]

Where an agent is authorized to make a contract for his principal in writing, it must, in general, be personally signed by him.[z] It is a rule, that an act done under a power of attorney must be done in the name of the person who gives the power, and not merely in the attorney's name, though the latter be described as attorney in the instrument;[a] but it matters not in what words it is done, if it sufficiently appear to be in the name of the principal.[b] The strict rule of law in this respect applies, however, only to sealed instruments; and the rule is further modified, even in such cases where the seal is not essential to the validity of the instrument.[c]

An authority must be exercised within the time limited.[d]

Instructions or orders given by a principal to his agent in relation to the business of the agency must be carefully complied with.

An agent with instructions is bound to regard them in every point; nor can he depart from them without making himself responsible for the consequences,[f] unless he is justified by matter of necessity.[g] If he has no instructions, or indistinct or partial instructions, his duty will depend upon the intention and understanding of the parties, which may be gathered from the circumstances of the case, and especially from the general custom and usage in relation to that kind of business.[h] But he cannot defend himself by showing a conformity to usage, if he has disobeyed positive instructions. If loss issue from his disregard to his instructions, he must sustain it; if profit, he cannot retain it, but it belongs to his principal.[i]

Justification of. The authority given must have been possessed by the person who delegates it, or it will be void; and it must be of a thing lawful, and be otherwise capable of being delegated, or it will not justify the person to whom it is given.[e] This power is the authority by which one person (called the donor) enables another (called the donee) to do some act for him. It is derivative or inherent.

Powers—Derivative are those received from another. When coupled with an interest it is a right or authority to do some act, together with an interest in the matter on which the power is to be exercised.[j] This kind of a power survives the person creating it, and in case of its excess in execution, renders the act valid so far as the authority extends, leaving it void as to the remainder only. *Naked powers* are those rights of authority disconnected from any interest of the donee in the subject-matter.[k] *Inherent or natural powers* are those enjoyed by their possessors by natural right, not having been received from another. Such are the powers of a people to establish a form of government; of a father to control his children. The exercise of some of these powers are

o-3 Pick. 495; 5 Cush. 442. p-3 Campb. 506; 6 M. & W. 386; Id. 358; 33 Q. B. 58, 68; 21 Vt. 129; 7 Gratt. 52. q-4 Kas. 397. r-Story Ag. § 13; Liverm. 54–66; 2 Kent Comm. 633. s-1 Liverm. Ag. 55; Paley Ag. (Dunlap Ed.) 175; Story Ag. § 14; 9 Ves. Ch. 234, 251, 252. t-Co. Litt. 49 *b*, 181 *b*, 303 *b*; 6 T. R. 591; 2 H. Bl. 623. u-Paley Ag. 178, 179. v-Id. 177; Co. Litt. 112 *b*; 181 *b*. w-Story Ag. § 42; 3 Pick. 232; 2 Id. 345; ; Id. 198; 12 Mass. 185; 6 Johns. 39; 23 Wend. 324; 10 Vt. 532; 12 N. H. 226; 9 W. & S. 56. x-Co. Litt. 181 *b*; Bac. Abr. *Authority* C; 1 B. & P. 229, 234; 3 T. R. 592. y-24 Pick. 13; 9 Watts, 466; 9 S. & R. 99. z-Story Ag. § 146; 3 Merch. R. 237; 1 Younge & C. 387; 3 Mer. Ch. 235, 251, 252. a-Story Ag. § 147; 11 Mass. 27, 29; 12 Id. 173, 175; 16 Pick. 347, 350; 22 Id. 158, 161; 8 Met. (Mass.) 442; 7 Wend. 68; 10 Id. 87–871; 9 N. H. 263, 269, 270. b-For "A. B." (the principal), "C. D." (the attorney), is held sufficient: Story Ag. § 153; 6 B. Mon. 612; 3 Blackf. 55; 7 Cush. 215. If B. signs "B. for A." this is the signature of B., and he is the contracting party, although he makes the contract at the instance, and for the benefit of A. But, if he signs "A. by B.," then it is the contract of A., made by him, through his instrument, B. c-Story Ag. §§ 148, 154; Paley Ag. (Dunlap Ed.) 183, *n*; 8 Pick. 56; 17 Pet. 161. d-4 Campb. 279; Russell, Fact. & Brok. 313 e-Dig. 102; Kielw. 83; 5 Co. 80. f-1 Cowen, 645; 3 Cranch. 415–439; 1 Wash. C. C. 454; 3 Id. 51; 4 Id. 549; 3 Johns. Cas. 36; 3 Flor. 27; 1 Story, 43; 2 A. & E. 57; 4 Bing. 66–72; 3 Ired. L. 538; 7 Hill (N. Y.) 128. g-4 Binn. 361; 1 Liverm. Ag. 368. h-1 B. & Ad. 415; 10 A. & E. 27; 5 M. & W. 645; 4 Wash. C. C. 315; 12 Q. B. 765, 10 B. & C. 760. i-4 Camp. 184; 1 Johns. Ch. 394; 11 Leigh. 213. j-8 Wheat. 203. k-3 Hill (N. Y.) 365.

regulated and restricted by law. *Mediate* (*or subordinate*) *powers* are those incident to primary powers given by a principal to his agent. Thus, an agent authorized to perform certain acts has power to employ all the incidents to his authority to accomplish the thing intended. The general authority given to collect, receive, and pay debts due by or to his principal is a primary power. In order to accomplish this it is frequently necessary to settle accounts, adjust disputed claims, resist unjust demands, and defend suits. These subordinate powers are called mediate powers.[k]

Ratification, when express, is that made in open and express terms. Implied ratification is that which the law presumes from the acts of the principal; thus, if A. buys goods for B., and the latter knowing of the purchase receives them and applies them to his own use, the law will presume B.'s assent to the purchase. By ratifying a contract a person adopts the agency altogether, as well what is detrimental as that which is beneficial.[l]

The principal has, as a general rule, the right to elect whether he will adopt an unauthorized act or not; having once ratified the act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and the principal becomes bound as if he had originally authorized the act.[m] The ratification of a lawful contract has a retrospective effect, and binds the principal from its date, and not only from the time of the ratification, for the ratification is equivalent to an original authority.[n] Such ratification will, in general, relieve the agent from all responsibility, when he would have otherwise been liable.[o] See CONTRACTS.

Recognition is the acknowledgment or avowal that something which has been done by one person in the name of another was done by authority of the latter. A recognition by the principal of the agency of another is, in the particular instance, evidence of the authority of the agent; and this recognition may be express or implied.[p]

Revocation is recalling or revoking an authority conferred, or the annulling or vacating of an instrument conferring a power previously made. The principal may, at any time, put an end to the relation between himself and his agent by withdrawing the authority, unless the authority is coupled with an interest, or given for a valuable consideration.[q] And this countermand may, in general, at the mere will of the principal, be effected at any time before the contract is completed,[r] even though there be an express agreement not to revoke. But when the authority or power is coupled with an interest, or when it is given for a valuable consideration, or when it is a part of security, then, unless there is an express stipulation that it shall be revocable, it cannot be revoked.[s] Unless the power provides a specific mode of revocation (in which case it must be strictly followed) its authority may be revoked in any form the constituent or principal may adopt.[t] Where third parties have dealt with an agent clothed with general powers, whose acts have therefore bound his principal, and the principal revokes the authority he gave his agent, such principal will continue to be bound by the further acts of his agent, unless such third parties have knowledge of the revocation, or unless he does what he can to make the revocation as notorious and generally known to the world as the fact of the agency.[u] This is usually done by advertising.

Naked powers not coupled with an interest may always be revoked by the express act of the constituent or principal whenever he so elects, he being bound by all the acts of the agent until notice of the revocation; until such notice the agent is entitled to compensation and indemnity for all acts done and liabilities incurred. The act of revocation is merely provisional and contingent until notice is communicated to the agent.[v] Third persons who deal with the agent before notice of the revocation of his powers are not affected by it.[w] But strangers who have never dealt with the agent before the revocation of his powers, if the principal has given public notice of the revocation in such a manner as to render the fact generally known in the vicinity, will have no remedy against such principal.[x] Where, however, the power was conferred in writing, and the agent retains and exhibits it as the evidence of his authority, so that strangers are fairly justified in believing in its continuance, having no adequate means of knowledge of its revocation, the acts of the agent will bind the principal.[y] It is a question of fact whether, under all the circumstances, a party is justified in supposing the authority still continues.[z]

An agent's authority terminates by the bankruptcy of either the principal or the agent,[a] though not necessarily by the bankruptcy of the

k-1 Story Ag. § 58; see 1 Campb. 43, *n*; 4 Id. 163; 6 S. & R. 149. l-2 Str. 859; 1 Atk. Ch. 158; 4 T. R. 211; 7 East. 164; 16 Martin, La. 105; 1 Ves. Ch. 509; Smith Merch. L. 60; Story Ag. § 250; 9 B. & C. 59. m-Story Ag. § 250; Paley Ag. (Lloyd's Ed.) 171; 3 Chitty C. L. 197. n-Poth. Ob. *n*. 75; 2 L. Raym. 930; Campb. 450; 5 Burr. 2727; 2 H. Bl. 623; 1 B. & P. 316; 13 Johns. 367; 2 Johns. Cas. 424; 2 Mass. 106; Co. Litt. 207, *a*; Story Ag (4th Ed.) 102; Broom. Max. 715; 2 Bouv. Inst. 25; 4 Id. 26; 8 Wheat. 363; 7 Exch. 726; 10 Id. 845; 9 C. B. 532. 607; 14 Id. 53. o-2 B. & B. 452; see 16 Mass. 461; 8 Wend. 494; 10 Id. 399; Story Ag. § 251. p-1 Campb. 43, *n*, *a*; 4 Id. 88; 1 Esp. Cas. 61. q-8 Wheat. 201; 2 Esp. 565; 10 B. & C. 731; 3 Id. 482; 1 Ves. 28; 2 M. & W. 371; 1 B. & Ald. 684; 9 C. B. 541; 4 N. Y. Leg. Obs. 301; 14 Pet. 479, 405; Story Agency, §§ 466, 467, 468; 2 Kent Comm. 644; 23 Pick. 330; 14 Pet. 479; 22 Pick. 40; 12 N. H. 239; 3 Comst. 78; 5 C. B. 895; 6 M. & W 670. r-3 Chitty C. & M. 223; 2 Liverm. Ag. 309; Paley Ag. 185; Story Ag. §§ 462, 465. s-Story Ag. §§ 476, 477; 2 Liverm. Ag. 308, 309; Paley Ag. 184, 185; 2 Kent Comm. 643, 644; 2 Mass. C. C. 244, 342. t-8 Ired. 74; 6 Pick 108; Story Ag. § 474. u-Stra. 506; 12 Mod. 346; 5 T. R. 215; 4 Munf. 130; 5 Binn. 305; 11 N. H. 397; 12 Q. B. 460; 4 Campb. 215. v-1 Parsons Contr. 58 and notes; 6 Ind. 231. w-1 Str. 506; 5 T. R. 211–214; 12 Q. B. 460; 4 Campb. 215; 12 Mod. 346; 4 Munf. 130; 5 Binn. 305; 5 Dana, 513; 17 Mo. 204; 11 N. H. 397; 2 Kent. Comm. 644, and cases cited; 11 Ad. & E. 589, 592. x-1 Parsons Contr. 59, 60; Dav. Dist. Ct. 287 y-11 N. H. 397. z-12 Q. B. 460. a-2 Kent Comm. 644, and notes; 4 Taunt. 544; 16 East. 382; 5 B. & Ald. 27.

latter.[b] Where the agent has a lien it may be enforced in the name of the assignee.[c]

The authority of an agent may be revoked by death of either principal or agent.[d] In case of a naked authority the death of the principal terminates the authority of the agent by that event itself, and without notice either to the agent or those with whom he deals. Acts done in good faith in discharge of the agent's duty before knowledge of the death of his principal, and which enures to the benefit of the principal's estate, are binding upon his personal representatives.[e] Where the agent has entered upon the business or incurred expenses he is entitled to compensation.[f] And if he has incurred liabilities he is entitled to indemnity.[g] Powers coupled with an interest which are not revocable by the act of the principal during his life, are, nevertheless, annulled by his death, so far as any act in his name is concerned.[h] Joint authority by two persons terminates by the death of one of them.[i]

A complete execution of the trust, or accomplishment of the business or undertaking, operates an extinguishment of authority.[j]

The agency may terminate by the expiration of the period which it was to exist, and to have effect; as, if an agency be created to endure a year, or until the happening of a contingency, it becomes extinct at the end of the year, or the happening of the contingency.[k]

The extinction or destruction of the subject-matter of the agency destroys with it the power to accomplish the result intended.[j]

The authority of the agent may be revoked by the incapacity of either principal or agent.

Insanity either of the principal or agent terminates the agency.[l] But third persons, ignorant of the fact of insanity, and whose contract with the agent is fair and just, will be protected.[m] An inquisition of lunacy is constructive notice to all;[n] and the inquisition forming the basis of the commission is allowed to antedate the finding of the incapacity, in which case it would probably throw the burden of proof on the other party. If the power confer an interest upon the agent which can be enforced in his name, insanity will not operate as a revocation.

Loss of the principal's interest operates as a revocation.[o]

The marriage of a *feme sole* terminates her power either as principal or agent,[p] though not necessarily so.[q]

When the authority has been partially executed by the agent, if it admit of severance, or of being revoked as to the part which is unexecuted, it may be revoked as to that part; but if it be not thus severable, and the agent by its execution in part will sustain damage, it cannot be revoked as to the unexecuted part, unless the agent be fully indemnified.[r] This revocation may be by a formal declaration publicly made known, or an informal writing, or by parol; or it may be implied from circumstances, as, if another person be appointed to do the same act.[s] It takes effect from the time it is made known, and not before, both as regards the agent and third persons.[t]

The determination may be by the renunciation of the agent either before or after a part of the authority is executed;[u] it should be observed, however, that if the renunciation be made after the authority has been partially executed, the agent, by renouncing it, becomes liable for the damages which may thereby be sustained by his principal,[v] or, by operation of law, in various ways.

Powers coupled with an interest are, in general, not revocable. Being transferred upon consideration, a power is no more revocable than any other contract.[w] Whenever the power confers an interest in the subject-matter only, and not in the results, and constitutes an essential part of a security upon the faith of which money or other thing has been advanced or liability incurred, it is not revocable even by the death of the principal, but may be thereafter executed, where it can be done without the use of the name of the principal.[x] The consignee of goods for sale who has incurred liability or made advances upon the faith of the consignment, acquires a power of sale which, to the extent of his interest, is not revocable or subject to the control of the consignor.[y] But if orders are given by the consignor contemporaneously with the consignment and advances, in regard to the time and mode of sale, and which are, either expressly or impliedly, assented to by the consignee, he is not at liberty to depart from them afterward. But if no instructions are given at the time of the consignment and advances the legal presumption is that the consignee has the ordinary right of factors to sell according to the usages of trade and the general duty of factors, in the exercise of a sound discretion, and reimburse the advances out of the proceeds, and that this right is not subject to the interference or control of the consignor.

A pledge of personal property to secure the liabilities of the pledgor, with an express power of sale, confers such an interest in the subject-matter that it will not be revoked by

b-Story Ag. §§ 485, 486; 12 Mod. 383; 3 Burr. 1469, 1471. c-Story Bailm. § 211: Story Ag. § 486. d-Story Bailm. 209; 1 Kent. Comm. 645; Paley Ag. 185. e-Willes, 103; 10 M. & W. 1; Story Ag. 488; 4 Pet. 333, 334; 1 Humphr. 294; 12 N. H. 146; 4 Metc. Mass. 333; 11 Leigh. 137. f-33 Eng. L. & Eq. 229; Dav. Dist. Ct. 287; Bac. Abr. *Authority* (E.). g-Chitty Contr. 225, *n*, *o*. h-4 Campb. 272; Willes, 105, 563; 5 Esp. 119; 6 East. 356; 8 Wheat. 174; 2 Kent. Comm. 646; 2 Me. 14; Prec. *n*, Ch. 125. i-2 Kent Comm. 645; 15 East. 592. j-Story Ag. § 499; Story Bailm. § 207; 2 Bouv. Inst. 51, 52. k-Story Ag. § 480. l-2 Kent Comm. 645, and cases cited in note. m-10 N. H. 156.

n-2 Kent. Comm. 645. o-Chitty Contr. 224, and notes, (Perkins Ed.) 1860. p-1 Rolle Abr. 331, *Authority* (E. Pl. 4); W. Jones, 388; 5 East. 266; 2 Kent. Comm. 645; 11 Vt. 545. q-Story Ag. §§ 485, 486; 12 Mod. 383; 3 Burr. 1469, 1471. r-Story Ag. § 466. s-Story Ag. § 474; 5 Binn. 305; 6 Pick. 198. t-Story Ag. § 470; Paley Ag. 188; 2 Liverm. Ag. 306, 310; 2 Kent Comm. 644; 11 N. H. 397. u-Story Ag. § 478. v-Story Ag. § 478; Jones Bailm. 101; 4 Johns. 84. w-1 Parsons Contr. 61, and notes; Chitty Contr. 224, and notes (Perkins Ed. 1860); 7 Ves. Ch. 3, 28. x-1 Caines Cas. 1; 3 B. & C. 842, 851; 2 Esp. Cas 565; 4 Campb. 272; 17 Mass. 234. y-14 Pet. 479.

his death.[l] But a power to pledge and sell the property of a constituent, and from the avails to reimburse advances made or liabilities incurred by the appointee, is not so coupled with an interest as to be revocable.[j] The interest must exist in the subject-matter of the power, and not merely in the result of its exercise, to become irrevocable.[k] Hence, if one give a letter of credit agreeing to accept bills to a certain amount within a limited time, the letter is revoked by death, and bills drawn after the death and before knowledge thereof, reaching the drawer, cannot be enforced against the estate of such deceased party.[l] All contracts which are to be executed in the name of the constituent or principal by virtue of an agency, although forming an essential part of a security upon the faith of which advances have been made, are of necessity revoked by the death of the constituent. Even a warrant of attorney to confess judgment, although not revocable by the act of the party, is revoked by his death.

DUTIES AND LIABILITIES. The particular obligations of an agent vary in accordance to the nature, terms, and end of his employment.[m] He is bound to execute the orders of his principal, whenever, for a valuable consideration, he has undertaken to perform them.[n] When his authority is limited by instructions it is his duty to adhere faithfully to those instructions;[o] but cases of extreme necessity and unforeseen emergency constitute exceptions to this rule;[p] and where the agent is required to do an unlawful or an immoral act[q] he may violate his instructions with impunity.[r] If he have no specific instructions, he must follow the accustomed course of the business.[s] When the transaction may, with equal advantage to the principal, be done in two or more different ways, the agent may, in general, do it in either, provided a particular mode has not been prescribed to him.[t] He is to exercise the skill employed by persons of common capacity similarly engaged, and the same degree of diligence that persons of ordinary prudence are accustomed to use about their own affairs.[u] It is his duty to keep his principal informed of his doings, and to give him reasonable notice of whatever may be important to his interests.[v] He is also bound to keep regular accounts of business and money transactions, and to render his accounts to his principal at all reasonable times, and whenever called on, without concealment or overcharge.[w]

The responsibility of an agent, whether for positive misconduct, or for deviation from instructions, is not measured by the extent of his commission or compensation, but by the loss or injury which he may cause his principal.[x] And, in general, a verdict against a principal for the act of his servant, is the measure of damages which the former may recover from the latter.[y] An agent is bound to great diligence and care for his principal; not the utmost possible, but all that a reasonable man, under the circumstances, would take of his own affairs.[z] And he is bound to possess and exert the skill and knowledge necessary for the proper performance of the duties which he undertakes.[a] If an agent, without necessity, has mixed the property of his principal with his own in such a way that he cannot render an account precisely discriminating between the two, the whole of what is so indistinguishable is held to belong to the principal;[b] for it was the duty of the agent to keep the property and accounts separate, and he must bear the responsibility and consequences for not doing so. If an agent employed for any special purpose discharges his duty and does all he was required to do, he is entitled to full compensation, although the principal declines or refuses to take advantage of the agent's act, or even adopt it.

As to their principals, the liabilities of agents arise from a violation of duties and obligations to them by exceeding their authority, by misconduct, or by any negligence, omission, or act, by the natural result or just consequence of which the principal sustains a loss.[c] And joint agents who have a common interest are liable for the misconduct and omissions of each other in violation of their duty, although the business has, in fact, been wholly transacted by one with the knowledge of the principal, and it has been privately agreed between themselves that neither shall be liable for the acts or losses of the other.[d]

The degree of neglect which will make the agent responsible for damages varies according to the nature of the business and the relation in which he stands to his principal. The rule of common law is, that where a person holds himself out as of a certain business, trade, and profession, and undertakes, whether gratuitously or otherwise, to perform an act which relates to

l-10 Paige Ch. 205. j-8 Wheat. 174; 6 Comm. 559. k-15 N. H. 468. l-28 Vt. 209. m-Paley Ag. 3; 2 L. Raym. 517. n-Story Ag. § 189; 6 Cow. 128; 7 Id. 456; 20 Wend. 321. o-Paley Ag. 3, 4; 3 Bos. & P. 75; 5 Id. 269; Story Ag. § 192; 3 Johns. Cas. 36; 1 Sandf. 111; 26 Penn. St. 394; 14 Pet. 494. p-1 Story, C. C. 45; 4 Binn. 361; 5 Day, 556; 26 Penn. St. 394; 4 Campb. 83. q-6 C. Rob. Adm. 207; 7 T. R. 157; 11 Wheat. 258. r-Story Ag. §§ 193, 194, 195; 11 Mart. 636. s-Paley Ag. 4; 4 Story Ag. § 199; 1 Gall. 360. t-1 Liverm. Ag. 103. u-Story Ag. § 183; Paley Ag. 77, 78; East. 348; 6 Taunt. 495; 10 Bing. 57; 1 Johns. 364; 20 Pick. 167; 6 Met. (Mass.) 13; 24 Vt. 149. v-Paley Ag. 27, 38, 39; Story Ag. § 208; 5 M. & W. 527; 4 W. & S. 305; 1 Story, C. C. 43, 56; 4 Rawle, 229; 6 Whart. 9; 13 Mart. 214, 265. w-Paley Ag. 47, 48; Story Ag. § 203; Story Eq. Jur. § 468, 633; 1 Taunt. 572; 8 Ves. 49; 14 Id. 510; 13 Id. 9, 1 Id. 436; 1 Jac. & W. 135; 7 Ired. Eq. 211; 12 Q. B. 531; Johns. Ch. 62–108; 1 C. B. (N. S.) 26. x-19 Law T. 10; 2 Brock. 350; 6 Whart. 9, 12 N. H. 239; 20 Wend. 321; 1 B. & Ad. 415. y-8 Taunt. 202 S. C.; 2 Moore, 125. z-Co. Litt. 89, *a*; 10 Bing. 57; 1 Johns. Cas. 174; 1 Wash. C. C. 154; 4 Nev. & M. 170; 2 A. & E. 256; 4 B. & C. 345. a-One who undertakes to act in a professional or other clearly defined capacity, as that of a carpenter, blacksmith, or the like, is bound to exercise the skill appropriate to such trade or profession; and this although the undertaking be gratuitous; 4 B. & C 435; 1 H. Bl. 161; 2 Chitty, 311; 8 C. & P. 479; 7 Foster (N. H.) 460; 11 M. & W. 113. b-15 Ves. 436–440; 8 Id. 46; 11 Id. 377; 2 Johns. Ch. 62–108; 1 C. B. (N. S.) 26. c-Story Ag. § 217 *c*; Paley Ag. 7, 71, 74; 1 Liverm. Ag. 398; 1 B. & Ad. 415; 6 Hare Ch. 366; 12 Pick. 328; 20 Id. 167; 11 Ohio, 363; 13 Wend. 518; 6 Whart. 9. d-1 Liverm. Ag. 79–84; Story Ag. § 232; Paley Ag. 52, 53; 7 Taunt. 403.

his particular employment, an omission of the skill which belongs to his situation or profession is imputable to him as a fraud upon his employer.[e] But where his employment does not necessarily imply skill in the business he has undertaken, and he is to have no compensation for what he does, he will not be liable to an action if he act in good faith, and to the best of his ability.[f]

As to third parties. Generally, when a person having full authority is known to act merely for another, his acts and contracts will be deemed those of the principal only, and the agent will incur no personal responsibility.[g] But when an agent does an act without authority, or exceeds his authority, and the want of authority is unknown to the other party, the agent will be personally responsible to the person with whom he deals.[h] If the agent, having original authority, contract in the name of his principal, and it happens that at the time of the contract, unknown to both parties, his authority was revoked by the death of the principal, the agent will not be personally responsible.[i]

An agent will be liable on a contract made with him when he expressly, or by implication, incurs a personal responsibility;[j] as, if he make an express warranty of title, and the like; or if, though known to act as agent, he give or accept a draft in his own name;[k] and public as well as private agents may, by a personal engagement, render themselves personally liable.[l] In general, although a person contract as agent, yet if there be no other responsible principal to whom resort can be had, he will be personally liable; as, if a man sign a note as "guardian of A. B.," an infant, in that case neither the infant nor his property will be liable, and the agent alone will be responsible.[m] The case of an agent of government, acting in that capacity for the public, is an exception to this rule, even though the terms of the contract be such as might, in a case of a private nature, involve him in a personal obligation; it not being presumed that a public agent meant to bind himself individually.[n] Masters of ships, though known to contract for the owners of the ships and not for themselves, are liable for the contracts they make for repairs, unless they negative their responsibility by the express terms of the contract.[o] As a general rule, the agent of a person resident in a foreign country is personally liable upon all contracts made by him for his employer, whether he describe himself in the contract as agent or not, this being the usage of trade, and it being presumed that the credit was given to him and not to his principal.[p] But this presumption may be rebutted by proof of a contrary agreement.[q]

An agent is not personally liable, unless he transcends his agency, or departs from its provisions;[r] or unless he expressly alleges his own liability,[s] in which case he is liable, although he describes himself as agent;[t] or unless he conceals his character as agent;[u] or unless he so conducts as to render the principal inaccessible or irresponsible;[v] or unless he acts in bad faith. If a sealed instrument is executed by an agent, and it contain covenants which expressly purport to be those of the principal, and the agent in executing it calls himself an agent, he is not liable on those covenants;[w] but if they are not expressly the principal's covenants, the agent is liable on them.[x] If a person dealing with an agent knows his agency, his rights and obligations will be the same as if the agent disclosed it,[y] unless the agent purposely represents himself as a principal and assumes the responsibility of one. And if the agent's act be open to two constructions, one of which binds him, and the other binds the principal, the law prefers the latter.[z] If a party dealing with an agent as agent, and knowing that the principal is bound, takes the agent's note, the principal is discharged.[a] If one describes himself as agent for some unnamed principal, he is of course liable if proved to be the real principal.[b] And one acting as agent is liable personally, if it be shown that he acts without authority.[c] An agent is not responsible to third parties for mere neglect or omission in discharge of his duty, for they must look to the principal.[d] An agent who exceeds his authority renders himself liable to the whole extent of the contract, although a part of it was within his authority.[e]

An agent is personally responsible where money has been paid to him for the use of his principal under such circumstances that the party paying it becomes entitled to recall it. In such cases, as long as the money has not been paid over by the agent, nor his situation altered as by giving his principal fresh credit upon the faith of it, it may be recovered from

e-Paley Ag. (Lloyd's Ed.) 7, note 4. f-1 Liverm. Ag. 336, 339, 342. g-2 Liverm. Ag. 245; Story Ag. § 261; Paley Ag. 368, 369; 2 Kent. Comm. 629, 630; 15 East. 62; 3 P. Wms. 277; 6 Binn. 324; 13 Johns. 58, 77; 15 Id. 1. h-Story Ag. § 264; 2 Liverm. Ag. 255, 256; 2 Taunt. 385; 7 Wend. 315; 8 Mass. 178. i-Story Ag. § 265; (a) 10 M. & W. 1. j-Story Ag. §§ 156–159, 269. k-5 Taunt. 74; 1 Mass. 27, 54; 2 Duer 260; 2 Conn. 453; 5 Whart. 288 l-Paley Ag. 381. m-Paley Ag. 374; Story Ag. § 280; 2 Brod. & B. 460; 5 Mass. 299; 6 Id. 58; 8 Cow. 31. n-Paley Ag. 376, 377; and see 5 B. & Ald. 34; 1 Brown Ch. 101; 6 Dowl. & R. 122; 7 Bingh. 110. o-Paley Ag. 388; 15 Johns. 298; 16 Id. 89; 11 Mass. 34. p-2 Liverm. Ag. 249; Story Ag. § 268; Paley Ag. 248, 373, 382; 15 East. 68; 9 Barn. & C. 78; 3 Hill (N. Y.) 72. q-11 Ad. & E. 589, 594, 595. r-11 Wend. 477; 3 P. Wms. 279; 4 Q. B. 235, n; Story Agency, § 265; 4 Q. B. 239. s-2 M. & W. 440; 8 Id. 834; 6 A. & E. 486; 5 East. 148; 12 E. L. & E. 180; 29 Id. 103; 30 Me. 299; 1 Wheat. 56; 4 Mass. 595; 6 Id. 58; 13 Johns. 307; 7 Cowen, 453; 4 Herring. 451; 2 Carter (Ind.) 327; 2 Hill (S. C.) 294. t-10 Cush. 324; 29 E. L. & E. 103; S. C. 4, E. & B. 591; 32 E. L. & E. 127; S. C. 5, E. & B. 125; 30 Conn. 122. u-4 C. B. 637; 3 A. & E. 132; 9 B. & C. 78; 2 Esp. 567; 2 Met. 319; 5 Cush. 210; 3 Hill (N. Y.) 72. v-3 T. R. 761; 9 N. H. 263; 8 Texas, 98; 2 Md. 63. w-11 S. & R. 126. x-4 Bing. 269; 7 Cowen, 453; 10 Wend. 87. y-2 Gillman, 371. z-25 Me. 13. a-10 Met. 190; 8 Id. 411; 6 Greenl. 220. b-5 E. L. & E. 391; 19 Id. 526. c-3 Johns. Cas. 70; 20 Mo. 284; 2 C. R. 530, n, (a); 7 E. & B. 301; 8 Wend. 494; 1 Denio, 471; 2 M. & W. 217; 5 M. & Sel. 383; 15 M. & W. 359. d-2 Comst. 126; 2 Denio, 118 e-11 Wend. 477; 1 S. & Marsh. 1.

the agent.[f] And if, in receiving the money, the agent was a wrong-doer, he will not be exempted from liability by payment to his principal.[g]

As to torts, there is a distinction between acts of misfeasance or positive wrongs, and nonfeasance or mere omissions of duty. In the former case, the agent is personally liable to third persons, although authorized by his principal,[h] while in the latter he is, in general, solely liable to his principal.[i]

RIGHTS AND PRIVILEGES.—*As to their principals.* An agent is ordinarily entitled to compensation for his services—commonly called a commission—which is regulated either by special agreement, by the usage of trade, or by the presumed intention of the parties.[j] In general, he must have faithfully performed the whole service or duty before he can claim any commissions.[k] He may forfeit his right to commissions by gross unskilfulness, by gross negligence, or gross misconduct in the course of his agency;[l] as, by not keeping regular accounts;[m] by violating his instructions; by wilfully confounding his own property with that of his principal;[n] by fraudulently misapplying the funds of his principal;[o] by embarking the property in illegal transactions, or by doing anything which amounts to a betrayal of his trust.[p]

The agent has a right to be reimbursed his advances, expenses, and disbursements reasonably and in good faith incurred and paid, without any default on his part, in the course of the agency,[q] and also to be paid interest on such advancements and disbursements, whenever it may fairly be presumed to have been stipulated for, or be due to him.[r] But he cannot recover for advances and disbursements made in the prosecution of an illegal transaction, though sanctioned by or even undertaken at the request of his principal;[s] and he may forfeit all remedy against his principal even for his advances and disbursements made in the course of legal transactions by his own gross negligence, fraud, or misconduct;[t] nor will he be entitled to be reimbursed his expenses after he has notice that his authority has been revoked.[u]

The agent may enforce the payment of a debt due him from his principal on account of the agency by an action for the amount; and he may also have the benefit of his claim by way of set-off to an action of his principal against him, provided the claim is not for uncertain damages, and is in other respects of such a nature as to be the subject of a set-off.[v] He has also a particular right of lien for all his necessary commissions, expenditures, advances, and services in and about the property intrusted to his agency, which right is in many respects analogous to the right of set-off.[w] Factors have a general lien upon the goods of their principal in their possession, and upon the price of such as have been lawfully sold by them, and the securities given therefor.[x] There are other cases in which a general lien exists in regard to particular classes of agents, either from usage, from a special agreement of the parties, or from the particular habit of dealing between them; such, for example, as insurance brokers, bankers, common carriers, attorneys and solicitors, packers, calico printers, fullers, dyers, and wharfingers.[y]

As to third persons. In general, a mere agent who has no beneficial interest in a contract which he has made on behalf of his principal, cannot support an action thereon.[z] An agent acquires a right to maintain an action upon a contract against third persons, in the following cases:

1. When the contract is in writing, and made expressly with the agent, and imports to be a contract personally with him; as, for example, when a promissory note is given to the agent, as such, for the benefit of the principal, and the promise is to pay the money to the agent under that name or description;[a] and it has been held that the right of the agent in such case to sue in his own name is not confined to an express contract: thus, one holding, as mere agent, a bill of exchange, or promissory note, indorsed in blank, or a check or note payable to bearer, may sue on it in his own name.[b]

2. The agent may maintain an action against third persons on contracts made with them whenever he is the only known and ostensible principal, and, consequently, in contemplation of law, the real contracting party;[c] as, if an agent sell goods of his principal in his own name, as though he were the owner, he is entitled to sue the buyer in his own name;[d] and, on the other hand, if he so buy, he may enforce the contract by action. The renunciation of the agent's contract by the principal does not necessarily preclude the agent from maintaining an action, but he will still be entitled

f-Paley Ag. 388, 389; 2 Liverm. Ag. 260, 261; Story Ag. § 300; 3 M. & S. 344; 7 Johns. 179; 1 Wend. 173. g-Paley Ag. 393, 394; 1 Camb. 396. h-Story Ag. § 311; Paley Ag. 396; 1 Wils. 328; 1 Bes. & P. 410; 28 Me. 464. i-Story Ag. § 308; Paley Ag. 396, 397, 398; Story Bailm. §§ 400, 404, 507. j-Story Ag. §§ 324, 326; Paley Ag. 100, 101; 8 Bingh. 65; 1 Caines, 349; 2 Id. 357. k-Story Ag. §§ 329, 331; 1 Carr. & P. 384; 4 Id. 289; 7 Bingh. 99; 16 Ohio, 412. l-3 Campb. 451; 7 Bingh. 569; 12 Pick. 328. m-8 Ves. Ch. 48; 11 Id. 358; 17 Mass. 145; 2 Johns. Ch. 108. n-9 Beav. Rolls. 284; 5 Bos. & P. 136; 11 Ohio, 363. o-3 Chitty C. & M. 222. p-Story Ag. §§ 331–334; Paley Ag. 104, 105; Story Eq. Jur. § 468; 12 Pick. 328, 332, 334. q-2 Liverm. Ag. 11–13; Story Ag. §§ 335, 336; Story Bailm. §§ 196, 197, 357, 358; Paley Ag. 107, 108; 5 B. & C. 141; 3 Binn. 295; 11 Johns. 439; 4 Halst. Ch. 657. r-Story Ag. § 338; 2 Liverm. Ag. 17; 2 Bouv. Inst. 36; 15 East. 223; 3 Campb. 467; 7 Wend. 315; 3 Caines, 226; 3 Binn. 295. s-Story Ag. § 344; 1 Liverm. Ag. 14–21; 3 B. & C. 639. t-Story Ag. § 348; 12 Wend. 362; 12 Pick. 328, 332; 20 Id. 167. u-Story Ag. § 349; 2 T. R. 113; 8 Id. 204; 3 Brown, Ch. 314. v-2 Liverm. Ag. 34; Story Ag. §§ 350, 385; 4 Burr. 2133; 6 Cow. 181; 11 Pick. 482. w-Story Ag. § 373; 2 Liverm. Ag. 34; Paley Ag. 127. x-Story Ag. § 376; Paley Ag. 128, 129; 2 Kent Comm. 640; 26 Wend. 367; 10 Paige, Ch. 205. y-Story Ag. §§ 379–384; see "Bailments," "Liens." z-1 Liverm. Ag. 215. a-Story Ag. §§ 393, 394; 1 Liverm. 215–221; 3 Pick. 322; 16 Id. 381; 5 Vt. 500. b-Paley Ag. (Dunlap's Ed.) 861, note. c-Russell Fact. & B. 241, 244; Paley Ag. 361, note; Story Ag. § 393. d-12 Wend. 413; 5 M. & S. 833.

to sue the party with whom he has contracted for any damages which he may have sustained by reason of a breach of contract by the latter.[w]

3. The right of the agent to sue in his own name exists when, by the usage of trade, or the general course of business, he is authorized to act as owner, or as a principal contracting party, although his character as agent is known.[x]

4. Where the agent has made a contract in the subject-matter of which he has a special interest or property, he may enforce his contract by action, whether he held himself out at the time to be acting in his own behalf or not:[y] for example, an auctioneer who sells the goods of another may maintain an action for the price, although the sale be on the premises of the owner of the goods, because the auctioneer has a possession coupled with an interest.[z]

But this right of an agent to bring an action in his own name is subordinate to the rights of the principal, who may, unless in particular cases where the agent has a lien or some other vested right, bring a suit himself, and suspend or extinguish the right of the agent.[a]

An agent may maintain an action against third persons for injuries affecting the possession of his principal's property; and when he has been induced by the fraud of a third person to sell or buy goods for his principal, and he has sustained a personal loss, he may maintain an action against such third person for such wrongful act, deceit, or fraud.[b] But his remedy for mere torts is confined to cases like the foregoing, where his right of possession is injuriously invaded, or where he incurs a personal responsibility, or loss, or damage in consequence of the tort.[c]

SIGNATURE BY AN AGENT. If A. signs "A. for B.," this is the signature of A., and he is the contracting party, although he makes the contract at the instance and for the benefit of B. But if he signs "B. by A.," then it is the contract of B., made by him through his instrument A. In the first case A. is the principal; in the second, B. is the principal, and A. his agent. But with whatever technical inaccuracy the signature is made, it may be determined in each instance from the facts and the evidence, that a party is an agent or a principal, in accordance with the intention of the parties to the contract, if the words are sufficient to bear the construction.[d] But it is still requisite that the name of the principal appear as such in the signature of a deed.[e] Parol evidence may always be admitted to *charge* an unnamed principal; but not to discharge the actual signer.[f]

SUB-AGENTS. An agent can do for his principal only that which his principal authorizes, and if the principal appoint an agent to act for him as his representative in any particular business, this agent has not thereby a right to make another person the representative of his principal. A mere agent cannot generally appoint a sub-agent, so as to render the latter responsible to the principal,[g] but may when such is the usage of trade, or is understood by the parties to be the mode in which the particular business may be done.[h] The principal may, if he chooses, give this very power to his agent.[i] A substitute of an agent who has no power to employ him, cannot be held as the agent of the original principal; but is only the agent of the agent who employs him,[j] and who is accordingly *his* principal, and the person so employed is bound only to his immediate employer, and can look only to him for compensation.[k] But a substitute, appointed by an agent who has this power of substitution, becomes the agent of the original principal, and may bind him by his acts, and is responsible to him as his agent, and may look to him for compensation. If the agent has either express or implied authority to appoint a sub-agent he will not, ordinarily, be responsible for the acts or omissions of the substitute,[l] and this is especially true of public officers; but the sub-agent will himself be directly responsible to the principal for his own negligence or misconduct.[m] The agent of an agent is generally accountable only to his own principal, and not to the principal of the party for whom he acts; that is, only his immediate employer can call him to account.[n]

Where sub-agents are employed without the knowledge or consent of the principal, their remedy is against their immediate employer only, with regard to whom they will have the same rights, obligations, and duties as if the agent were the sole principal. But where sub-agents are ordinarily or necessarily employed in the business of the agency, the sub-agent can maintain his claim for compensation both against the principal and the immediate employers, unless the agency be avowed, and exclusive credit be given to the principal, in which case his remedy will be limited to the principal.[o]

A sub-agent will be clothed with a lien against the principal for services performed and

[w]-Russell Fact. & B. 243, 244; 2 B. & Ald. 962. [x]-Story Ag. § 393. [y]-1 Liverm. Ag. 215–219; Story Ag. § 393; 27 Ala. (N. S.) 215. [z]-2 Esp. 493; 1 H. Bl. 81, 84, 85. [a]-1 Liverm. Ag. 221; Story Ag. § 403; 3 Hill (N. Y.) 72, 73; 6 S. & R. 27; 4 Campb. 194. [b]-Paley Ag. 363; Story Ag. §§ 414, 415; 9 B. & C. 208; 3 Campb. 320; 1 H. Bl. 81; 1 B. & Ald. 50. [c]-Story Ag. §§ 329, 331; 1 C. & P. 384; 4 Id. 289; 7 Bingh. 99; 16 Ohio, 412. [d]-5 Wheat. 326, 337; 11 Mass. 197; 6 Cush. 54; 7 Id. 217; 2 East. 154; 3 Blackf. 55; 6 B. Mon. 612; 12 Ired. L. 95; 1 Busb. L. 422; 8 Texas, 98; 12 Id. 75; 21 Conn 627; 33 Me. 106; 3 Flor. 262; 9 Barb. 528; 4 Comst. 208; 32 E. L. & E. 127; 1 Duer. 89. [e]-Bac. Abr. *Leases* I. 14; 5 Pet. 319, 350; 9 M. & W. 79. [f]-12 Q. B. 310, 8 M. & W. 834; 11 A. & E. 594; 9 M. & W. 79; 11 Mass. 97; Id. 27; 16 Pick. 350; 9 N. H. 263; 7 Wend. 68; 10 Id. 87; 6 Whart. 79; 10 B. Mon. 347; Paine C. C. 252; 8 Met. 348; 1 Cal. 481; 10 B. & C. 671; 2 Cranch. 419; 7 Cush. 371; 5 Sanf. 101. [g]-Story Ag. § 13; 9 Co. 75; 3 Mer. 237; 2 Maule & S. 298, 301; 1 Y. & J. Exch. 387; 4 Mass. 597; 12 Id. 241; 1 Hill, 501; 13 B. Mon. 400; 12 N. H. 226; 2 Story C. C. 411. [h]-9 Ves. Ch. 234; 1 Maule & S. 484; 2 Id. 301; 6 S. & R. 386; 1 Ala. (N. S.) 249; 3 Johns. 167. [i]-Bunb. 166; 1 Vent. 338–339; 1 Freem. 476. [j]-6 Q. B. 930; 11 Id. 248. [k]-33 Me. 341. [l]-2 Bos. & P. 438; 2 Maule & S. 301; 1 Wash. C. C. 479; 8 Cow. 198. [m]-Story Ag. §§ 201, 217 *a*; 2 Gall. C. C. 565; 8 Cow. 198. [n]-3 B. & Ald. 354; 5 Taunt. 447; Mad. & G. 360. [o]-1 Liverm. Ag. 64-66; Story Ag. §§ 386, 387; Paley Ag. 49; 6 Taunt. 147.

disbursements made by him on account of the sub-agency, whenever a privity exists between them.[n] He will acquire a lien against the principal if the latter ratifies his acts, or seeks to avail himself of the proceeds of the sub-agency, though employed by the agent without the knowledge or consent of the principal.[o] He may avail himself of his general lien against the principal by way of substitution to the rights of his immediate employer, to the extent of the lien of the latter.[p] And there are cases in which a sub-agent, who has no knowledge or reason to believe that his immediate employer is acting as an agent for another, will have a lien on the property for his general balance.[q]

Arbitrators are private extraordinary judges, to whose decision matters in controversy are referred by consent of the parties. REFEREE is used as a synonym of arbitrator, but is in its origin of broader signification, and less accurate than arbitrator.

Appointment. Usually a single arbitrator is agreed upon, or the parties each appoint one, with a stipulation that, if they do not agree, another person, called an UMPIRE, named or to be selected by the arbitrators, shall be called in, to whom he matter is to be referred.[r] The jurisdiction of the umpire and arbitrators cannot be concurrent; if the arbitrators make an award it is binding; if not, the award of the umpire is binding.[s] If the umpire sign the award of the arbitrators, it is still their award, and *vice versa*.[t] Arbitrators may appoint an umpire after their term of service has expired, if the time has not gone within which the umpire was to make his award.[u] Subsequent dissension of the parties without just cause will have no effect upon the appointment; but they should have notice.[v] If an umpire refuse to act, another may be appointed as often as the thing shall happen.[w] In general, any objection to the appointment of an arbitrator or umpire will be waived by attending him.[x] Any person selected may be an arbitrator, notwithstanding natural incapacity, or legal disability, as infancy, coverture, or lunacy,[y] or disqualification on account of interest, provided it be known to the parties at the time of making the submission.[z]

Duties and powers. Arbitrators cannot delegate their authority; it is a personal trust.[a] The power ceases with the publication of the award;[b] and death after publication and before delivery does not vitiate it.[c] They cannot be compelled to make an award,[d] or disclose the grounds of their judgment.[e] An arbitrator may retain the award till paid for his services, but cannot maintain an action for them without a promise,[f] which may be implied from circumstances.

Proceedings. Arbitrators proceed on the reference as judges, not as agents of the parties appointing them.[g] They should give notice of the time and place of proceeding to the parties interested.[h] They should all conduct the investigation together, and should sign the award in each other's presence;[i] but a majority is sufficient.[j] In investigating matters in dispute, they are allowed the greatest latitude.[k] They are judges both of law and fact, and are not bound by the rules of practice adopted by courts.[l] They may decide in justice and honesty, and need not follow the law; the award will be set aside only when it appears that they meant to be governed by the law but have mistaken it.[m]

Revocation of powers of arbitrators may occur at the pleasure of either party at any time before final award.[n] It is not competent for the parties to deprive themselves of this power by any form of contract.[o] But when the submission releases the original cause of action, and the adversary revokes, the party so releasing may recover the amount so released by way of damages caused by the revocation.[p] Where the submission is made a rule of court it becomes practically irrevocable, since such an act

n-2 Liverm. Ag. 87-98; Paley Ag. 148, 149; Story Ag. § 388; 2 Campb. 218, 597; 2 East. 523; 6 Wend. 175. **o**-Story Ag. § 389; 2 Campb. 218, 597, 598; 4 Id. 348, 353. **p**-Story Ag. § 389; 1 East. 335; 2 Id. 523, 529; 7 Id. 7; 6 Taunt. 147. **q**-2 Liverm. Ag. 87-92; Paley Ag. 148, 149; Story Ag. § 390; 4 Campb. 60, 349; 353. **r**-Caldw. Arb. 99; 2 Vern. 485; 16 East. 51; 9 Barn. & C. 624; 3 Barn. & Ald. 248; 5 Barn. & Ad. 488; 7 Scott, 841; 9 Ad. & E. 699; 6 Harr. & J. 403; 17 Johns. 405; 1 Barb. 325; 2 M'Cord, 279; 4 Rand. 275; 15 Vt. 548; 2 Bibb. 88; 4 Dall. 471; 9 Ind. 150. **s**-T. Jones, 167. **t**-6 Harr. & J. 403. **u**-2 Johns. 57. **v**-11 East. 367; 12 Met. (Mass.) 293; 1 Harr. & J. 362, n. **w**-See 2 Saund. 1133, *a*. note. **x**-2 Eng. L. & Eq. 284; 9 Ad. E. 679; 8 East. 344; 1 Jac. & W. 511; 1 R. & M. 17; 3 Ind. 277; 9 Penn. St. 254, 487; 10 B. Mon. 536. **y**-Watson Abr. 71; Russel Abr. 107; Viner. Abr. *Arb.* A. 2; 8 Dowl. 879; 1 Pet. 288; 7 W. & S. 142; 26 Miss. 127, *contra* Com. Dig. *Abatement* B. C. West. Symb. *Compr.* p. 164, §§ 23, 26; Brooke Abr. 10 Ad. & E. 775; 10 Q. B. 7. **z**-9 Bingh. 672; 2 Vern. 251; 1 Dowl. 611; 5 Id. 247; 4 Mod. 226; 1 Jac. & W. 511; 1 Cai. 147; 1 Bibb. 148; Hardin. 318; 14 Conn. 26; 26 Miss. 127; 27 Me. 251; 2 E. D. Smith, 32. **a**-2 Atk. Ch. 401; Cro. Eliz. 726; 9 Dowl. Parl. Cas. 1044; 6 C. B. 258; 4 Dall. 71; 7 S. & R. 228; 1 Wash. C. C. 448. **b**-9 Mo. 30. **c**-21 Ga. 1. **d**-Story Eq. Jur. § 1457; Kyd. Aw.; 2 Ed. 100. **e**-3 Atk. 644; 7 S. & R. 448; 5 Md. 253; 19 Mo. 373. **f**-8 East. 12; 4 Esp. 47; 2 Mann. & G. 847, 870; 3 Q. B. 466, 928; but see 1 B. & P. 93; *Contra* 1 Denio, 188; 29 N. H. 48. **g**-1 Ves. Ch. 226; 9 Id. 69. **h**-3 Atk. 529; 8 Md. 208; 6 Harr. & J. 403; 3 Gill, 31; 7 Id. 488; 24 Miss. 346; 23 Wend. 628; 6 Cow. 103; 12 Met. (Mass.) 293; 1 Dall. 81, 4 Id. 432; 1 Conn. 498; 17 Id. 309; 2 N. H. 97; 6 Vt. 666; 3 Rand. 2; Hardin, 46; 32 Me. 455, 513. **i**-4 Me. 468. **j**-1 Wash. C. C. 448; 11 Johns. 402; 3 R. I. 192; 30 Penn. St. 384; 2 Dutch. 175; 9 Ind. 150; 7 Id. 669; 14 B. Mon. 292; 21 Ga. 1. **k**-13 East. 251; 9 Bingh. 679; 1 Bos. & P. 91; 7 Beav. Rolls, 455; 14 M. & W. 264; 5 C. B. 211, 581; 6 Cow. 103; 1 Hill, 319; 1 Sandf. 681; 1 Dall. 161; 6 Pick. 148; 10 Vt. 79; 2 Bay. 370; 1 Bail. 46; but see 1 Halst. 386; 1 Wash. 193; 4 Cush. 111; 7 Hill, 463; 3 Johns. Cas. 224; 1 Binn. 458. **l**-3 Atk. Ch. 486; 1 Ves. Ch. 369; 1 Price, 81; 11 Id. 57; 13 Id. 533; 1 Swanst. 28; 1 Taunt. 52, n.; 6 Id. 255; 13 East. 358; 9 Bingh. 681; 2 Barn. & Ald. 692; 3 Id. 239; 4 Ad. & E. 347; 7 Id. 601; 1 Dowl. & L. 465; 1 Dowl. & R. 366; 17 How. 344; 2 Gall. C. C. 61; 7 Met. (Mass.) 316, 486; 36 Me. 19, 108; 2 Johns. Ch. 276, 368; 3 Duer, 69; 1 E. D. Smith, 85, 265; 5 Md. 353; 19 Penn. St. 431; 21 Vt. 99, 250; 25 Conn. 66; 16 Ill. 34, 99; 12 Gratt. 554; 7 Ind. 49; 2 Cal. 64, 122; 23 Miss. 272; thus, the witnesses were not sworn; Hill & D. 110; 28 Vt. 776. **m**-9 Ves. 364; 14 Id. 271; 3 East. 18; 13 Id. 351; 4 Tyr. 997; 2 C. B. 705; 3 Id. 705; 2 Gal. C. C. 61; 1 Dall. 487; 6 Pick. 148; 6 Met. (Mass.) 131; 7 Id. 486; 6 Vt. 529; 21 Id. 250; 4 N. H. 357; 1 Hall, 598; see 19 Mo. 373. **n**-20 Vt. 198. **o**-8 Co. 80; 16 Johns. 205. **p**-13 Vt. 97.

would be regarded a contempt of court and punishable by attachment.[q] This is the only mode of making a submission irrevocable.[r] A submission by rule of court is made irrevocable by the express provisions of the statutes of most of the States, and the referee is required, after due notice, to hear the case *ex parte* where either party fails to appear. See GENERAL STATUTES.

The form of the revocation is not important if it be in conformity with the submission; or if, when it is not, it be acquiesced in by the other party.[r] The revocation should, in general, be of as high a grade of contract as the submission.[s] Where the submission is in writing the revocation ought to be in writing;[t] and however the form of revocation is expressed it must be distinct and intelligible.[u]

A party may revoke the submission by any act which renders it impracticable for the arbitrators to proceed.[v]

Where the arbitrators decline to act it will operate as a revocation of the submission.[w]

Bankruptcy of a party does not operate to revoke a submission to arbitration,[x] though it may justify the other in revoking.[y]

The death of either party, or of an arbitrator, or of one of them, will operate as a revocation of the submission. It is competent to make provision in the submission for the completion of the award notwithstanding the death of one of the parties, by proceedings in the name of the personal representative.[z] Where the submission is by rule of court, and the cause of action survives, this provision is not necessary, it may be revived and prosecuted in the name of the personal representative.[a]

The power of the arbitrator is determined and destroyed by the occurrence of any fact which incapacitates the party from proceeding with the hearing.

Insanity in either party, or in an arbitrator, will determine and destroy the authority to proceed.

The marriage of a single woman is a revocation of the arbitrators' power.[b] So, also, if she is joined with another in the submission her marriage is a revocation as to both.[c] The exceptions to this rule are purely statutory.

The bringing of a suit upon the same cause of action embraced in the submission, at any time before the award, is an implied revocation.[d]

When one party to a submission consists of several persons one cannot revoke without the concurrence of the others,[e] though his death would operate as a revocation on the part of the party of which he was one, but if the cause of action survived, his personal representative might be substituted in his stead.

Where the revocation is by the express act of a party it will be effectual when notice reaches the arbitrator.[f] But in case of death, insanity, or marriage, either of these events of themselves terminates the power of the arbitrator at once, and all acts done by him thereafter are absolutely void.[g]

Submission is the agreement, oral or written, by which parties agree to submit their differences to the decision of a referee or arbitrators. It is sometimes termed a reference.[h]

Any matter may be determined by arbitration, which the parties may adjust by agreement, or which may be the subject of a suit at law. Crimes, however, and, perhaps, actions on penal statutes by common informers, cannot be made the subject of arbitration and composition by arbitration.[i] Disputes respecting rent, or tithes, charges of slander, breaches of contract, matters of account, trespass to person or property, etc., etc., may be submitted to arbitration.[j] Parties may by parol submit any matters in controversy between them to arbitration; and this is the common law of the land.[k] And, notwithstanding the statutes, parties may submit to arbitration as at common law.[l] When a statute provides a new, and does not abrogate the old mode, and parties may adopt either mode at their own election, but they cannot pursue both at the same time.[l] Any one capable of making a disposition of his property, or release of his right, or capable of suing or being sued, may make a binding submission to arbitration; but one under civil or natural incapacity cannot be bound by his submission.[m] In general, in cases of incapacity of the real owner of the property, as well as in many cases of agency, the person who has the legal control of the property may make the submission; *including* a husband for his wife;[n] a parent or guardian for an infant;[o] but not a *guardian ad litem*;[p] a trustee for his *cestui que trust*;[q] an attorney for his client;[r] an

q-12 Mass. 47; 1 Com. 498; 3 Halst. 116; 4 Me. 459; 1 Bingh. 42; 5 Penn. St. 497; 3 Ired. 333; see also 19 Ohio St. 245; 5 Paige Ch. 575; 11 Id 529 r-7 Vt. 237. s-Caldw. Arb. 79; 8 Co. 82; Brownl. 62; 8 Johns. 125. t-18 Vt. 91; see 7 Vt 237, 240; 15 N. H. 468; and 8 Ired. 74; 26 Me. 251. u-1 Cow. 325. v-1 Salk. 73; 7 Mod. 8; Story Ag. § 474. w-Caldw. Arb. 90; 1 Marsh. 366; 17 Ves. Ch. 241; 4 Monr. 3; 3 Swanst. Ch. 90; 1 B. & C. 66. x-Caldw. Arb. 89. y-9 B. & C. 659; but see 2 Chitty Bailm. 43; 1 C. B. 131. z-3 B. & C. 144; 3 Bingh. 20; 4 Id 143, 435; 6 Bingh. N. C. 158; 8 M. & W. 873. a-15 Mass. 79; 3 Halst. 116; 3 Gill, 190; 2 Gill & J. 475. b-2 Keble, 865; 11 Vt. 575. c-W. Jones, 338; Rolle Abr. *Authority*. d-6 Dana, 107; Caldw. Arb. (Smith's Ed. 1860), 80 Am. notes. e-Caldw. Arb. 77, 78; 1 Brownl. 62 Ralle Abr. *Authority* (H.); 12 Wend. 578; but see Russel Arb. 147; Chitty Bailm. 542. f-Caldw. Arb. 80; 5 B. & Ald. 507; 8 Co. 80. g-1 Rolle Abr. *Authority* (I. 4.); 11 Vt. 525; 5 East. 266. h-Enclyc. Am. *Arb.* Kyd. Arb. 11; Caldw. Arb. 16; 17 Ves. Ch. 419; 6 Bingh. 506; 3 M. & W. 816; 6 Watts, 359; 16 Vt. 663; 4 N Y. 157; 2 Barb. Ch. 430. i-Caldw. Arb. 12; Com. Dig. Arb. (D. 3, 4); 5 Wend. 111; 2 Cow. 638; 3 Caines, 320; 9 Johns. 38; 13 S. & R. 319; 2 Rawle, 341; 7 Com. 345; 4 N. H. 177; 16 Miss. 298; 16 Vt. 450; 10 Gill & J. 192; 5 Munf. 10; 4 Dallas, 120. j-7 Kas. 349. k-Id. p. 350. l-3 Wis. 249; 1 Chand. 219. m-Watson Arb. 65; Russell Arb. 20; 2 P. Wms. 45-50; 9 Ves. Ch. 350; 1 Dowl. & L. 145; 8 Me. 316; 11 Id. 326; 2 N. H. 484; 8 Vt. 472; 16 Mass. 396; 5 Conn. 367; 1 Barb. 584; 14 Johns. 302; 5 Wend. 20; 5 Hill, 419; 2 Rob. 761; 6 Munf. 458; Paine C. C. 646; 1 Wheat. 304; 5 How. 83. n-Str. 351; 5 Ves. 846. o-Latch. 207; March, 111, 141; Freem. Ch. 62, 139; 1 Wils. 28; 11 Me. 326; 12 Conn. 376; 3 Caines, 253. p-9 Humph. (Tenn.) 129. q-3 Esp. 101; 2 Chitt. Bail. 40; 1 Lutw. 571. r-1 Wils. 28, 58; 1 Salk. 70; 1 L. Raym. 246; 12 Mod. 129; Dy. 217, *b*; 12 Ala. 252; 9 Penn. St. 101; 19 Id. 418; 23 Id. 393; 1 Park. Cr. Cas. 387; 2 Hill, 271; 4 Monr. 375; 8 Cranch. 476; but see 6 Weekly R. 10.

agent duly authorized for his principal;[t] an executor or administrator at his own peril, but not thereby necessarily admitting assets:[u] assignees under bankruptcy and insolvency laws under statutory restrictions, the right being limited in all cases to that which the person acting can control and legally dispose of,[v] *but not including* a partner for a partnership.[w]

The submission which defines and limits, as well as confers and imposes the duty of the arbitrator, must be followed by him in his conduct of the award: but a fair and liberal construction is allowed in its interpretation.[x] If general, it submits both law and fact.[y] If limited, the arbitrator cannot exceed his authority.[z]

The award is the judgment or decision of arbitrators, or referees, or umpires, on the matter submitted to them. The writing containing such judgment.[a] A court has no power to alter or amend an award.[b]

—— *Enforcement.* An award may be enforced by an action at law, which is the only remedy for disobedience when the submission is not made a rule of court, and no statute provides a special mode of enforcement.[c]

—— *Form.* The award should, in general, follow the terms of the submission, which frequently provides the time and manner of making and publishing the award. It may be oral or written, or by deed.[d] It should be signed by all the arbitrators in the presence of each other. An award will be sustained by a liberal construction, that it may be supported sooner than be lost.[e]

—— *Effect.* An award is a final and conclusive judgment between the parties on all the matters referred by the submission. It transfers property as much as the verdict of a jury, and will prevent the operation of the statute of limitations.[f] A verbal or written award following a verbal or written submission will have the same effect as an agreement of the same form directly between the parties.[g] The right of real property cannot thus pass by mere award; but no doubt an arbitrator may award a conveyance or release of land, and require deeds, and it will be a breach of the agreement and arbitration bond to refuse compliance; and courts will sometimes enforce this specifically.[h]

Arbitrament and award may be pleaded to an action concerning the same subject-matter, and will bar the action.[i] To an action on the award nothing can be pleaded against the award; not even fraud.[j]

To be conclusive, the award should be consonant with, and follow the submission, and affect only the parties to the submission; otherwise, it is an assumption of power, and not binding.[k] It must be final and certain,[l] conclusively adjudicating *all* the matters submitted,[m] and stating the decision in such language as to leave no doubt of the arbitrator's intention, or the nature and extent of the duties imposed by it on the parties.[n] It must be possible to be performed, and must not direct anything to be done which is contrary to law.[o] It must be without palpable or apparent mistake.[p] An award may be in part good, and in part void; in which case it will be enforced so far as valid, if the good part is separable from the bad.[q]

t-4 Taunt. 378, 386; 8 Barn. & C. 16; 5 Id. 141; 8 Vt. 472; 11 Mass. 479; 5 Green (N. J.) 38; 29 N. H. 405; 8 N. Y. 160. u-2 Str. 1144; 5 T. R. 6; 7 Id. 453; 5 Mass. 15; 20 Pick. 584; 6 Leigh. 62; 5 Monr. 240; 6 Conn. 621; see 5 Bing. 200; 1 Barb. 419; 3 Harr. N. J. 442. v-6 Mass. 78; 6 Munf. 453; 4 Monr. 240; 21 Miss. 133. w-3 Bing. 101; Holt, 143; 1 Cr. M. & R. 681; 1 Pet. 221; 19 Johns. 137; 2 N. H.; 5 Gill & J. 412; 12 S. & R. 243; Coll. Part. §§ 439, 470; 3 Kent Comm. 49. x-1 Wms. Saund.; 95 Cro. Car. 226; 11 Ark. 477; 3 Penn. St. 114; 13 Johns. 187. y-7 Ind. 49. z-11 Cush. 37. a-Cowel, Jenk. Cent. Cas. 137; Billings Aw. 119 Watson Arb. 174; Russel Arb. 234; 3 Bouv. Inst. n. 2402, *et seq.* b-1 Dutch. 130; 5 Cal. 179; 12 N. Y. 9; 41 Me. 355. c-6 Ves. 815; 17 Id. 232; 19 Id. 431; 1 Swanst. 40; 2 Chitt. 316; 5 East. 266; 5 Barn. & Ald. 507; 4 Barn. & C. 103; 1 Dowl. & R. 106; 3 C. B. 475. d-3 Bulstr. 311; 20 Vt. 189. e-2 N. H. 126; 8 Pick. 534; 4 Wis. 181; 8 Md. 208; 8 Ind. 310; 17 Ill. 477; 29 Penn. St. 251; Reed. Aw. 170. f-3 Bl. Comm. 16; 1 Freem. Ch. 410; 4 Ohio, 310; 5 Cow. 383; 15 S. & R. 166; 1 Cam. & N. 93. g-37 Me. 72; 15 Wend. 99; 27 Vt. 241; 16 Ill. 34; 5 Ind. 220; 1 Ala. 278; 6 Litt 264; 2 Coxe, 369; 7 Cranch. 171; h-2 L. Raym. 115; 3 East. 15; 6 Pick. 148; 4 Dall. 120; 16 Vt. 450, 592; 15 Johns. 197; 5 Wend. 268; 2 Cai. 320; 4 Rawle, 411, 430; 7 Watts. 311; 11 Conn. 240; 18 Me. 251; 28 Ala. (N. S.) 475. i-Watson Arb. 256; 12 N. Y. 9; 41 Me. 355. j-23 Barb. 187; 28 Vt. 81, 776; *contra* 9 Cush. 560. k-Lutw. 530; Str. 903; 1 Ch. Cas. 186; Rep. *temp.* Finch. 141; 24 Eng. L. & Eq. 346; 8 Barb. 361; 5 Barn. & Ad. 295; 13 Johns. 27, 268; 11 Id. 133; 17 Vt. 9; 3 N. H. 82; 13 Mass. 396; 11 Id. 447; 22 Pick. 144; 11 Cush. 37; 18 Me. 251; 40 Id. 194; 25 Conn. 71; 3 Harring. (Del.) 22; 1 Binn. 109; 5 Penn. St. 274; 12 Gill & J. 156, 456; Litt. Sel. Cas. 83; 13 Miss. 172; 25 Ala. 351; 7 Cranch. 599; see 7 Sim. 1; 2 Q. B. 256; 11 Johns. 61; 1 Call. 500; 7 Penn. St. 134. l-1 Burr. 275; 5 Ad. & E. 147; 2 Sim. & S. 130; 2 Vern. 514; 2 Bulstr. 260; 3 S. & R. 340; 1 Id. 395; 9 Johns. 43; 13 Id. 187; 22 Wend. 125; 23 Barb. 187; 3 Sandf. 405; 7 Met. (Mass.) 316; 4 Cush. 317, 396; 1 Gray, 418; 13 Vt. 53; 40 Me. 194; 2 Green. N. J. 333; 2 Halst. 90; 1 Dutch. 281; 2 Id. 175; 3 Harr. & J. 383; 2 Harr. & G. 67; 6 Md. 135; 4 Md. Ch. 199; 1 Gilm. (Va.) 92; 2 Patt. & H. 442; 3 Ohio, 266; 5 Blackf. 128; 4 Id. 489; 1 Ired. 466; Busb. 173; 3 Cal 431; 1 Ark. 206; 4 Ill. 428; 2 Fla. 157; 13 Miss. 712; Charlat. 289; 2 M'Cord, 279; 5 Wheat. 394; 11 Id. 446; 12 Id. 337; and see 4 Conn. 50; 6 Johns. 39; 6 Mass. 46. m-6 Md. 135; 1 McMull. 305; 2 Cal. 209. n-2 Cal. 299, and cases above; an award reserving the determination of future disputes, 6 Md. 135; or directing a bond without naming a penalty, 5 Co. 77; Roll. Abr *Arb.* 2, 4; or that one shall give security for the performance of some act or payment of money, without specifying a kind of security, are invalid, Vin. Abr. *Arb.* 212; Bac. Abr. *Arb.* E. 11, and cases above. o-1 Ch. Cas. 87: 5 Taunt. 454; 12 Mod. 585; 2 Barn. & Ald. 528; Kirb. 253; 1 Dall. 364; 4 Id. 298; 4 Gill & J. 298; it will be void if it direct a party to pay a sum of money at a day past, or direct him to commit a trespass, felony, or an act which would subject him to an action; 2 Chitt. 594; 1 M. & W. 572; or if it be of things nugatory and offering no advantage to either of the parties, 6 J. B. Moore, 713. p-2 Gall. C. C. 61; 3 B. & P. 371; 1 Dall. 487; 6 Met. (Mass.) 131; for if the arbitrator acknowledges that he made a mistake, or if an error (in computation for instance) is apparent on the face of the award, it will not be good, 4 Zab. 647; 2 Stockt. 45; 2 Dutch. 130; 32 N. H. 289; 11 Cush. 549; 18 Barb. 344; 2 Johns. Ch. 399; 27 Vt. 241; 8 Md. 208; 4 Call. 345; 5 Id. 430; for although an arbitrator may decide contrary to law, yet if the award attempts to follow the law, but fails to do so from the mistake of the arbitrator, it will be void, 3 Md. 353; 15 Ill. 421; 26 Vt. 416, 630; 4 N. H. 647; 17 How. 344. q-10 Mod. 204; 12 Id. 587; Cro. Jac. 664; 2 Leon, 304; 3 Lev. 413; Godb. 164; 8 Taunt. 697; 1 Wend. 326; 5 Cow. 197; 13 Johns. 264; 2 Cai. 235; 1 Me. 300; 11 Cush. 37; 6 Green (N. J.) 247; 1 Dutch. 281; 1 Rand. 449; 1 Hen. & M. 67; Hardin, 318; 5 Dana. 492; 26 Vt. 345; 2 Swanst. 213; 2 Cal. 74; 4 Ind. 248; 6 Harr. & J. 10; 5 Wheat. 394.

—— *Setting aside.* An award will not be disturbed except for very cogent reasons. It will be set aside for misconduct, corruption, or irregularity of the arbitrator, which has, or may have, injured one of the parties.[r] For error in fact, or in attempting to follow the law, apparent on the face of the award; for uncertainty or inconsistency; for an exceeding his authority by the arbitrator;[s] when it is not final and conclusive, without reserve; when a party or witness has been at fault, or has made a mistake; or when the arbitrator acknowledges that he has made a mistake or error in his decision.

ARBITRATION FORMS.

For additional forms see PLEADINGS.

Arbitration—Submission Agreement.

A General Form—Of all matters in difference, etc.

Where the parties intend to refer *all* disputes, the terms of the reference should be, "of all matters in difference between the parties;" but where the reference relates to matter in a particular cause only it should be, "of all matters of difference in the cause ——."[t]

Know all men by these presents:

That we, the undersigned, do hereby mutually agree to submit all the matters in difference between us, of every name, kind, and nature, to the determination and award of A. R., (of ——), as arbitrator, [*or* A. R., B. I., and T. R. (*all of* ——), as arbitrators].

That said arbitrator (*or* arbitrators, *or* any two of said arbitrators) shall hear and determine the same [*insert if desirable*, and award the payment of the costs (and expenses) incurred in such arbitration].

That said arbitrator shall make his (*or* their) award in writing, on or before the —— day of ——, A. D. ——.

(*Signed*) A. B.
C. D.

[*Witnesses.*]

Arbitration—Submission Agreement.

General Form—Of all matters in variance.

Know all men by these presents:

That divers disputes and controversies have arisen and are now depending between A. B., of ——, and C. D., of ——, touching and concerning (*state what*).

That, for the deciding and ending the same, it is hereby mutually agreed, by and between said parties, that all matters in variance between them, touching and concerning all and every matter and thing above mentioned and specified, shall be referred to the arbitrament and determination of A. R., B. I., and T. R., or any two of them.

That said award shall be made on or before the —— day of ——, and a copy thereof delivered to either or both of said parties desiring the same.

[*Witnesses.*] (*Signed*) A. B.
C. D.

Arbitration—Submission Agreement.

General Form—Of all suits, controversies, etc.

Know all men by these presents:

That we, the undersigned, A. B. (of ——,) and C. D., (of ——,) do hereby mutually agree to and with each other, to submit all and all manner of actions, cause and causes of actions, suits, controversies, claims and demands whatsoever, now pending, existing or held by and between us, to A. R., (of ——,) as arbitrator, who shall [*or* to A. R., B. I., and T. R., (*all of* ——), who, or any two of whom, shall] arbitrate, award, order, judge, and determine of and concerning the same [*insert if desired*, with power to award the payment of the costs (and of the expenses) incurred in such arbitration.]

That we do mutually agree to and with each other, that the award to be made by the said arbitrator (*or* arbitrators, *or* any two of said arbitrators) shall in all things by us, and each of us (and our respective heirs, executors, administrators, and assigns), be well and faithfully kept and performed.

That such award shall be made in writing, under the hand of said arbiter (*or* arbiters, *or* any two of said arbiters), ready to be delivered to us, or either of us, on or before the —— day of ——, A. D. ——.

Witness our hands, this —— day of ——, A. D. ——.

(*Signed*) A. B.
C. D.

[*Witnesses.*]

Arbitration—Submission Agreement.

General Form—Of all matters, differences, etc.

Know all men by these presents:

That differences have for a long time existed, and are now existing and pending, between A. B., of ——, and C. D., of ——, in relation to divers subjects of controversy and dispute.

That we, the said A. B. and C. D., do hereby submit said differences to the arbitrament of A. R. B. I., and T. R., or any two of them, to arbitrate award, order, judge and determine of and concerning all manner of actions, suits, bills, bonds, specialties, executions, quarrels, controversies trespasses, damages, debts, claims, demands, and all and every other subject of difference whatsoever, at any time heretofore had, possessed, instituted, sued out, prosecuted, made, began, pending, existing, done, or suffered to be done, committed, or pending, by and between said parties, directly or indirectly.

That said award shall be made in writing, under the hands of said arbitrators, or any two of them, ready to be delivered to said parties, or such of them as shall desire the same, on or before the —— day of ——.

That said award shall, in all things, by us, and each of us, be well and faithfully kept, observed and performed.

Witness our hands (and seals) this —— day of ——.

A. B. (*Seal.*)
W. T., N. S., *Witnesses.* C. D. (*Seal.*)

Arbitration—Submission Agreement.

General Form, by Administrators, Corporations, etc.

Know all men by these presents:

That A. D. and M. R. are administrators of the estate of D. D., deceased.

That the R. C. is a railway corporation created and existing under the act of the legislature (*or* General Assembly) of the State of ——.

That (*here insert the matters or thing in controversy*).

That said administrators and said corporation, by A. A., its agent, hereunto lawfully authorized, do by these presents nominate and appoint A. R., B. I., and T. R. arbitrators between them, and to whom they refer the consideration of said differences, to hear and determine the same, etc. (*as in other cases*).

In witness, etc.

Arbitration—Submission Agreement.

General Form, with provision for an Umpire, etc.

Know all men by these presents:

That controversies exist and have for a long time existed between A. B., of ——, and C. D., of ——.

That said A. B. and C. D. do hereby mutually agree to and with each other to submit all and all manner of actions, cause and causes of action, suits, controversies, claims and demands whatsoever, now pending, existing, or held by and between them to (A. R., of ——, as arbitrator, who shall, *or* to A. R., B. I., and T. R., all of ——, as arbitrators), who (*or* any two of them) shall arbitrate, award, determine, judge, and order of and concerning the same.

That said arbitrators shall have power to award payment of the costs and expenses incurred in said arbitration.

That said award shall be made in writing, under the hands of said arbitrators, ready to be delivered to us, or either of us, on or before the —— day of ——.

That in case said arbitrators do not make their award on or before said day, then the matters and things above submitted shall be, and are by these presents submitted to the decision of such third person as shall be then, or shall theretofore have been appointed (in writing and indorsed hereon) by said arbitrators to act and arbitrate of and concerning said premises, and make his award

[r] 2 Eng. L. & Eq. 184; 5 Barn. & Ad. 488; 1 Hill & D. 103; 13 Gratt. 535; 14 Tex. 56; 28 Penn. St. 514; 29 Vt. 72. [s] 22 Pick. 417; 4 Den. 191. [t] 3 T. R. 628; 2 Chitty Bl. 17, *n.*

and umpirage in writing on or before the —— day of ——.

That said parties do mutually covenant to and with each other that the award (and umpirage) made as aforesaid shall by each of them and their legal representatives be well and faithfully kept, observed, and performed.

Witness our hands, etc. (*Signed*) A. B.
W. T., N. S. (*witnesses*). C. D.

Arbitration—Submission Agreement.

Special Form—Of particular matters only.

Know all men by these presents:

That a controversy is now existing and pending between A. B., of ——, and C. D., of ——, in relation to (*state what, as:* an exchange of horses between said parties at ——, on the —— day of ——, last past, whereby, etc., *stating the matters of difference*).

That said A. B. and C. D. do hereby submit said controversy to the arbitrament of A. R., B. I., and T. R., or any two of them.

That said award shall be made in writing under the hands of said arbitrators, or any two of them, ready to be delivered to said parties, or such of them as may desire the same, on or before the —— day of —— next.

That said award shall in all things by us and each of us be well and faithfully kept, observed, and performed.

Witness our hands, etc. A. B.
W. T., N. S. (*witnesses*). C. D.

Clauses to be inserted in the preceding forms according to circumstances:

CONCERNING ACCOUNTS.

That a controversy has arisen between said parties concerning an account (a copy of which is hereunto attached, marked A.), and is to whether said A. B. ever delivered the (*state what*), mentioned therein, or any part thereof; and if so, the value and price thereof, and within what time said C. D. shall pay the balance due upon said account.

CONCERNING ANNUITY.

That W. B., widow of A. B., deceased, was entitled to dower in the following described real estate, which had belonged to said A. B. in his lifetime, situated in ——, to wit (*describing it*).

That said real estate was sold by H. B., heir of said A. B., to P. R., said W. B. agreeing to take as her share thereof the quarterly sum of —— dollars, to be secured and paid to her during her lifetime in lieu of said dower.

That a controversy has arisen between said parties as to what quarterly sum is a fair equivalent in lieu of said dower, and what amount of security, and the nature thereof, is necessary to be given by said H. B. to W. B.

CONCERNING BOUNDARIES.

That a controversy exists between the undersigned A. B. and C. D., concerning the boundary and division lines of the following described tracts and parcels of land situated in ——, to wit (*describing them and stating the parts in controversy*).

CONCERNING HORSE TRADE.

That a controversy exists between A. B. and C. D. concerning an exchange of horses made between them at ——, in ——, on the —— day of ——, wherein it is claimed by said A. B. that the horse exchanged by said C. D. was by him warranted sound in every respect, and that thereby said A. B. was induced to make said exchange. That said horse was not at the time of said exchange sound as warranted in this (*state what*).

CONCERNING PARTNERSHIP.

That A. B., C. D., and E. F. are partners doing business under the firm-name of A. B. & Co., and are about to dissolve said partnership.

That a controversy exists between said partners concerning the settlement of the firm-business, and the business transactions and claims by and between said parties subsequent to the —— day of —— last.

CONCERNING SUIT PENDING.

That this submission shall not operate a discontinuance of the action, No. —, entitled A. B. vs. C. D., etc., now pending in the —— Court, in ——, without an award made pursuant to the terms hereof, and that its effect as to such suit shall be merely to stay proceedings until such discontinuance, or until said submission shall become imperative or be revoked.

CONCERNING TITLE AND TRESPASS.

That a controversy exists between A. B. and C. D. concerning the title and right of possession of the following real estate, situated in —— (*describing it*), whereon various trespasses have been committed by C. D. and his servants, in this (*stating the nature of the trespasses and amount of damage*).

Another.

That A. B., of ——, claims the title and right of possession of the following described premises, situated in —— (*describing them*).

That C. D., of ——, claiming title thereto, and right of possession, with his servants, entered upon said premises and (*state what damage was done*).

That by reason thereof said A. B. claims to have sustained —— dollars damage.

CONCERNING WAGES.

That a controversy exists between A. B. and C. D. concerning wages due said C. D. for services heretofore rendered said A. B. as ——, from the —— day of —— unto the —— day of ——, wherein C. D. claims (*state what*), and A. B. claims (*state what*).

CONCERNING WARRANTY BREACH.

That a controversy exists between A. B. and C. D. concerning a certain (horse) sold by said A. B. to C. D., at ——, in ——, on the —— day of ——, upon the sale of which said A. B. warranted said (horse) to be sound in every respect, and which (horse) it is alleged was not, at the time of such sale, sound as warranted.

Arbitration—Bond.

With Sureties.

Know all men by these presents:

That A. B. and C. D. have, this —— day of ——, A. D. ——, submitted all their matters in difference, of every name, kind, and nature, to A. R. (B. I., and T. R.), to arbitrate, award, order, judge and determine of and concerning the same.

That we, the undersigned, bind ourselves to A. B. (*or* C. D.) in the sum of —— dollars, that said C. D. (*or* A. B.) shall submit to the decision and award of said arbitrator (*or* arbitrators, *or* any two of said arbitrators), provided said award be made in writing, on or before the —— day of ——, A. D. ——.

(*Signed*) C. D., (*or* A. B.)
S. S.,
Y. Y.

Arbitration—Bond.

To be given by each party to the other.

Know all men by these presents:

That I, (A. B. *or* C. D.), of ——, am held and firmly bound unto (C. D. *or* A. B.), of ——, in the sum of —— dollars, for the payment of which I bind myself and legal representatives by these presents.

The condition of this obligation is:

That if the above bound (A. B. *or* C. D.), or his legal representatives shall submit, perform, and comply with the award, determination, judgment and orders of A. R., B. I., and T. R., the arbitrators named and selected by said parties * to award, determine, judge, and order of and concerning (*if a special matter here describe it, but if the submission is not limited say*) all and all manner of actions or causes of action, suits, controversies, claims and demands whatsoever, now pending, existing, or held by and between said (A. B. and C. D. *or* C. D. and A. B. * *) (with power to award payment of costs and expenses incurred in said arbitration), provided, however, that said award be made in writing, under the hands of arbitrators, or any two of them, and ready to be delivered to said parties, or such of them as may desire the same, on or before the —— day of ——, at ——, * * * then this obligation shall be void, otherwise it shall remain in full force

Executed in presence of } *Signed*
W. T., N. S., *Witnesses.* } (A. B. *or* C. D.)

Same—Without Discontinuing a Suit.

* * Provided, that this submission shall not operate a discontinuance or otherwise affect a

suit now pending in the —— court, between said A. B. and C. D., without an award made pursuant to the terms hereof.

Same—Oath of Arbitrators Contemplated.

* And sworn (*or* affirmed) honestly and impartially to hear.

Same—Umpire Contemplated.

* * * Provided, also, that if said arbitrators shall not, within the time limited, make said award, determination, judgment and orders, then and in such case the same shall, in all respects, in like manner and with like effect, be made, determined, adjudged and ordered by W. R. (a person by said arbitrators indifferently chosen as umpire) on or before the —— day of ——, at ——.

Arbitration—Appointment of Umpire.

Arbitrators disagreeing.

Know all men by these presents:

That by agreement (*or* bond) bearing date the —— day of ——, the matters in difference, etc., between A. B. and C. D., were by them submitted to our consideration to hear, determine, and award thereon (with power to select an umpire in case of disagreement, etc.)

That we are not able to determine said differences.

That we do by these presents choose and appoint U. R. to determine and award said matters in difference to us submitted, pursuant to said agreement (*or* bond).

Witness our hands, this —— day of ——, A. D. ——. A. R., B. I., T. R.

Arbitration—Notice to Arbitrators.

A. R., B. I., and T. R.

Gentlemen—You have been chosen arbitrators on behalf of the undersigned, to arbitrate and award between them, in divers matters and things, set forth in their submission, which will be produced for your inspection when you meet at ——, in ——, on the —— day of ——, at — o'clock — M., to hear the allegations and proofs of yours, &c., A. B.

Dated ——. C. D.

Arbitration—Notice to Witness.

W. S.: Dear Sir—The arbitration concerning certain differences between A. B. (*or* myself) and C. D. will be had before A. R., B. I., and T. R., at ——, in ——, on the —— day of ——, at — o'clock — M. Do not fail to attend. Yours, &c., A. B.

Arbitration—Oaths.

See AFFIDAVITS, *above*.

Arbitration—Affidavit of Arbitrators.

These affidavits must be made before some one authorized by law to administer oaths, as a magistrate, notary public, clerk of a court of record, and the like. A mere arbitrator (not authorized by law) cannot administer an oath or take an affidavit.[t]

State of ——, —— county, ss.

We, the undersigned, and each of us, do severally solemnly swear, that we will honestly and impartially hear and determine all the matters in difference, of every name, kind, and nature, existing between A. B. and C. D., which shall be submitted to us for arbitration, and a true award make thereon, according to the evidence, so help us God. A. R., B. I., T. R.

Subscribed and sworn to before me, this —— day of ——, A. D. ——. (*Signature of officer before whom sworn and his official title.*)

Arbitration—Affirmation of Arbitrators.

State of ——, —— county, ss.

We, [the undersigned arbitrators], and each of us, do severally, solemnly, sincerely, and truly declare and affirm, that we will honestly and impartially hear and determine all the matters in difference, etc., existing between A. B. and C. D., which shall be submitted to us for arbitration, and make a just award thereon, according to our best understanding, and this we do under the pains and penalties of perjury.

A. R., B. I., T. R., *Arbitrators.*

Subscribed and affirmed to before me, this —— day of ——, A. D. ——.

(*Officer's name and official title.*)

Arbitration—Affidavit of Witness.

State of ——, —— county, ss.

I do solemnly swear, that the testimony I shall give in the matter of arbitration between A. B. and C. D., submitted to A. R., B. I., and T. R., arbitrators, shall be the truth, the whole truth, and nothing but the truth, so help me God. W. S.

Subscribed and sworn to before me, this —— day of ——, A. D. ——.

(*Officer's name and official title.*)

Arbitration—Affirmation of Witness.

State of ——, —— county, ss.

I do (*or* we, and each of us, do severally) solemnly, sincerely, and truly declare and affirm, that the testimony I (*or* we) shall give, in the matter of arbitration between A. B. and C. D., submitted to A. R., B. I., and T. R., arbitrators, shall be the truth, the whole truth, and nothing but the truth, and this I (*or* we) do under the pains and penalties of perjury.

(*Signed*) W. S., (*or* W. T., N. S., etc.)

Subscribed and affirmed to before me, this —— day of ——, A. D. ——. (*Name and official title.*)

Arbitration—Appointment of Arbitrators.

See SUBMISSION AGREEMENT, *above*.

Arbitration—Continuance Agreement.

We hereby agree that the time for making the award in the matters referred by the within (*or* annexed) submission shall be extended unto the —— day of ——. (*Signed*) A. B.

Witness, A. R., B. I., T. R. C. D.

Arbitration—Revocation of Powers.

A seal is only necessary to the revocation if the submission be under seal [u]

A. R., B. I., and T. R.

Gentlemen—I hereby revoke your powers as arbitrators under the agreement of submission (*or* bond) entered into between A. B. and (myself, *or*) C. D., on the —— day of —— last. D. C.

Dated this —— day of ——.

Arbitration—Revocation Notice.

A. B.: Dear Sir—I have this day revoked the powers of A. R., B. I., and T. R., as arbitrators under the agreement of submission (*or* bond), entered into between us on the —— day of —— last, by an instrument of which the annexed is a copy.

Dated this —— day of ——. C. D.

Arbitration—Award, General Form.

By a single Arbitrator.

Know all men by these presents:

That by agreement (*or* bond) bearing date the —— day of ——, the matters in difference, etc., between A. B. and C. D. were by them submitted to the consideration of the undersigned arbitrator, to hear, determine, and award concerning the same.

That by virtue of said agreement (*or* bond), and after hearing the allegations and proofs of said parties, and examining the subjects in controversy between them, I do award, determine, and order as follows:

That, etc. (*setting out the matters and things awarded, determined and ordered, by following the submission, determining all the matters submitted, and stating the award, determination, and orders in such a manner as to leave no doubt of the arbitrators' intention, or the nature and extent of the duties imposed on the parties*).

Witness my hand, this —— day of ——, A. D. ——. A. R., *Arbitrator.*

Arbitration—Award, General Form.

By two or more Arbitrators.

Know all men by these presents, that we, the undersigned, arbitrators of all the matters in difference, of every name, kind, and nature, between A. B. and C. D., by virtue of their agreement of submission of said matters, dated at ——, on the —— day of ——, A. D. ——, do award, order, judge and determine of and concerning the same, as follows:

That, etc. (*here state the award, consonantly with and following the submission, so that it affects only the parties to the award, the matters submitted, with clearness, certainty, and without mistake or doubt*)

[t] 5 How Pr. 318; 1 N. Y. Leg. Obs. 189.

[u] 8 Johns. 125.

In witness whereof, we have, in each other's presence, hereunto set our hands, this —— day of ——, A. D. ——. A. R., B. I., T. R.

Arbitration—Award, General Form.

By three, or more, or less Arbitrators.

To all to whom these presents shall come, know ye:

That we, A. R., B. I., and T. R., arbitrators, to whom was submitted the matters in controversy existing between A. B. and C. D., as by agreement (*or* bond of submission) bearing date this —— day of ——, more fully appears.

That we, the said arbitrators, being first duly sworn, heard the allegations and proofs and allegations of parties, and examined the matters in controversy submitted, do make the following award and determination:

That, etc., (*here set out the matters awarded and determined*).

In witness whereof, we have hereunto subscribed these presents, this —— day of ——, A. D. ——. A. R., B. I., T. R., *Arbitrators.*

Arbitration—Award, General Form.

By three, or more, or less Arbitrators.

To all to whom these presents shall come, or may concern, know ye:

That the matters in controversy existing between A. B., of ——, and C. D., of ——, as by the conditions of their respective bonds of submission executed by said parties respectively, each to the other (*or* by their submission in writing), bearing date the —— day of ——, more fully appears, was submitted to A. R., B. I., and T. R., as arbitrators.

That said arbitrators being sworn (*or* affirmed) according to law, and having heard the proofs and allegations of the parties, and examined the matters in controversy by them submitted, do make this, their award, in writing:

That, etc. (*setting out the matters awarded and adjudged*).

In witness whereof, we have hereunto subscribed our names, this —— day of ——, A. D. ——. A. R., B. I., T. R., *Arbitrators.*

Arbitration—Award, General Form.

By three, etc.—Another form.

To all to whom these presents shall come, we, A. R., B. I., and T. R., send greeting:

Whereas, divers suits and controversies have been and are yet pending between A. B., of ——, and C. D., of ——, for the determination of which said A. B. and C. D. have submitted themselves, and become bound each to the other, by their several obligations, dated the —— day of ——, in the sum of —— dollars, with conditions therein, to abide by, support, and keep the award, determination, and judgment of said A. R., B. I., and T. R., arbitrators, indifferently chosen, as well on the part and behalf of said A. B. as on the part and behalf of said C. D., to award, determine, and judge of and concerning all and all manner of actions, controversies, and demands whatsoever pending between said A. B. and C. D., from the beginning of the world until the day and date of these presents (*or* of said obligations), and that said award, determination, and judgment should be in writing, under our hands (and seals), on or before the —— day of ——, as by said obligations and conditions more fully appears.

Therefore, know ye:

That we, the said A. R., B. I., and T. R., taking upon us the charge of said arbitrament and award, being duly sworn, and having deliberately and at large heard and considered the allegations of both parties and witnesses, concerning said premises, do make and put in writing our award, determination, and judgment between said parties concerning said premises, in the manner and form following, to wit:

That, etc. (*setting forth the matters and things awarded, determined, and adjudged*).

In witness, etc.

A. R., B. I., T. R., *Arbitrators.*

Arbitration—Award, General Form.

By indorsement on the submission.

We, A. R., B. I., and T. R., the within-named arbitrators, having undertaken the arbitration upon and concerning all and singular the matters and things therein to us referred, do make this, our award, in the manner following, to wit:

We do award, determine, adjudge, and order

That, etc. (*setting forth the matters and things awarded, determined, etc.*)

In witness, etc.

Arbitration—Award by Umpire.

Whereas, A. B., of ——, of the one part, and C. D., of ——, of the other part, have mutually entered into bonds to each other, bearing date the —— day of ——, in the penal sum of —— dollars, conditioned that said parties shall well and truly abide and perform the award and determination of A. R., B. I., and T. R., arbitrators, indifferently chosen by said parties, of and concerning all manner of actions, controversies, etc., pending between said parties, said award to be made on or before the —— day of ——, with the condition that if said arbitrators should not make such award by the time so agreed upon, then said parties should in all things well and truly abide, perform and keep the award, determination, and umpirage of such person as should thereafter be chosen umpire by said arbitrators between said parties of and concerning said differences, said umpire to make his award or umpirage on or before the —— day of ——.

And whereas, said A. R., B. I., and T. R., met upon said arbitration, and did not make their award between said parties within the time limited therefor, and did thereupon choose the undersigned U. R. umpire, as agreed in the premises; therefore, know ye:

That said U. R., having undertaken the arbitration aforesaid, being duly sworn, having heard the allegations and proofs of parties, and examined as well the said parties as their respective witnesses, concerning said actions, controversies, etc., and fully considered the same and the matters to me referred, do make this, my award and umpirage, in the manner following:

I do award, adjudge and order

That, etc. (*setting forth the matters and things awarded, etc.*)

In witness whereof, I have hereunto set my hand, this —— day of ——, A. D. ——.

U. R., *Umpire.*

Arbitration—Award by Umpire.

Another form.

Know all men by these presents

That, (*reciting the conditions of the agreement of submission, or arbitration bond*).

That said arbitrators did not make any award in the premises within the time for that purpose limited as aforesaid.

That by a writing under their hands, dated the —— day of ——, said arbitrators did agree that I, the undersigned, U. R., should be the umpire in and concerning said matters of difference.

Now know ye:

That, etc. (*setting forth the matters and things awarded and determined, etc.*)

Clauses to be inserted in the preceding forms, according to circumstances.

CONCERNING ASSIGNMENT.

That said C. D. shall make, execute and deliver to said A. B. a good and sufficient assignment of a certain bond and mortgage executed and delivered to said C. D. by one E. F., on or before the —— day of ——, and that said A. B. shall pay said C. D. the sum of —— dollars therefore, upon the execution and delivery of the same.

CONCERNING BOND.

That said A. B. shall, on or before the —— day of ——, well and sufficiently make, execute and deliver, a bond or obligation in the penal sum of —— dollars, conditioned for the payment of —— dollars to C. D., or his assigns, on or before the —— day of ——, etc. (*or* for the performance of, etc., *stating what*).

CONCERNING CONVEYANCE.

That the within-named A. B. shall, on or before the —— day of ——, by such deed or deeds said C. D. (his heirs, or assigns, or counsel) shall advise, well and sufficiently grant, convey, and assure unto said C. D., his heirs and assigns forever, the following described real estate, situated in the State of ——, county of ——, to wit (*describing it*).

That said C. D., in consideration thereof, and upon the execution of said conveyance or conveyances, shall pay or cause to be paid unto said A. B. (his heirs or assigns) the sum of —— dollars. And shall, if required, give security, by bonds or mortgages, for the payment of —— dollars, in —— instalments, payable on the—— days of, etc.

CONCERNING COSTS.

That —— dollars, the costs, charges, and expenses of this arbitration, be paid by A. B. (*or* C. D.)

Another.

That —— dollars, the costs, charges and expenses of this arbitration and its incidents, be paid as follows: —— dollars by A. B., and —— dollars by C. D.

CONCERNING DAMAGES.

That said A. B. sold unto said C. D. the following articles (*describing them*), representing them to be in good, merchantable and sound condition, and in these and every other respect warranting them.

That said articles were neither good, merchantable, or sound, and were and are worth only —— dollars.

That said A. B. shall repay said C. D. —— dollars, the difference in price; —— dollars, for care and custody of said property; and —— dollars, cartage of the same, and —— dollars, for costs and expenses of this arbitration.

CONCERNING A DEBT.

That A. B. is entitled to the sum of —— dollars, with interest, at the rate of —— per cent. per annum, from the —— day of ——.

Or,

That said C. D. shall pay the said A. B., on or before the —— day of ——, the sum of —— dollars, with interest, at the rate of —— per cent. per annum, from the —— day of —— until the payment thereof.

Another.

That said A. B. has no cause of action against said C. D.

CONCERNING DELIVERY OF GOODS.

That said C. D. shall, on demand (on or before the —— day of —— at ——), freely deliver up to said A. B. the following goods (*describing them so that a stranger may easily designate them*), the property of said A. B. (*or* the property of D. D., deceased).

CONCERNING DELIVERY OF WRITINGS.

That said A. B. shall (on demand of C. D., or his legal representative; *or* on or before the —— day of —— at ——; *or* upon —— days' notice) deliver unto said C. D. (*or* his legal representative) the following writings (*describing them*).

Or,

All leases, deeds, mortgages, and instruments of writing whatsoever, concerning any and all estates in possession of said C. D., or of any other person in trust for him, and especially the lease of (*describe premises*).

Same—For Cancellation.

That said A. B. shall forthwith, or before the —— day of ——, at ——, deliver unto said C. D. the following described writings, cancelled, or to be cancelled on delivery, to wit (*describing them*).

CONCERNING DISCONTINUANCE OF ACTION.

That said A. B., or his legal representatives, shall, on or before the —— day of ——, cause and procure all actions and suits commenced and pending against said C. D., in any and all courts whatsoever, by or in the name of said A. B., or in the name of any other person or persons, by the consent, means and procurement of said A. B., thenceforth to cease, and be no further proceeded in by him or them, and to be utterly discontinued and made void.

That the costs accrued and to accrue of said actions, suits, and discontinuance, shall be paid by said ——.

CONCERNING HORSE TRADE.

That said A. B. did, on the —— day of ——, at ——, sell unto said C. D. a horse, answering the following description (*describe the horse by age, color, sex, size, etc*).

That said C. D. was to pay said A. B. therefore —— dollars, upon the delivery of said horse (*or* on the —— day of ——).

That said A. B. shall, upon the payment of said sum, deliver said horse to C. D. (allowing said C. D. the sum of —— dollars, to be deducted therefrom for damage for non-delivery and use of said horse).

CONCERNING INTEREST.

That said C. D. shall pay unto said A. B. interest on the sum of —— dollars aforesaid, at the rate of —— per cent. from the —— day of —— unto the —— day of —— (*or* until full payment thereof).

CONCERNING MINING CLAIM.

That said C. D. is entitled to, and shall have set apart to his own use, the following described mining claim (*describing it*).

That in consideration thereof said C. D. shall (*state what*).

CONCERNING PAYMENT.

That said A. B. shall (on demand; *or* on or before the —— day of ——, at ——; *or* within —— days from the date hereof) pay, or cause to be paid, to said C. D. the sum of —— dollars, in full discharge, payment, release, and satisfaction of and for all claims, debts, demands and moneys whatsoever, due or owing from him unto said C. D. at any and all times prior to the date of said submission.

Same—Bond For.

That said A. B., upon —— days' notice, shall well and sufficiently make, execute and deliver to said C. D., a bond or obligation, in the penal sum of —— dollars, condition for the payment of said sum of —— dollars, to C. D., his heirs, or assigns, on or before ——.

CONCERNING PAYMENT OF COSTS.

See Costs, above.

That the sum of —— dollars, being the expenses and charges incident to this arbitration, shall be paid by them, the said A. B. and C. D., in equal amounts and shares.

Same.

That said C. D., his executors or administrators, shall, between the hours of —A. M. and —P. M., at ——, pay unto said A. B. the sum of —— dollars, in full satisfaction for his damages and costs, in a certain action lately commenced by him against said A. B., and also for the costs occasioned by this reference.

CONCERNING PERFORMANCE.

That said A. B. shall (*state the particular things required to be done by A. B.*)

That said C. D. shall (*state the particular things required to be done by C. D.*)

CONCERNING RELEASE.

That all controversies shall cease between said parties, and that each of them shall, on or before the —— day of ——, duly execute and deliver to the other a general release, in writing, of all actions, suits, demands, and obligations whatsoever existing at or prior to the date of said submission.

Same.

That said A. B. shall, on or before the —— day of ——, as his act and deed, duly execute and deliver unto said C. D. a general release, in writing, of all manner of actions, suits, controversies and demands whatsoever, from the beginning of the world unto the day and date of said submission.

Arbitration—Award. Service of.

Proven by affidavit of person serving.

State of ——, —— county.

W. S., being duly sworn, says:

That, on the —— day of ——, at — o'clock, — M., at ——, in ——, he served the award (of which the within is a true copy *or* counterpart) by delivering the same unto the within-named A. B. and C. D.

(*Signature of affiant.*)

Subscribed and sworn to before me, this —— day of ——, A. D. ——. J. P., *Justice of the Peace.*

Arbitration—Award, Verification.

By Subscribing or other Witness.

State of ——, —— county, ss.

W. S., being duly sworn, says:

That he knows A. R., B. I., and T. R., the arbitrators named in the annexed award.

That, on the —— day of ——, at ——, he was present and saw them (*or* that he heard them each declare that they did severally) sign and publish the same as their final award, determination, and

judgment of the matters and things in controversy submitted them, between A. B., of ——, and C. D., of ——.

That the names of said A. R., B. I., and T. R. are the actual and genuine signatures of said arbitrators. (*Signed*) W. S.

Subscribed and sworn to before me this —— day of ——. (*Officer's signature and official title.*)

Same—By Arbitrators.

State of ——, —— county, ss.

A. R., B. I., and T. R., being duly sworn, say:

That they are the arbitrators named in the annexed award.

That, on the —— day of ——, at ——, as such arbitrators, they did sign and publish the same as their final award, determination and judgment of the matters and things in controversy, submitted them by A. B., of ——, and C. D., of ——.

A. R., B. I., T. R., *Arbitrators.*

Subscribed and sworn to, etc.

(*Officer's signature and title.*)

Attorneys are those who act for others by virtue of appointment. They are of various kinds.

AN ATTORNEY IN FACT is a person to whom the authority of another, who is called the CONSTITUENT, is by him lawfully delegated.

The term, "attorneys in fact," is employed to designate persons who act under a special agency, or a special letter of attorney, so that they are appointed in the matter for the deed or special act to be performed; but, in a more extended sense, it includes all other agents employed in any business, or to do any act, or acts, in and about the same, for another.[a]

All persons who are capable of acting for themselves, and even those who are disqualified from acting in their own capacity, if they have sufficient understanding, as, infants of a proper age, may act as attorneys for others.[b]

A Letter or Power of Attorney is an instrument of writing by which one or more persons (called principals or constituents) authorize one or more other persons (called the attorneys) to do some lawful act for, in the stead, and place of the former.[c] An instrument of writing authorizing a person to act as the agent or attorney of the person granting it. This instrument is more generaly called a power of attorney.

A general power authorizes the agent to act generally in behalf of the principal.

A special (or limited) power is one limited to particular acts.

A power of attorney may be parol or under seal.[d]

It is a general rule that one acting under a power of attorney cannot execute for his principal a sealed instrument, unless the power of attorney be sealed.[e] And where the statute prescribes certain formalities, and makes them requisite for the execution of an instrument, a power to make that instrument must, in general, be itself executed with similar formalities.[f]

But, as oral or written powers are equally parol, one by oral authority may sign the name of his principal without a seal thereto; and so he may be authorized orally to bind his principal by written contract, when the statute of frauds requires a writing signed by the parties sought to be charged, as the foundation of an action.[g]

Powers of attorney are strictly construed.[h] General terms used with reference to a particular subject-matter are presumed to be used in subordination to that matter.[i]

Where a power is special, and the authority limited, the attorney cannot bind his principal by any act in which he exceeds his authority. The authority of an attorney is to be strictly construed; though it is to be taken to include all necessary means of executing it with effect. Hence a party dealing with an attorney under a power of attorney of another, should look to the terms of the power to see that the authority given is sufficiently broad.

If a power prescribes any condition in its execution, it must be strictly pursued.

Where a power is vested in several persons jointly, all should unite in executing it.

An attorney acting under a power cannot delegate his authority or appoint a substitute, unless the power expressly gives authority to do so.

A revocation of a power takes effect, as to an agent, from the time it is communicated to him; as to third persons, from the time it is communicated to them.

An attorney in a simple power of attorney must act only in the name of his principal; in signing, should sign his principal's name, adding his own, thus: A. B., by C. D., his attorney.

It is only necessary to have a power of attorney and the substitution acknowledged, when the power given is to convey, or otherwise affect or encumber any land, tenement, or hereditament. In such case the acknowledgment and filing for record is the same as a deed or mortgage.

POWERS OF ATTORNEY FORMS.

The general elements of a power of attorney are:

1. The names of the principal or principals (constituents) and of the attorney or attorneys, and words of appointment.
2. The nature and description of the duty imposed, and the particular mode of performance.
3. The character of the power imposed, whether general or limited (with conditions, limitations, restrictions, etc., if any).
4. The power of substitution and revocation.
5. The ratification or confirmation.
6. The signature of the principal or principals.
7. The proper attestation and acknowledgment, when required by law (as, in case the power is to convey or encumber real estate).
8. The recording, when required by law (as, in case the power is to convey or encumber real estate).

a-Bac. Abr. *Attorney*; Story Ag. § 25. **b**-Co. Litt. 52, *a*; 1 Esp. 142; 2 Id. 511. **c**-1 Mood. Cr. Cas. 52-70. **d**-1 Parsons' Contr. 94. **e**-7 T. R. 209; 2 B. & P. 338; 5 B. & C. 455; 2 Greenl. 258; 4 T. R. 313; 1 Chitty, 707; 7 M. & W. 322, 331; 5 Mass. 11-24; 19 Johns. 60; 2 Pick. 345; 7 Cranch. 209; 30 Vt. 159; 4 Wash. C. C. 471; 9 Johns. 285; 16 Ga. 424; 1 Hall. 262; 11 Pick. 400; 26 Vt. 156; 7 M. & W. 331, 332-334; 2 G. Greene, 427; 6 G. & J. 250; 5 Bing. 368; 12 Wend. 525; 9 Id. 68; 1, 11 Ill. 544; 7 Met. 244; 2 Me. 358. **f**-10 Foster (N. H.) 420; 6 Wheat. 577. **g**-8 Pick. 9; 9 Ves. 234; 1 Sch. & L. 22; 4 Johns. Ch. 659; 5 Bing. N. C. 607. **h**-6 Cush. 117; 5 Wheat. 326; 3 M. & W. 402; 8 Id. 856; 5 Bingh. 442. **i**-1 Taunt. 349; 7 B. & C. 278; 1 Younge & C. 394; 7 M. & W. 595; 5 Denio, 49; 7 Gray, 287, see, as to a power to collect a debt, 1 Blackf. 252; to settle a claim, 5 M. & W. 645; 8 Blackf. 291; to make an adjustment of all claims, 8 Wend. 494; 7 Watts. 716; 14 Cal. 399; 7 Ala. (N. S.) 800; to accept bills, 7 B. & C. 278.

Power of Attorney—General Form.

Simple and short form.

Know all men by these presents:

That I, the undersigned, of ——, do hereby make, constitute, and appoint E. F., of ——, my true and lawful attorney, for me, and in my name and stead —— to (*here insert the subject-matter of the power*), to do and perform all the necessary acts in the execution and prosecution of the aforesaid business, and in as full and ample a manner as I might do if I were personally present. A. B.

[*Executed in presence of*]

For form of "ACKNOWLEDGMENT," see that title.

Power of Attorney—General Form.

Short, with power to revoke and substitute.

Know all men by these presents:

That I (*name of principal*), do by these presents appoint, constitute, and make (*name of attorney*) my lawful and true attorney, for me, and in my name, place, and stead —— to (*state what*).

That I do by these presents grant and give unto my said attorney full authority and power to do and perform all and every act and thing whatsoever necessary and requisite to be done in and about the premises, as I might or could do, if personally present, with full power of substitution and revocation, hereby confirming and ratifying all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In testimony, etc. (*as in the above forms*).

For form of "ACKNOWLEDGMENT," see that title.

Power of Attorney—General Form.

Know all men by these presents:

That I, A. B., of —— county, in the State of ——, have made, constituted, and appointed, and by these presents do make, constitute and appoint A. Y., of —— county, in the State of ——, my true and lawful attorney in fact, for me, and in my name, place, and stead, —— to (*here insert the power conferred or acts to be performed*).

That I give unto my said attorney full power to do everything whatsoever requisite and necessary to be done in the premises, as fully as he could if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue hereof.

In witness whereof, I have hereunto set, etc. (*If the power be to convey, encumber, or otherwise affect real estate, then this clause should be the same as in the conveyance of the real property, which see.*)

For form of "ACKNOWLEDGMENT," see that title.

Power of Attorney—General Form.

Know all men by these presents:

That I (*name of principal*), of —— (*place of residence of the principal*), have by these presents constituted, made, and ordained, and in my place and stead substituted —— (*name of attorney*), to be my lawful, sufficient, and true attorney, for me, and in my name, place, and stead —— to (*set forth the purpose or purposes for which the power is given*).

That I hereby grant unto my said attorney full authority and power in and about said premises: and to use all due course, means, and process of law for the complete, effectual, and full execution of the business above described; and for said premises to appear and me represent before any governors, judges, justices, and ministers of law whomsoever, in any court or courts of judicature, and there, on my behalf, defend and prosecute all actions, causes, matters and things whatsoever relating to the premises; and in all said premises make and execute all due acquittances, discharges, and releases.

That said attorney shall have full authority and power to accomplish, act, determine, do, finish, and transact all matters and things whatsoever relating to the premises, as amply, effectually, and fully, to all intents and purposes as I, his said constituent and principal, if present, might or ought, although said matters and things should require more special authority than is herein comprised and included.

That I hereby allow, ratify, and hold firm and valid all matters and things whatsoever my said attorney or his substitutes shall lawfully do or cause to be done in and about said premises, by virtue of these presents.

In testimony whereof, I have hereunto set, etc. (*If the power is to convey, encumber, or otherwise affect real estate this clause* [which includes the signature and seal of grantor, or principal, witnesses, etc., etc.] *should be the same in all essential respects as that of the deed, mortgage, etc.*)

For form of "ACKNOWLEDGMENT," see that title.

Power of Attorney—General Form.

To several, jointly.

Know all men by these presents:

That I, A. B., of ——, do by these presents make, constitute, and appoint A. T., O. R., and N. Y., jointly, my true and lawful attorneys, for me, and in my name, place, and stead —— to (*stating the purpose of the appointment*).

Power of Attorney—General Form.

To several, to act jointly or separately.

Know all men by these presents:

That I, A. B., (of the city of ——, county of ——, and State of ——), do by these presents make, constitute, and appoint A. T., T. O., R. N., and N. Y., jointly, and each of them severally, my true and lawful attorney and attorneys, for me, and in my name, place, and stead —— to (*state the purpose for which the appointment is made*).

Power of Attorney—General Form.

To two persons—joint and several—in case of absence, death, or refusal of either or both, then to another, etc.

Know all men by these presents:

That I (*or* we), A. B., of —— (and C. D., of ——), do by these presents make, constitute, and appoint A. T. and T. Y. my (*or* our) true and lawful attorneys, and in case of the absence or death of either or both of them, or refusal of either or both of them to act by virtue hereof, then we hereby make, constitute, and appoint A. A., alone or together with him of them the said A. T. and T. Y., who shall be living and present, and will act as my (*or* our) attorney or attorneys by virtue of these presents, jointly or either of them severally, my (or our) true and lawful attorney or attorneys —— to (*setting forth the purpose for which the appointment is made*).

Power of Attorney—General Form.

To three persons—joint and several—in case of absence, death, or refusal of either or both, then of another in his stead.

Know all men by these presents:

That I (*or* we), A. B., of —— (and C. D., of ——), do by these presents make, constitute, and appoint A. T., O. R., and N. Y., my (*or* our) true and lawful attorney and attorneys, and in case of the absence or decease of said O. R. and N. Y., or either or both of them, or refusal of either or both of them to act as such, then, and not otherwise, I (*or* we) make, constitute, and appoint A. A. my (*or* our) true and lawful attorney, together with said A. T., in case of the absence or death of said O. R. and N. Y., or either of them, or refusal of either or both of them to act by virtue hereof; or together with said O. R. and N. Y. in case of absence or death of said A. T., or his refusal to act by virtue hereof, as the case may be, jointly, or any of them severally, to be my (*or* our) true and lawful attorney and attorneys —— to (*state the purpose of the appointment*).

Power of Attorney—Various clauses to be inserted in the general forms where applicable.

TO ACKNOWLEDGE CONVEYANCES, ETC.

—— to appear before any officer authorized by the laws of —— to take acknowledgments, etc., and acknowledge a deed (mortgage, *or other instrument*) bearing date the —— day of ——, which I, the said A. B., signed (sealed, etc.) to be my own proper act and deed. Hereby ratifying, etc.

TO ACKNOWLEDGE SATISFACTION OF MORTGAGE, ETC.

—— to appear before the recorder (*or* register) of deeds (*or* county clerk, etc.) and acknowledge and enter satisfaction of the sum of —— dollars, principal, and —— dollars, interest upon (the margin of) record No. ——, page ——, of a mortgage bearing date the —— day of ——, from C. D. to A. B., of the following described premises (*describing them*). Provided, said sum of —— dollars, principal, and —— dollars, interest, be paid in the man-

ner and at the time in the condition of said mortgage mentioned.

To Appoint Appraiser, etc.

—— to choose, at the discretion of ——, my attorney, a disinterested and discreet person, and a (freeholder *or* householder) of —— county, who shall be duly qualified, and faithfully and impartially appraise, together with two such discreet and impartial persons (of like qualifications), such (real *or* personal) property (as shall be shown them by —— for that purpose, *or*, as is comprised in the following schedule: viz. (*describing it*).

To Arbitrate Matters, etc.

—— to submit any and all matters in dispute elating to (*state what*), or respecting the premises o arbitration or otherwise, with full power to make and substitute for the purposes aforesaid, and at his option, one or more attorneys.

Another.

That said attorney may submit any matter in dispute respecting the premises to arbitration or otherwise.

To Accept, Pay for, and Sell Bank Stock.

—— to accept all capital stock in the —— bank which I have already bought and contracted for, or shall hereafter buy or contract to buy, of any person or persons, upon the transfer thereof in the customary and legal manner, and thereupon to pay such sums of money or consideration for the purchase of the same as may be theretofore agreed upon; and to and for my own use, sell and transfer all or any of such stock as I shall from time to time direct: and also for my own use to receive the moneys and considerations which shall become due and payable by said sales and transfers, giving sufficient receipts and releases for the same.

To Carry on Business Generally.

—— to carry on and conduct the business of (*state what*), at ——, in ——, to buy and sell (*state what*), to receive and sell on commission (*state what*), to manufacture (*state what*), and to buy, sell, manufacture, and receive on commission all goods, wares, and merchandise appertaining to such business as he may deem proper, and to draw, execute, make, sign, seal, and deliver for me, and in my name, all bills, bonds, notes, conveyances and other instruments of writing whatsoever, as shall be necessary to the proper conducting of said business.

Another.

—— to take the general control and management of my affairs, business and property, at ——, in ——, to buy, sell, pledge, mortgage, execute, and enter into bonds, contracts, conveyances and encumbrances in behalf of the same; and in general to do and perform all other acts and things which he may consider useful and necessary, connected with my said affairs, business, property and interests.

Another.

—— to take charge of my business o. ——, at ——; to purchase and sell, for cash or on credit, all such articles, goods, merchandise and wares as he shall deem proper, necessary and useful to said business; to sign, accept and indorse all notes, drafts and bills; to state accounts; to sue and prosecute, compromise, collect and settle all claims or demands due or to become due, now existing or hereafter to exist in my favor; to adjust and pay all claims or demands which now exist or may hereafter arise against me, either connected with said business or otherwise.

Another.

Know all men by these presents:

That I, A. B., of ——, merchant, do hereby constitute my two clerks, C. L. and R. S., of ——, my lawful and sufficient attorneys, *jointly*, for me, and in my name, to manage and transact all business, open all letters of correspondence and to answer the same; to draw, accept, make, indorse, and pay all bills of exchange and promissory notes; to receive and receipt for all moneys, to draw and sign all orders, checks and drafts for money on the cashiers of ——, ——, —— banks, or any other bankers or persons where I shall deposit or keep money; to arrange, balance, and settle all books and accounts, and generally do every act, matter and thing which the nature of said business shall require. Hereby ratifying whatever my said attorneys may lawfully do by virtue hereof.

To Carry on Commission Business, etc.

—— to carry on, conduct, and transact, at ——, in ——, the business of a general commission merchant, and more particularly the receiving and selling on commission all kinds of dry and wet groceries, together with all and every goods, wares and merchandise appertaining to said business, as my said attorney shall deem proper and necessary; to draw, make, execute, sign, seal, and deliver for me, and in my name, all bills, bonds, notes, conveyances, or other instruments in writing whatsoever, which shall be necessary to the proper carrying on, or conducting and transacting the business aforesaid; and to do and perform all and every act and deed in whatsoever name or nature, legally appertaining to the same; binding me as firmly and irrevocably by such deed or performance as if I were myself present, thereto consenting; hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

To Carry on General Mercantile Concerns.

With clauses separate.

—— to carry on, conduct, manage and transact the entire business concerns included in and pertaining to (*give the name and description of the business*) at ——, in ——.

For me, and in my name, to use and employ all such means, rights, remedies and usages as are best calculated for the safe and successful prosecution of said business, and to insure accessions, increase, and preservation of all property; the diligent collection and settlement of indebtedness, the most judicious purchases and largest sales therein, and for all and every other matter and thing belonging or pertaining to said business.

Acceptance. To accept any bill or bills of exchange, drafts or orders, make and execute any promissory note or notes, bonds, contracts, or other instruments of writing, in my name and on my account, to or for any amount which he may deem expedient, necessary and proper.

Accounts. To adjust and settle with all and every person, all accounts, demands and dues subsisting or to subsist between them and me, and to compound, arbitrate and agree to the same, in such manner as my said attorney shall deem best.

Actions. To appear, answer and defend; to commence, carry on, and prosecute any actions, suits or legal proceedings, for any cause or thing due or belonging, or to be demanded to, of, by or from me, concerning any chattels, debts, demands, duties, goods, merchandise, or matters whatsoever, due or owing to or by me, heretofore, now, or hereafter; to discontinue, or become nonsuit therein, and for cause to end, compromise, make composition or agreement in and concerning the same or any part thereof.

Collecting, etc. To ask, demand, sue for, levy, recover and receive all debts, duties, goods, chattels, rents, moneys and accounts whatsoever, due or hereafter to become due, owing, or belonging to me, on account of said business, or for or on any other account whatsoever, by any person or persons whomsoever, and upon receipt of the same, or any part thereof, to give acquittances, discharges, receipts or releases for the same.

Another.

To ask, demand, recover and receive all and any sum or sums of money, debts, dues and merchandise or rights, credits and effects, due or belonging to, or which may at any time hereafter become due or payable unto me, from any person or persons whomsoever.

Compromise, etc. To compound and compromise for any debts, dues or demands owing, or which may hereafter be owing to me, and to take less than the whole or otherwise to agree for the same, in such manner and on such terms as my said attorney in his discretion may deem proper; and for all or any of these purposes to make and

execute any releases, compromises, agreements, or contracts, by deed or otherwise, in his opinion necessary and expedient in the premises.

Debts.—to pay and discharge all debts and demands due and payable from me unto any person or persons whomsoever.

Drafts, etc.—to draw, accept, make and indorse all bills of exchange, checks, drafts, promissory notes, and agreements and contracts in writing, in my own name (*or* in the name of my said attorney), which he shall see proper for the carrying on of said business.

Infringements, etc.—to commence, carry on, institute and prosecute any proceeding, civil or criminal, for any infringement of my rights as proprietor of (*state what*), and for the punishment of any person or persons for the infringement of the same, or the imitating, counterfeiting, or selling as real, spurious imitations of said (*state as above*).

Insurance.—to insure, or cause insurance to be obtained upon the goods, wares, merchandise of said concerns, or such parts thereof, and at such premiums, as he shall in his discretion deem prudent and necessary.

Leases.—to receive all rents, issues and profits of all my lands and tenements (*or* of the following premises), to wit (*describing them*), and from time to time to renew the leases thereof, not extending the same, however, beyond the —— day of ——, next.

Lands.—to enter into and take possession of any lands or tenements, or other real estate to which I am or may be entitled, and recover possession thereof, and damages for any injury done thereto.

Purchase goods, etc.—to purchase all goods, wares, and merchandise for cash or upon credit, at such prices and to such amounts as he shall see proper, and the same to sell again on my account and for my benefit, for any prices whatsoever.

Purchase real estate, etc.—to purchase any real estate on my account, in fee simple or otherwise, at any prices or any exchanges whatsoever, and for these purposes to receive, confirm, make and execute any deeds, conveyances, contracts, or other instruments whatsoever.

Sales of goods.—to sell all or any part of said goods, wares and merchandise which may come to his possession or knowledge, on such credit prices or terms as he shall deem proper.

Sales of land, etc.—to sell, barter, exchange, or dispose of any real estate, to any person or persons, for any price and in any manner whatsoever, and for these purposes to execute and acknowledge all deeds, conveyances and assurances, with general covenants of warranty against all persons or incumbrances, or any other covenants whatsoever.

Settlement of accounts, etc.—to settle and adjust all (partnership) accounts and demands (and all other accounts and demands) now subsisting or which may hereafter subsist between me and any other person or persons whomsoever, and to submit and decide the same by and to arbitration, or otherwise.

Workmen, clerks, etc.—to engage, hire and employ all workmen, servants, clerks and assistance for the better and more effectually carrying on, conducting, managing and transacting said business, and to discharge such of said employees as he may deem proper and expedient.

Substitution. And I hereby give and grant unto my said attorney full power to substitute one or more attorney or attorneys under him, in or concerning the premises or any part thereof; hereby ratifying and confirming whatsoever my said attorney or his substitutes shall do by virtue hereof in the premises.

Ratification. And whereas, said A. Y. has heretofore, as my attorney, exercised the powers aforesaid, or some of them, and has, as my attorney, executed divers agreements, bonds, contracts, conveyances, deeds, writings and other instruments, and other things in and about the premises, I do therefore hereby ratify and confirm all the doings of the said A. Y. as my attorney in all matters and things by him done and transacted at any time before the execution of these presents, to all intents and purposes whatsoever.

To Collect Debts Generally.

—— to ask, demand, sue for, collect, receive and receipt for all sums of money, debts and demands whatsoever, due, owing or belonging to me now and hereafter, by or from all and every person and persons whomsoever (*or* from C D. or his legal representatives).

Another.

—— to ask, demand, sue for, collect and receive all such sum and sums of money, accounts, debts, dues, rents and other demands whatsoever, which are or shall be due, owing, payable, or belonging to me, in any manner whatsoever, by C. D., of ——, or his legal representatives, or any of them (*or* by any person or persons residing or being in the State of ——).

Another.

—— to demand, ask, sue for, collect and receive all sums of money, accounts, debts, dues, rents and demands of every description, kind and nature whatsoever, which are due, owing or payable from any person or persons whomsoever, and to give good and sufficient receipts, acquittances and discharges therefore; giving and granting unto my said attorney full authority, etc.

Another.

—— to ask, demand, sue for, collect and receive all and every such sum and sums of money, debts and demands whatsoever, as are now due and owing to me by and from (*state whom*); and in default of payment thereof to have, use and take all lawful ways, means and proceedings, in my name or otherwise, for the recovery thereof, by arrest, attachment, or otherwise, and to compound, compromise and agree for the same; and on payment thereof to give receipts or other sufficient discharges for the same; and to do all lawful acts and things whatsoever concerning the premises, as fully in every respect as I myself might or could do if I were personally present; and an attorney or attorneys under him for the purposes aforesaid to make, and at his pleasure to revoke; hereby ratifying and confirming all and whatsoever my said attorney or his substitutes, or either of them, shall lawfully do or cause to be done in and about the premises.

Another.

—— to ask, demand, sue for, recover and receive all such sum and sums of money, debts, goods, wares and other demands whatsoever, which is or shall be due, owing, payable and belonging to me, by any manner or means whatsoever, especially, etc. (*stating what particular matters, etc., the attorney is required to attend to*).

Giving and granting unto my said attorney, by these presents, my full, absolute and unqualified authority and power, in and about the premises; to have, take and use all lawful ways and means, in my name, for the purposes aforesaid; and upon the receipt of any such moneys, debts, goods, wares or demands, to give acquittances or other sufficient discharges therefore, under seal or otherwise, for me and in my name.

And generally all and every other act and acts, thing and things in law whatsoever, necessary to be done in and about the premises, for me and in my name to do, execute and perform as fully, generally and amply, to all intents and purposes, as I myself might or could do if personally present; and to make and constitute, and again at pleasure to revoke, one or more attorneys under him for the purposes aforesaid.

Hereby ratifying, allowing and holding firm and effectual all and whatsoever my said attorney or his substitutes, or either or any of them, shall lawfully do, in and about the premises, by virtue hereof.

To Collect Debts for Corporations Generally.

—— to demand, recover and receive all and singular the sums of money now or which may here

after be or become due, payable and coming to us, or to our successors, by virtue of any accounts, agreements, bills of exchange, bonds, contracts, promissory notes, or other engagements in deed or in law, from any person or persons, corporation or corporations whatsoever.

Hereby giving and granting our said attorneys, or any two of them, whereof the said A. A. shall be one, full authority and power to institute and pursue unto final judgment and execution any processes or proceedings whatsoever which our said attorneys, or any two of them, whereof said A. A. shall be one, shall deem expedient, and in such processes or proceedings for us to appear, and us to represent, before any court or courts having jurisdiction, and therein to plead for us and enter into all stipulations or other requisites requisite and necessary to the same; and at their discretion, or at the discretion of any two of them, whereof said A. A. shall be one, to submit to arbitration, or any compromise whatsoever, any matter in dispute; and as our deeds, and in our stead, to make, seal and deliver all necessary receipts, acquittances and releases. Hereby ratifying and confirming whatsoever our said attorneys, or any two of them, whereof said A. A. shall be one, may lawfully do in the premises by virtue hereof.

To Collect Dividend

—— to receive from the —— bank (*or* company, *or* corporation) the dividends now due me on all stock standing in my name on their books, and to receipt for the same; hereby ratifying and confirming, etc.

To Collect Rents.

—— to ask, demand, distrain for, collect and receive all such rents and arrears of rent as now are or may or shall hereafter grow due or owing to me from C. D. or E. F., of ——, or any or either of them (*or* from any person or persons), as tenants or occupants of any lands, tenements or hereditaments, belonging to or claimed by me, in the city (*or* town *or* county) of ——, in the State of ——, or which may be due from, or payable by, any other person or persons whomsoever, as tenants, occupants, or lesses or assignees, of any term or terms of such lands, tenements or hereditaments, or any of them, or any part thereof, and upon receipt of the same to give proper acquittances and sufficient discharge thereof.

To Confirm Acts of Attorney.

And whereas, said A. Y. has heretofore, as my attorney, exercised the powers aforesaid, or some of them, and has, as my attorney, executed divers agreements, bonds, bills of exchange, checks, contracts, conveyances, deeds, drafts, promissory notes, and other instruments and writings, and many other things in and about the premises, I do therefore accept, acquiesce in, confirm and ratify and make valid all and every matter and thing by said A. Y. as my attorney done and performed, at any and all times prior to the execution of these presents.

To Deliver Possession of Lands.

—— to enter into all those lands, tenements and hereditaments, situate in ——, in the State of ——, and after such entry to deliver possession thereof unto C. D. or his legal representatives, or either of them, to his or their use, according to the form, tenor and effect of a certain deed bearing date the —— day of ——, by me to said C. D. executed.

And generally to do all and every act and thing whatsoever necessary to making quiet entry and giving peaceable possession as aforesaid.

Hereby ratifying, etc.

To Demand Rent.

—— to ask, demand and receive of C. D. the sum of —— dollars, for one month's (*or* year's) rent of (*describe the premises*), due me on the —— day of —— last, and on receipt thereof to give a sufficient discharge for the same; and on default of payment thereof, for me, and in my name, to enter into and take possession of said premises, and detain and keep the same for my use.

Another.

—— to demand and receive of and from C. D., of ——, on the —— day of —— next, the sum of —— dollars, for one month's (quarter's, *or* year's, etc.) rent for the following described premises, situated in ——, in —— county, in the State of —— (*describing them*), due by the terms of a lease bearing date the —— day of ——, whereby said premises were let to said C. D. by said A. B. for a term of ——.

And in default of payment of said sum I give my said attorney full authority and power to enter into and take possession of said premises, to the intent that said lease, according to provisions therein contained, shall become void: and further to do and perform all things necessary and requisite to be done in and about the execution of these presents, according to the true intent and meaning thereof.

To Draw, Indorse, and Negotiate Bills of Exchange, etc.

—— to draw and subscribe bills of exchange, singly and in sets (as circumstances require) upon (*here insert the names of drawees or debtors*), on account of moneys due from them to me for the sales of my goods (wares and merchandise), lately (sold by them for me, *or*) purchased by them of me, and in my name and behalf to negotiate and sell the same in the market for the largest sum which my said attorney can obtain therefor, and the proceeds thereof to receive and retain for my use.

And I do further authorize and empower my said attorney, in my name and behalf, to indorse any bill or bills of exchange which shall be drawn payable to me, and so remitted to me in my absence, and the same to negotiate and sell to my best advantage, and to receive and retain the proceeds of the same to my use.

Hereby granting my said attorney power to substitute one or more attorneys under him in the premises, and the same at pleasure to revoke.

To Enter Lands.

—— to enter into all lands, tenements, and hereditaments, situated in ——, and ——, and ——, which at any time heretofore was, or did, or does now appertain thereto, or did in his lifetime belong unto D. D., of ——, deceased, grandfather of me, the said A. D., in whose several or other tenures of occupation the same, or any of them now are, or heretofore have been, for me and in my name or right to claim, challenge, and demand as my lawful inheritance.

And further, for me and in my name, and as my right, to claim and demand all and every such lands, tenements, and hereditaments, remainders and reversions, lawfully or rightfully appertaining and belonging unto me through my brother, B. D., of ——, deceased.

And lastly, for me, in my name, in my right, and to my use, to make all and every such entry and entries, claim and claims, in or upon all and every, or any of the premises, as to my said attorney shall, at any time or times, seem convenient and expedient for the reducing, re-vesting, and settling unto me all such estates, possessions, reversions, and remainders as to me did or does lawfully belong.

Giving and granting, etc.

To Fit Out, Furnish, and Let Vessel.

—— to order E. F. to fit out the vessel, V. L., of ——, of —— tons burthen, whereof we are part owners, and M. R. its master, for such a voyage to sea as our said attorney shall see fit; and we do hereby agree to pay, or allow out of the moneys in the hands of said M. R. our proportions of the charges of said vessel's outfit, according to our proportionate interests therein.

And we do hereby empower and order said M. R. to let said ship to freight for such a voyage as he shall deem proper and for our advantage and benefit.

And we do further agree with said M. R., each for himself only, and not jointly, according to our respective proportions in said vessel, shall and will indemnify said M. R. for all seamen's wages, and all actions, costs, and damages by reason thereof, that shall or may grow due, or be incurred on account of said vessel for her intended voyage out and home.

To Fill up Blanks in a Writing, etc.

—— as soon as conveniently may be (*or* on or before the —— day of ——), to fill up blanks in (*state the kind or character of the instrument*) as follows: (*specifying particularly the lines or parts to be filled up and, if possible, the exact matter to be filled in*) with the proper date when the same shall be executed, and sign (and seal) and deliver the same for me and in my name, to C. D. (his heirs and assigns forever).

(*If it be an instrument affecting real estate, or one requiring acknowledgment, add the following*): and afterwards to acknowledge said conveyance (*or other instrument, naming it*) as my free act and deed, before any officer authorized by law to take acknowledgments.

And generally, for me, and in my name, and as my act and deed, but to the use of said C. D., his heirs and assigns, to do all and every other act, matter, and thing which shall be necessary or requisite to the effectual execution and acknowledgment of said conveyance (*or other instrument, naming it*), in all respects and as fully to all intents and purposes as I myself might or could do if personally present; hereby ratifying and confirming all that my said attorney may lawfully do in the premises by virtue hereof.

Provided, however, that these presents shall not be construed to annul or revoke any power of attorney by me at any time heretofore given, to any other person or persons whomsoever for any other purposes; and provided, further, that these presents shall not be construed to extend or appoint my said attorney for any other purpose whatsoever.

To Insure Property, etc.

—— to effect insurance on the following described property, to wit (*describing it*), with the —— Insurance Company, of ——, on such terms as my said attorney shall deem necessary or proper, and for this purpose to sign any application for the same, any representation of condition or value of said property, any articles of agreement, any notes, and other papers necessary for that purpose, and to cancel and surrender any policy which he may obtain, and upon such cancelling, or surrender, or expiration thereof, to receive any dividend, return premium or deposit, that may be due, and give receipts or discharges for the same.

To Lease Lands.

—— to lease by writing all the following described real estate situated in ——, in the State of ——, or any part thereof which my said attorney shall see fit, and to such person and persons, and for such term and terms (not exceeding ——), and with such reservations of rents, covenants, and conditions as my said attorney shall deem expedient; and in my name to execute (seal) and deliver said written leases to the lessee or lessees thereof, retaining duplicates of the same duly witnessed.

And I hereby do and at all times hereafter shall and will confirm and ratify all and every act and thing which my said attorney shall do in the premises in my name by virtue hereof.

To Lease and Sell, etc.

—— to lease, sell, or make any other disposition whatever of the following described premises, to wit (*describing them*), and to sign (seal) and deliver any agreement, assignment, assurance, conveyance, or lease to any person or persons who shall purchase or agree to purchase said premises, or any part thereof, and in due form of law, to acknowledge any such instrument necessary to the proper conveying or leasing said premises or any part thereof.

Hereby ratifying, etc.

To Renew Lease and Sell, etc.

—— to renew or agree for a renewal of the lease by which I hold the following described property, to wit (*describing it*), for a term of ——.

And also to sell and convey said premises for the unexpired term of ——, for cash, and thereupon to assign the lease whereby I hold and may hold the same.

To Survey and Lease, etc.

—— to survey for, and lease by writing, to any person or persons, and for such term or terms (not exceeding ——), and at such rents (not less than ——), payable at intervals of (not less than ——), as shall seem most convenient to my interest, and with such covenants as my said attorney shall deem expedient (*or* with the usual covenants). And for me and in my name to execute, sign (seal), and deliver said written leases unto the parties to whom said premises shall be let, and counterparts thereof to receive.

Giving and granting to my said attorney full authority and power in the premises to do and execute all things in as ample a manner as I might do if personally present.

Hereby ratifying, etc.

To Manage Real Property.

—— to exercise the general control an supervision over the lands, tenements, and hereditaments belonging to me, and situated in —— county, in the State of ——. To prevent, hinder, and forbid all trespassing and waste thereon: and at my cost and charges, and under the advice and counsel of my attorney, A. Y., of ——, to sue for, collect, compound, receive, and recover all damages which may accrue by reason of any trespasses or waste thereon, and for all debts, rents, and moneys due, owing, or that may be due or owing from the gains and profits which has or may hereafter arise from or out of said premises.

To Mortgage Real Property.

—— to obtain for my use the sum of —— dollars, at —— per cent. interest per annum, for a term of ——, and to secure the payment of the same to execute, sign (seal), and deliver a mortgage upon the following described premises, to wit (*describing them*), and to include in said mortgage the usual provisions for insurance, interest, taxes, and power of sale; and as collateral thereto to execute such promissory notes as may be agreed upon by my said attorney and the mortgagee.

To Make Partition.

—— to make partition with the other heirs of my late father, D. D., deceased, of his real (and personal) estate, and upon any partition or division thereof (to accept and receive my share of the same), and to enter upon and take possession of any lands, tenements, and hereditaments which may be set apart as my portion of the same, and to enter into any agreement or covenant respecting my portion or share (and the portions or shares of the other heirs), as my said attorney shall deem reasonable and to my interest; and in my name and for my use to demand, sue for, and take possession of all and singular the property, real or personal, and all rights, credits, and effects withheld from me, to which I am entitled, and which I may lawfully claim from the heirs, executors, or administrators of my said father, or any other person or persons whomsoever.

To Prosecute and Defend Suits.

—— to appear to, institute, prosecute, and defend all causes, real, personal, or mixed, and all and every action, suit, or proceeding, by, for, or against me; and in my name to plead to and pursue the same to final judgment and execution, with full power and in my name to execute all bonds, undertakings, agreements, stipulations, and every writing whatsoever necessary and requisite in the premises; with full power of substitution and revocation.

Hereby ratifying, etc.

For Proxy to vote, etc.

—— to vote at any election of directors or other officers of the (*give the name of the company, corporation, etc.*) at any meeting of the stockholders of said company (*or* corporation) as fully as I might or could were I personally present.

Another.

—— to vote as my proxy at any election of directors or other officers of the (*name of company, corporation, etc.*) according to the number of votes I should be entitled to if I were then personally present.

Affidavit (or affirmation) of Shares.

State of ——, —— county, ss.

I do solemnly swear (*or* I do solemnly, sincerely,

and truly declare and affirm) that the shares on which my attorney and agent in the (within, foregoing, *or* above, *as the case may be*) proxy is authorized to vote, do not belong, and are not hypothecated to said company (*or* corporation), and that they are not hypothecated or pledged to any other company, corporation, or person whatever; that such shares have not been transferred to me for the purpose of enabling me to vote thereon at the ensuing election, and that I have not contracted to sell or transfer them upon any condition, agreement, or understanding in relation to my manner of voting at the said election (and this I do under the pains and penalties of perjury.)

(*Signed*) A. B.

Subscribed and sworn (*or* affirmed) to, before me this —— day of ——, A. D. ——.

(*Signature and title of officer.*)

RATIFICATION.

See "CONFIRMATION" above, and the ending clauses of the various forms above and below.

Hereby ratifying and confirming all that may be lawfully done in the premises by virtue hereof.

Another.

Hereby ratifying and confirming all lawful acts done by my said attorney in the premises by virtue hereof.

Another.

And the said A. B. does hereby ratify, allow, and make firm in law all and whatsoever acts the said A. Y. shall do or cause to be done in pursuance hereof.

Another.

Hereby ratifying and confirming all things whatsoever lawfully done in the premises by my said attorney or his substitutes, or either of them by virtue hereof.

Another.

And I, the said A. B., and my heirs shall and will at all times hereafter, ratify and confirm all and every act, matter, and thing which the said A. Y., in my name, shall lawfully do by virtue hereof, in the premises.

TO RECEIVE DIVIDEND.

—— to receive the dividends payable on all stock standing in my name on the books of (*state what company or corporation*), and receipt therefor.

Another.

—— to receive from the —— (*name of company or corporation*) the dividends now due me on all stock standing in my name on the books of said company, and receipt for the same.

Another.

—— to receive the dividends which are or shall be payable according to law on all the stock standing in my name in the books of the R. and Y., Railway Company (S. and L., Steamship Line, *or* Treasury of the United States, *or* B. and K., Banking Company, etc., etc.), with full power to make and substitute an attorney or attorneys under him for that purpose, and to do and perform all things lawful and requisite in the premises; hereby ratifying all that my said attorney or his substitutes shall lawfully do by virtue hereof.

ASSIGNMENT OF DIVIDEND.

(*Add to either of the above forms when proper*) and to assign, transfer, and set over unto E. F. and G. H. the sum of —— dollars of said dividend (*or* stock, *or* of the following dividends, *or* stocks, to wit, *specifying them*).

TO RECEIVE FREIGHT, ETC.

—— to demand, sue for, and prosecute with effect, and receive, for my use, and the use of C. D., E. F., and G. H., part owners of the ship ——, all such sums of money as are due from M. R., C. H., and N. T., etc., merchants, etc., for freight, or otherwise for or concerning any and all goods and merchandise, imported by said ship in her late voyage from ——, by virtue of a charter party bearing date the —— day of ——, or otherwise, and upon receipt thereof to give sufficient acquittances and releases for the same.

TO RECEIVE MONEY NOT YET DUE, ETC.

—— to demand and receive on the —— day of —— next, the sum of —— dollars for the payment of which C. D. and E. F., of ——, by their obligation, bearing date the —— day of —— last, are bound unto me, and upon payment thereof to receipt for the same and cancel said obligation.

And if the same shall not then be paid, to sue for the sum of —— dollars, the penalty of said obligation.

TO RECEIVE MONEY FROM UNDERWRITERS.

—— to ask, demand, sue for, and recover the several sum and sums of money which I, the said A. B., may be entitled to recover, together with all costs and charges incident thereto, from certain underwriters, by whose policies of insurance certain goods and merchandise, shipped by the ship ——, were assured from loss and damage by sea, by them respectively, as follows, to wit (*specifying what goods and merchandise were assured by each underwriter separately*), all of which said goods and merchandise became wholly damaged and lost from said ship's being forced by stress of weather into ——.

And in default of payment of the same, or any part thereof, for me and in my name to commence and prosecute to final effect any actions at law or equity against said underwriters or their legal representatives, or whomsoever else it may concern, for the recovery and enforcing payment thereof; and on payment of the same, or any part thereof, for me and in my name, to execute suitable discharges.

And if my said attorney shall deem expedient, to compromise or submit to arbitration the several claims and demands which I have against said underwriters by virtue of said policies of insurance.

And generally, etc.

TO RECEIVE POSSESSION OF REAL ESTATE.

—— to receive and take peaceable possession of the following described premises, situated in —— county and State of —— (*describing them*), which was heretofore conveyed in fee, together with all privileges and appurtenances, by C. D. to me, by an instrument in writing bearing date the —— day of ——, and duly executed and acknowledged and recorded as required by law, in the office of ——, in said county. Receiving and taking the same of said C. D. or his agent or attorney thereunto lawfully authorized, according to the true intent of said conveyance.

Another.

—— to take and receive of the sheriff of —— county, or his deputy, peaceable and quiet possession of all and singular the following described lands, tenements and hereditaments, situated in —— county, State of ——, which were lately belonging to C. D., and which said sheriff has caused to be set off to me, by virtue of an execution to him directed, etc. Giving and granting, etc.

TO RECEIVE A LEGACY.

—— to ask, demand and receive of and from E. X. and T. R., executors of the last will and testament of D. D., late of ——, deceased, the legacy of —— dollars, given and bequeathed me by said will; and upon receipt by, or payment to my said attorney, to make, execute and deliver a general release or discharge for the same; hereby ratifying, etc.

Another.

—— to ask, demand and receive of and from C. D. the sum of —— dollars, which D. D., late of ——, deceased, by her last will and testament, bearing testimony the —— day of ——, did give and bequeath unto me, upon my executing and delivering a general release unto the executors of said D. D., making E. X., of ——, his executor, said will having been duly proved, and having executed and delivered said release to my said attorney, to be by him delivered to said E. X. upon payment of said sum; giving and granting unto my said attorney full power, etc.

TO RECEIVE PRINCIPAL AND INTEREST, ETC.

—— to ask, demand and receive all sums of money loaned to the following named persons, with the interest accrued and to accrue, to wit (*give name of borrower, amount loaned, time of loan, rate of interest and interest accrued, etc*).

Also to ask, demand and receive all dividends which shall be payable, according to law, on the

following described stock, standing in my name, to wit (*describing it*).

To Receive Share of Estate, etc.

—— to ask, demand and receive of and from A. D. and M. R., who were duly appointed administrators of the estate and effects of D. D., deceased, (my portion and share of) certain personal property belonging to said deceased in his lifetime, and which is to be divided among (us) the heirs of said D. D., according to the provisions of the statute relative to the distribution of the estates of intestates. And upon receipt thereof by or payment thereof to my (*or* our) said attorney, to make, execute and deliver a good and sufficient receipt, release and discharge for the same; hereby ratifying, etc.

To Receive Wages.

—— to ask, demand, receive and receipt for all sums of money as are now due, or may at any time hereafter become due and owing to me for wages as a (*state what*).

And upon non-payment, etc.

Another.

—— to ask, demand, receive and receipt for, of and from all and every person and persons whatsoever, all sums of money which now are and shall at any time hereafter become due and owing to me for wages from (*state whom*), and also all other moneys now due, or to become due and owing to me by any ways, means or persons whatever.

And upon non-payment of the same or any part thereof, I hereby authorize and empower my said attorney to enforce the same by any action or legal proceeding, in my name or otherwise, necessary or requisite for the recovery of the same.

To Sell Personal Property, etc.

—— to sell, transfer and deliver unto (*state whom*) or any other person or persons (*here describe the property or goods*).

Giving and granting my said attorney full power of substitution and revocation.

In witness, etc.

To Sell Real Estate.

—— to sell and convey the following described real estate, situated in —— county, and State of ——, for the sum of —— dollars, and upon the receipt of said sum to execute and deliver to the purchaser thereof, or his attorney, a good and sufficient warranty deed for the same.

To Sell Real Estate, etc.

A power to *sell and convey* is not a power to mortgage. And a power to do the one will not authorize a doing of the other, nor of anything save the precise act authorized.[a]

—— to grant, bargain, sell and convey the following described premises, situated in —— county, and State of ——, to wit (*describing them*), or any part thereof, for such price, and on such terms as he shall deem proper, and in my name to make, execute, with or without covenants and warranty, acknowledge and deliver good and sufficient conveyances for the same.

The following may be added when proper:

And until the sale thereof, to lease said real estate for the best rents that can be procured for the same, and to ask, demand, distrain for, collect, recover and receive all sums of money which shall become due and owing to me, by means of such bargain and sale or lease.

Giving and granting unto my said attorney, etc.

To Sell Real Estate, etc.

—— to grant, bargain and sell all that part and parcel of real estate, situated in —— county, and State of ——, and described as follows, to wit (*describing it*), with the appurtenances, and all my estate, right, title and interest therein, unto such person or persons, and for such sum or sums of money (*or* for such consideration or considerations), for cash, or upon such credit or credits as my said attorney shall deem most for my advantage and profit; and upon such sale or sales to make, seal, acknowledge and deliver, in due form of law, suitable and proper deeds, general or special, of warranty, quit claim, or otherwise, as my said attorney shall deem expedient, and for me and in my name to accept and receive all and every the sum and sums of money (*or* consideration or considerations), whatsoever, which shall be coming to me on account of said sale or sales, and upon receipt thereof, in my name and stead, to make, seal and deliver suitable acquittance or acquittances.

And generally giving my said attorney full authority and power touching the premises, to do, execute and perform in all things as amply and fully as I might if personally present.

To Sell Stock, etc.

—— to sell, assign and transfer unto E. F. —— shares of —— stock in the capital or joint stock of the ——.

And I hereby empower my said attorney to perform all necessary acts for said sale, assignment and transfer.

In witness, etc. (*Signed*) A. B.

To Sell Stock, etc.

—— to sell and transfer unto any persons whomsoever, and for such price as my said attorney shall think fit, all and any of the following stocks (*describing them*).

And also for me, and in my name, to make and pass all necessary acts of assignment, and to give and receive receipts and releases for the consideration money arising from the sale thereof.

And also for me, and in my name, to give receipts for all interest and dividends now due or that shall hereafter become due on said capital stock, until the sale and transfer thereof.

In witness, etc.

To Sell Vessel, etc.

—— to sell, convey and transfer all of our several interests in the ship S., whereof A. B. is five-eighths, C. D. two-eighths, and E. F. one-eighth owners, together with her tackle, boats, apparel and furniture, to any person or persons, and for such sum and sums of money as he may deem proper, to receive and receipt for the same, and to execute and deliver the purchaser or purchasers thereof good and sufficient bills of sale or other conveyances thereof.

Giving and granting, etc.

To Sign Writings, etc.

—— to make, execute, sign, seal and deliver all agreements, bills, bonds, contracts, conveyances, specialties or other instruments, which shall be necessary to the proper (conducting of the following business, *or* completion of the following business, *or other matter, specifying it*).

And to do and perform all and every act and deed of whatsoever name or nature, legally appertaining to the same.

To Subscribe, etc.

—— to subscribe for (*state what*).

To Substitute.

To substitute one or more persons under him with like power.

Confirmation—General Form.

Whereas, misrepresentation has arisen as to the authority and power of C. D., of ——, in the county of ——, and State of ——, in my name and behalf to execute a certain agreement between E. F. of the one part and myself of the other part; and whereas, said agreement has been executed by the said C. D., as my lawful attorney, and the said E. F. respectively:

Now, therefore, these presents witness that I, A. B., of ——, in the county of ——, and State of ——, have examined and read said articles of agreement, and that I do hereby ratify and confirm the same, and do declare that the said C. D., who did, as my lawful attorney, execute the same, did so execute the same by my authority and with my consent; and I do now fully ratify and confirm all his acts and doings, in and about the same, in as full a manner as if I, myself, had executed the same.

In witness whereof, I have hereunto set, etc. (*If the power be to convey real estate, then this clause should be the same as in conveyances of real property, which see*).

[a] 3 Hill, 361; 3 Barb. 128; 1 Sandf. 17; 4 Comst. 9; 9 Wend. 446.

Custom House Power—General Form.

—— to receive and enter at the custom house of the district of —— any goods, wares or merchandise imported by me, or which may hereafter arrive, consigned to me; to sign in my name and seal and deliver, as my act and deed, any bond or bonds which may be required by the collector of said district, for securing the duties on any such goods, wares or merchandise.

Also to sign my name to, seal and deliver for me and as my act and deed, any bond or bonds requisite for obtaining the debenture on any goods, wares or merchandise when exported.

And generally to transact all business at said custom house, in which I am or may hereafter be interested or concerned, as fully as I could if personally present.

And I do hereby declare that all bonds signed and executed by my said attorney shall be as obligatory on me as those signed, sealed and delivered by myself.

This power shall remain in full force until revoked by written notice given to said collector.

In witness, etc.

Custom House Power—Special Form.

—— to receive and enter at the custom house of the district of ——, any goods, wares or merchandise, imported by or consigned to me, in the —— (*naming the vessel by which the goods are shipped*) and in my name and as my act and deed, to sign my name to, seal and deliver any bond or bonds required by the collector of said district for securing the duties on the same.

Also, and in my name and as my act and deed, to sign my name to, seal and deliver any bond or bonds requisite for obtaining the debenture on any of said goods, wares or merchandise, when exported for me.

And generally to transact all business at said custom house, in reference to said goods, wares and merchandise which may be requisite and necessary in the premises, as fully as I could if personally present.

And I hereby declare that all bonds signed, sealed and delivered by my said attorney in the premises shall be as obligatory on me as those signed, sealed and delivered by myself.

In witness, etc.

Revocation of Power—General Form.

Know all men by these presents:

That I, A. B., of ——, in and by my letter of attorney bearing date the —— day of ——, did make, constitute and appoint A. Y. my attorney, as by said letter more fully appears.

That I, the said A. B., do by these presents annul, countermand, revoke and make void said letter of attorney and all authority and power thereby given said attorney, A. Y.

In witness, etc.

Revocation of Power—General Form.

Know all men by these presents:

That I, A. B., of ——, in and by my letter of attorney bearing date the —— day of ——, did make, constitute and appoint A. Y., of ——, my true and lawful attorney, for me and in my stead, —— to (*state what*) as by said letter will more fully appear.

That I, the said A. B., have annulled, countermanded, revoked and made void, and by these presents do annul, countermand, revoke and make void the said letter of attorney and all authority and power thereby given or intended to be given to the said A. Y.

In witness, etc.

Revocation of Power and Substitution.

Know all men by these presents:

That I, A. B., of the city of ——, and State of ——, did heretofore, by a certain instrument in writing, or letter of attorney, bearing date the —— day of ——, empower A. Y., of ——, in my name and for my use, to (*state what*); and to do and perform all other matters and things as fully as I myself might or could do for the purposes intended, etc., and to that or like effect, as by said instrument more fully and at large appears.

That I, the said A. B., for divers good causes and valuable considerations, have revoked, recalled, countermanded and made void, and by these presents do revoke, recall, countermand, and to all intents and purposes make null, void and of none effect the said recited instrument in writing, or letter of attorney, and all the powers and authorities therein and thereby given and granted, and all other matters and things therein contained; and all acts, matters and things whatsoever, which shall or may be acted, done or performed by virtue or means thereof, in any manner whatsoever.

And further know all men:

That I, the said A. B., do by these presents appoint, constitute, depute, make, name and put in my place and stead, S. E., to be my true and lawful attorney, for me and in my name and to my use —— to, etc.

In witness, etc.

Substitution of Attorney—Short Form.

(For value received) I hereby appoint S. E. (irrevocably) as my substitute, with all the powers within (*or* above) given to me. (*Signed*) A. Y.

Substitution of Attorney—Short Form.

To be indorsed on the Power of Attorney.

I hereby appoint S. E. as my substitute and in my stead to do and perform every act and thing which I might or could do by virtue of the within power of attorney. (*Signed*) A. Y.

Substitution of Attorney—General Form.

To be indorsed on the Power of Attorney.

Know all men by these presents:

That I, A. Y., of ——, by virtue of the authority given me by the within power of attorney, do substitute S. E., of ——, as attorney in my stead, to do, perform and execute every act and thing which I might or could do by virtue of the said power of attorney. Hereby ratifying all that my said substitute shall or may do in the premises and of the within power of attorney.

In witness, etc.

For form of ACKNOWLEDGMENT, see that title.

Substitution of Attorney—General Form.

Know all men by these presents:

That I, A. Y., of ——, by virtue of the authority and power to me given, in and by the power of attorney of A. B., of ——, which is hereunto annexed, do appoint and substitute S. E., of ——, to do, perform and execute every act and thing which I might or could do, in, by or under the same, as well for me, as being the true and lawful attorney and substitute of the said A. B. Hereby ratifying all that said attorney and substitute shall do in the premises, by virtue hereof and of said power of attorney.

In witness, etc.

For form of ACKNOWLEDGMENT, see that title.

Substitution of Attorney—General Form.

Know all men by these presents:

That A. B., by his letter of attorney, a copy of which is hereunto annexed, did appoint and constitute me, the undersigned, A. Y., his attorney for the purposes and with the powers in the same letter of attorney at large contained.

That I, the said A. Y., by virtue hereof, and of the power of substitution in said letter of attorney appearing, do substitute and depute S. E., of ——, to be the lawful and sufficient attorney of said A. B., with all and every authority and power of acting in the name, place, stead, and to the use of said A. B., granted to me by said letter of attorney, which I can lawfully exercise and delegate.

And I hereby ratify and confirm whatsoever the said S. E. shall lawfully do, or cause to be done in the name of the said A. B., or in my name as attorney of said A. B., to the use of said A. B., by virtue of these presents, and the power of substitution in said letter of attorney contained.

In witness, etc.

For form of ACKNOWLEDGMENT, see that title.

AN ATTORNEY AT LAW is an officer of a court of justice, who is employed by a party in an action to manage the cause for him. In this sense he is also called advocate, counsellor at law, lawyer, and solicitor.

A client is one who employs and retains an attorney and counsellor to manage or defend a suit or action, to which he is a party, or to advise him about legal matters.

Appearance by attorney is the general rule, and appearance without, the exception.[a] It results from the nature of their functions, and of their duties, as well to the court as to the client, that no one can, even by consent, be the attorney of both the litigating parties in the same controversy.[b]

When a party has been aggrieved, and is desirous of obtaining redress for the violation of his rights, he should adopt the best means to put himself completely in the right, and to secure the evidence required to support his case. As most persons are ignorant of the means to be adopted to gain that end, the party should immediately apply to some attorney to aid him.

Although a party may himself conduct a suit brought by or against him, yet experience proves it is very dangerous for him to manage his own case, whatever may be his learning or qualities. He labors generally under such an excitement that it would be difficult to behave with that temperance and discretion so necessary to the proper management of a cause; besides, it is proper that he should not come in personal collision with the opponent, for this would produce many indiscreet acts which would be prejudicial to his cause.

In the selection of an attorney it is important to select not a mere lawyer, but a man of honor and honesty, having a knowledge of his professional duties, of the world, and being a good negotiator: one who is disposed to avoid litigation, and, above all, one who has not any connection with the adverse party. Pay him a retaining fee. When an attorney is thus employed, there is an implied contract, on his part, that he will use due diligence in the course of legal proceedings. He is bound to act with the most scrupulous honor, and to attend to the interest of his client only.[c]

The principal duties of an attorney are: to be true to the court and to his client; to manage the business of his client with care, skill, and integrity;[d] to keep his client informed as to the state of his business; and to keep his secrets, confided to him as such.

An attorney at law, by his admission as such, acquires rights of which he cannot be deprived at the mere *discretion* of the court.[e] Such an attorney need not prove his authority to appear for any party in court, and act for them there, unless his authority be denied, and some evidence be offered tending to show that he has no such authority.[f] But a person who is not an attorney at law, and who offers to appear for another in court, by special authority, must prove such authority if requested.[g] An attorney's implied duty to use reasonable skill, care, etc., is the same as that of other persons, to whose care and skill anything is intrusted.[h] He is not responsible for a mistake in a doubtful point of law,[i] or of practice,[j] nor for the fault of counsel retained by him.[k] He is liable for disclosing privileged communications.[l] If discharged by one party, he may act for an opposite party, provided he makes no improper use of knowledge obtained by him while acting for the first party.[m] But he may not act for an opposite party if discharged by his first client for misconduct.[n] The law implies a contract on the part of the client to pay his attorney the legal fees, or statute rate of compensation.[o] And if a client asserts that the services were to be rendered for a less compensation, the burden rests on him to prove this bargain.[p] If a bargain be proved, the attorney cannot recover more by showing that his services were worth more.[q] And even if he shows that the case was deemed, with good reason, a desperate one, this will not sustain his claim for an excessive compensation, as, half the sum recovered.[r] If, during the suit, an attorney makes a contract with his client, which is void for champerty, he may still recover a proper compensation for services rendered before the illegal bargain.[s] An attorney cannot maintain an action for compensation for services, merely by proof that the services were rendered; but must go further and show that they were requested, or, in other words, that he was retained as an attorney or counsel.[t] And he cannot recover his bill against his client, if his client has received no benefit whatever from his services by reason of his want of care and skill.[u] An attorney is, in general, personally liable on an agreement made by him, in his own name, although only personally concerned in the matter.[v] And where employed in the usual way to conduct a suit, he has, in general, no authority to enter into a compromise without the sanction of his client, express or implied.

The qualifications requisite to enable a person to practise law in the various courts

[a]-Appearance by an attorney has been allowed in England from the time of the earliest records of the courts of that country: they are mentioned in Glanville, Brocton, Fleta, and Britton; and a case turning upon the party's right to appear by attorney, reported Year B., 17 Edw. 3, p. 8, case 23; in France such appearance was first allowed by letters patent of Philip le Bel, A. D. 1290; 1 *Fournel Hist. des Advocate*, 42, 43, 92, 93; 2 Loisel. Contumes, 14, 15. [b]-Farr. 47. [c]-8 Watts. 81; 3 W. & S. 486. [d]-4 Burr. 2061; 1 B. & Ald. 202; 2 Wils. 305; 1 Bingh. 347. [e]-20 Cal. 427. [f]-9 Wheat. 738–830; 6 Johns. 31–296; 27 Miss. 567; 7 Harr. & Johns. 275; 16 S. & R. 369; 1 N. H. 23; 8 Foster (N. H.) 302; 11 Johns. 464; Burghart *vs.* Gardner, 3 Barb. 64; 1 Jac. & W. 457; *solicitor* is the legal designation of one who fills the place in a court of equity corresponding to that of an attorney in a court of law; Maughan Ch. 1, § 1. [g]-9 Wheat. 829. [h]-4 Burr. 2060; 3 Camp. 17–19; 7 C. & P. 289; 6 Bing. 460; 2 Bing. N. C. 625; 16 S. & R. 368; 15 Mass. 316; 15 Pick. 440; 2 Cush. 316; 12 E. L. & E. 403; 28 Id. 424; 5 H. & N. 890. [i]-4 B. & Ad. 424; 1 Nev. & M. 262; 9 M. & W. 569; 4 Burr. 2060. [j]-3 B. & C. 738. [k]-4 Mo. & P. 149, S. C.; 6 Bing. 460. [l]-3 Bing. N. C. 235; 27 Beav. 140; 3 Met. (Ky.) 51; 15 Ind. 50; 15 La. An. 330; 11 Ohio St. 261; 26 Ill. 225. [m]-1 Jac. 300–303–304; 19 Ves. 261; 4 Tyr. 78. [n]-19 Ves. 261; 4 Tyr. 78. [o]-1 Sanf. 569. [p]-Id. [q]-12 Ala. 790. [r]-Wright, 485. [s]-1 Pick. 415; 4 Litt. 417; 6 Monr. 392; 7 B. Mon. 305. [t]-3 Barb. 64. [u]-6 Bing. N. C. 111; 12 A. & E. 373; 7 Bing. 569; 12 Wend. 517; 11 Johns. 547. [v]-1 Cr. & M. 714; 1 B. & C. 160; 3 B. & Ald. 47; 1 C. & P. 307; 12 N. H. 179; 15 Id. 569.

are, in general, prescribed by the General Statutes of each State.

A retainer is the act of a client, by which he engages an attorney or counsellor to manage a cause, either by prosecuting it when he is plaintiff, or defending it when he is defendant. The retaining fee is that given to counsel on being consulted, to insure his future services.

The effect of a retainer to prosecute or defend a suit is to confer on the attorney all the powers exercised by the forms and usages of the courts in which the suit is pending.[w] He may receive payment;[x] may bring a second suit, after being non-suited in the first for want of formal proof;[y] may cause a review of the judgment for error;[z] may discontinue the suit;[a] may restore the action after a *nol. pros.*;[b] may claim an appeal, and bind his client in his name for the prosecution of it;[c] may submit the suit to arbitration;[d] may sue out an alias execution;[e] may waive objections to evidence, and enter into a stipulation for the admission of facts, or conduct of the trial,[f] and for the release of bail;[g] may waive the right of appeal, review, notice, and the like, and confess judgment.[h] But he has no authority to execute a discharge of a debtor, but upon the actual payment of the full amount of the debt,[i] and that in money only;[j] nor to release sureties;[k] nor to enter a *retraxit*;[l] nor to act for the legal representatives of his deceased client;[m] nor to release a witness.[n]

There is an implied contract on the part of an attorney who has been retained, that he will use due diligence in the course of legal proceedings, but it is not an undertaking to recover a judgment.[o] An attorney is bound to act with the most scrupulous honor; he ought to disclose to his client if he has any adverse retainer, which may affect his judgment or his client's interest; but the concealment of the fact does not necessarily imply fraud.[p]

ATTORNEY'S FORMS

Appointment of Attorney at Law—General Form.

I, A. B., hereby constitute A. Y., attorney at law, of ——, my attorney in all causes, real, personal, or mixed, for or against me, in my name to appear, plead, and pursue the same to final effect, with power of substitution.

Witness my hand, the —— day of ——, A. D. ——.

A. B.

Appointment of Attorney at Law—General Form.

I hereby authorize and empower A. Y., my attorney at law, to appear in my behalf, and as my said attorney represent my entire interests in any action, suit, or legal proceeding (and especially, *state the particular cause*) **in any wise affecting the same, with ower of substitution.**

(*Signed*) **A. B.**

Appointment of Attorney at Law.

By defendant.

I, C. D., of ——, do hereby appoint, constitute, and make A. Y., Esq., of ——, my lawful and sufficient attorney at law, and in fact, to appear for me in a certain action (suit, *or* legal proceeding), **wherein A. B. is plaintiff, and C. D. defendant, pending in the —— court of ——, and use all lawful ways and means in my defence, and in my name, therein, as may be requisite and necessary in the premises, and as fully as if I were personally present in said court. Hereby ratifying whatsoever my said attorney may lawfully do in the premises.**

Witness my hand, this —— day of ——, A. D. ——.

C. D.

Appointment of Attorney at Law.

By plaintiff to commence action.

I, A. B., of ——, do hereby appoint, constitute, and make A. Y., of ——, my lawful and sufficient attorney, in law and in fact, to institute for me, and in my name, an action (*or* suit, *or* legal proceeding), **in any court having jurisdiction, against C. D., for** (*or* upon, etc., *stating the cause, object, matter, or thing in dispute*), **and the same conduct to trial, judgment, and execution in as speedy a manner as said A. Y. reasonably can, and to use all lawful ways and means, in my name therein, as fully as though I were personally present in said court.**

(*Signed*) **A. B.**

Appointment of Attorney at Law.

To conduct a suit already pending.

I, A. B., of ——, do hereby appoint, constitute, and make A. Y. my lawful and sufficient attorney in law, and in fact, to appear for me in a certain action (suit, *or* legal proceeding) **now commenced and pending in the —— court of ——, wherein I am plaintiff, and C. D. is defendant, and conduct the prosecution of the same by all lawful ways and means, in my name, in as full and effectual a manner as if I were personally present in said court. Hereby confirming and sanctioning whatsoever my said attorney shall lawfully do in the premises.**

Witness my hand, this —— day of ——, A. D. ——.

A. B.

A warrant of attorney is an instrument of writing, addressed to one or more attorneys therein named, authorizing them, generally, to appear in any court, or some specified court, on behalf of the person giving it, and to confess judgment in favor of some particular person named therein, in an action at law. It usually contains stipulations not to interpose any proceeding in error, or any matter in equity so as to delay the person in whose favor the judgment is sought.

A warrant of attorney is given to the creditor as a security; having it in his possession, he may sign judgment and have execution issued without the formality of an action at law.[q] A warrant of attorney given to confess judgment is not revocable, in general, and notwithstanding a revocation, judgment may be entered upon it.[r] The death of the debtor, however, generally operates as an effectual revocation. So, also, the death of the constituent operates as a revocation, and where a warrant has been executed by two, it is vacated

w-2 M'Cord, 409; 13 Met. (Mass.) 320. **x**-13 Mass. 320; 4 Conn. 517; 1 Me. 257; 39 Id. 386; 1 Wash. C. C. 10; 8 Pet. 18. **y**-12 Johns. 315. **z**-16 Mass. 74. **a**-6 Cow. 385. **b**-1 Binn. 469. **c**-1 Pick. 462. **d**-1 Dall. 164; 16 Mass. 396; 8 Rich. 468; 6 McLean, C. C. 190; 7 Cranch, 436. **e**-2 N. H. 376; see 9 Met. (Mass.) 423. **f**-2 N. H. 520. **g**-1 Murphy, 146. **h**-5 N. H. 393; 4 Monr. 377; 5 Pet. 99. **i**-8 Dowl. 656; 8 Johns. 361; 10 Id. 220; 10 Vt. 471; 32 Me. 110; 36 Id. 496; 21 Conn. 845; 3 Md. Ch. Dec. 392; 14 Penn. St. 87; 13 Ark. 644; 1 Pick. 347. **j**-16 Ill. 272; 1 Iowa, 360; see 6 Barb. 201. **k**-3 J. J. Marsh. 532; 4 McLean, C. C. 85. **l**-3 Blackf. 137. **m**-2 Penning. 689. **n**-2 Greenl. Ev. § 141; 6 Barb. 392; see 3 Met. (Mass.) 413; 29 N. H. 170; 13 N. Y. 377; 36 Me. 339; 3 Ohio St. 528; 12 Mo. 76; 25 Penn. St. 264. **o**-Wright, 446; see 3 Campb. 17 7 C. & P. 289; 2 Bingh. 625; 16 S. & R. 368; 2 Cush. 316. **p**-3 Mas. C. C. 305; 2 Greenl. Ev. § 139. **q**-See 14 East. 576; 2 T. R. 100; 1 H. Bl. 75; 1 Str. 20; 2 W. Bl. 1133; 2 Wils. 3; 1 Chitty Bailm. 707. **r**-2 Ld Raym. 766, 850; 1 Salk. 87; 7 Mod. 93; 2 Esp. 563.

by the death of one of them; but such warrant, given by two, being merely ministerial, may be executed in the name of the survivor.[t] In case of the constituent's death, courts will, however, allow judgments to be entered as of a term prior to the death of a constituent.[u] A warrant of attorney to confess judgment executed by an unmarried woman is revoked by her marriage in the absence of statutory provisions to the contrary; but if executed by an unmarried woman the courts will allow judgment to be entered up in the name of the husband and wife.[v] The virtue of a warrant of attorney is spent by the entry of the one judgment; a second judgment entered upon the same warrant of attorney is irregular,[w] and cannot lawfully be enforced.

The general authority given by the warrant of attorney is usually qualified and restricted by a bond which commonly accompanies it, together with the conditions of defeasance, stating the terms upon which it was given and restraining the creditor from making immediate use of it.

Great frauds are often committed under color of bonds and warrants of attorney; in many of the States they are absolutely prohibited on experience of the abuse made of them. They can be tolerated only with a liberal exercise of discretion by the court in inquiring into them.[x]

A warrant of attorney to confess judgment should contain not only a grant of authority, expressed clearly and intelligibly, but a designation, by name or description, of the person who is to execute it. It must be subscribed by the defendant, but no formality is necessary.[y]

WARRANT OF ATTORNEY FORMS.

Bond and Warrant of Attorney.

Know all men by these presents:

That C. D. (of ——) is bound unto A. B. (of ——) in the sum of —— dollars.

The condition of said obligation is:

That if the above-bound C. D., his heirs or legal representatives, or any of them, shall pay or cause to be paid unto said A. B., his heirs, assigns, or legal representatives the sum of —— dollars (for, or on account of, *state what*), **without fraud or further delay, then said obligation shall be void, otherwise to remain in full force.**

And further, that A. A., or any other attorney of any court of record in the State of ——, is hereby empowered to appear for said C. D. in any action or suit brought or entered in such court, and after (complaint, *or* declaration, *or* petition, *as the case may be*), **filed therein, and without the issuing or service of process, to confess judgment against said C. D. for said sum of ——, with interest** (at the rate of —— per cent. per annum, from the —— day of —— unto ——), **to release all errors, waive all right to appeal** (but with a stay of execution unto the —— day of ——).

Executed and delivered in the presence of ——. (*Signed*) **C. D.**

Warrant of Attorney—General Form.

To A. Y., attorney-at-law, of the —— court, at ——, in ——, in the State of ——, or to any other attorney of said court, or of any other court of record, there or elsewhere.

Whereas, C. D., by a certain obligation of the same date herewith is bound unto A. B. in the sum of —— dollars:

Therefore, you, or any of you, are hereby authorized to appear in behalf of said C. D., his heirs, or legal representatives, in any of said courts, in any suit brought by said A. B., his heirs, assigns, or legal representatives, on said obligation without the issuing or service of process, and confess judgment thereupon against said C. D., his heirs or legal representatives, for the sum of —— dollars, interest and costs of suit in any manner or form, as you shall deem proper.

And said C. D., for himself, his heirs and legal representatives, does hereby release and waive all errors, mis-entries, defects, and imperfections whatever in the entry of said judgment, or any process or proceedings connected therewith, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand (and seal) **this —— day of ——, A. D. ——.**

(*Witnesses*) **W. T., N. S.** (*Signed*) **C. D.**

Judgment Confessed on Warrant.

Title of action, etc.[z]

Date ——. Said A. B., by A. Y., his attorney, files his (complaint, *or* declaration, *or* petition, *as the case may be*), **against said C. D.** (for —— dollars due —— for *or* on account of *state what*), **and thereupon A. A., one of the attorneys of this court, appeared** (in open court) **in behalf of said C. D., and by virtue of a warrant of attorney, executed for that purpose, produced and duly proved the same to said court, waived the issuing and service of process, and confessed that said C. D. owes said A. B.** (—— dollars of) **said sum of —— dollars, as stated in said A. B.'s** (complaint, *or* declaration, *or* petition, *as the case may be*) **herein.**

It is therefore considered and adjudged that said A. B. do recover of said C. D. said sum of —— dollars confessed due, together with his costs, herein taxed at —— dollars and —— cents, with a release of all errors and right of appeal, by virtue of said warrant of attorney.

Auctioneers are those who sell or conduct the sale of goods, merchandise and real property, by public sale to the highest bidder.[a] They are generally licensed for this purpose by public authority.

An auctioneer is the agent of the seller,[b] and of the buyer for some purposes.[c] He has a special property in the goods, and may bring an action for the price.[d] He has a lien upon them for the charges of the sale, his commission, and the auction duty.[e] He must obtain the best price he fairly can, and is responsible for damages arising from a failure to pursue the regular course of business, or from a want of skill;[f] and where he sells goods as the property of one not the owner, is liable for their value to the real owner.[g] See AUCTIONS, SALES.

Bailees are persons to whom personal property is delivered for some specific purpose; as, to be carried from one place to another, to be cared for and kept in good condition, to be manufactured, to be held as security, and the

t-7 Taunt. 453. u-2 Kent Comm. 646, 647; 9 Wend. 452; 8 Wheat. 174; see also 2 Ld. Raym. 766, 849; where the proceeding is discussed; 7 Mod. 9; 3 Str. 108; 1 Vent. 310; 1 Salk. 87, 3 Id. 116. v-1 Salk. 117; 1 P. A. Browne, 253; 3 Harring. 411. w-1 Penn. 245; 6 S. & R. 296; 14 Id. 170; Addis. 267; 2 Browne, 321; 3 Wash. C. C. 558. x-1 Troubat & Haly Pr. Pt. 1, 405. y-5 Taunt. 264; 6 Harr. 86; see 3 Pa. 72. z-The judgment docket must particularly state and set forth the names of the parties; 7 W. & S. 406; 3 Harr. 181.

a-5 Mass. 505; 19 Pick. 484. b-3 T. R. 148; 2 Rich. 464; 1 Parsons Contr. 418 c-4 Ad. & E. 792; 7 East. 558; 2 Taunt. 38; 3 Ves. & B. 57; 4 Johns. Ch. 659; 16 Wend. 28; 4 Me. 1, 258; 6 Leigh. 16; 2 Kent Comm. 539. d-1 H. Bl. 81; 7 Taunt. 237; 19 Ark. 566; 5 S. & R. 19; 1 Riley, 287; 16 Johns. 1; 1 E. D. Smith, 590; see 5 Mees & W. 645; 3 Carr. & P. 352; 5 B & Ad. 568. e-15 Mo. 184; 2 Kent Comm. 536. f-3 B & Ald. 616; Cowp. 395; 2 Wils. 325. g-7 Taunt. 237; 5 Esp. 103; 20 Wend. 21; 22 Id. 285; 5 Mo. 323. And see 2 Harring. (Del.) 179.

like; and after the object or purpose of such delivery is accomplished, to return the property as agreed. See BAILMENTS.

Brokers are those engaged for others to make and conclude bargains for them, for a fee or commission. Those who are engaged for others in the negotiation of contracts relative to property, the custody of which they have no concern.[h] There are several classes of brokers. See FACTORS, below.

A broker is for many purposes the agent of both parties. He is in the first place deemed only the agent of his original employer, and becomes the agent of the other when the bargain or contract has been definitely settled in its terms between the principals.[i]

EXCHANGE BROKERS negotiate bills of exchange, domestic and foreign, and other securities, make and conclude bargains for others, in matters of money, securities and merchandise, learn the rates of exchange and notify their employers of the same. Their business sometimes includes the purchase and sale of undercurrent currency, gold and silver, as well as drafts and checks drawn or payable in other cities. This is at their own risk and for their individual profit, and is not, therefore, included in the business of brokerage.

Exchange and merchandise brokers negotiate the sale of merchandise without having possession or control of it, as factors or commission merchants do.

INSURANCE BROKERS or agents, see *Stock Brokers*, procure fire, life and marine insurance, and negotiate between insurers and insured.

NOTE BROKERS negotiate the purchase and sale of bills of exchange, negotiable bonds and promissory notes, for which they are paid a percentage or commission by the seller, whose name it is not their custom to disclose. There is an implied warranty that what they sell is what they represent it to be; and should a bill, bond or note sold by them turn out to be a forgery, they are responsible. But by showing a payment over to their principals, or other special circumstances attending the transaction, which exonerates them in the premises, they will be discharged.[j]

PAWN BROKERS make it their business to lend money upon property deposited with them in pledge, at usurious rates of interest, being licensed therefor, and exempted from the operation of usury laws. See BAILMENTS; PAWN BROKERS.

REAL ESTATE BROKERS or agents negotiate the purchase and sale of real estate, procure loans on mortgage security, collect rents, lease houses and lands, draw conveyances, and furnish abstracts of title to property. See CONVEYANCING.

SHIP BROKERS negotiate the purchase and sale of ships and freighting vessels. Like other brokers they receive a percentage or commission from the seller or freighter.

STOCK BROKERS are those employed to buy and sell shares of stock, whether of the public funds, of banks or other corporations. In the larger cities stock brokers are associated together under a corporate name, as "Board of Brokers," "Merchants' Exchange," "Board of Trade," and the like. These associations are governed by rules and regulations made by themselves, to which each member is subject. Membership is procured by ballot or vote. A member defaulting in his obligations is expelled and forfeits his seat. A regular register or record of all the transactions of the body is kept by an officer of the association. Questions and disputes between members are settled by an arbitration committee. The stocks dealt in at the sessions of the board are those placed on the list by a regular vote of the association, after the same has been examined into by a committee for that purpose. The official record of sales is the best evidence of the price of any stock on a particular day.[k]

BROKERS' FORMS.

An Order to Buy (or Sell) Stock.

Date ——.

B., R. and S., Stock Brokers.

Please (buy *or* sell) for my (*or* our) account and risk (*giving the number*) shares (*giving the names or descriptions of stocks*).

This order good until countermanded.

A. B.

Broker's Receipt for Money for Stock.

$ —— Date ——.

Received of A. B. —— dollars, for —— shares —— stock.

To be transferred to ——. B., R. and S.

Broker's Statement of Account, etc.

Date ——.

B., R. and S., Stock Brokers, etc.

Bought for A. B.:

100 shares New York Central R. R., at $20, -		$2,000 00
" Pennsylvania R. R., at $20, - -		2,000 00
Commission, 12½, - - - -		25 00
Received payment, B., R. and S.		$4,025 00

Carriers are those who undertake to carry property or passengers from one place to another. See BAILMENTS.

Clerks are assistants in a shop or store, who sell goods, keep accounts, etc.; those who are employed in the use of the pen in an office, public or private, in keeping records and accounts. A clerk is always a subordinate. He differs from a factor in this, that the latter wholly supplies the place of his principal in respect to the property consigned to him,[l] while a clerk attends to only a part of the business, while his employer superintends the whole.

Consignees are the persons to whom goods or other things are delivered in trust, for sale or superintendence; called also factors. The goods or property sent is called the consignment.

When the goods consigned to them are their own, and they have been ordered to be sent, they are at his risk the moment the consignment is made, according to the consignee's direction; and the persons employed in their transmission are his agents.[m] When the goods are not the consignee's, if he accept the con-

h-Paley Ag. 13; see Com. Dig. *Merch.* 6; i-Paley Ag. 171, n. p.; 1 Younge J. Exch. 387; 13 Met. Mass. 463. j-Edw. Bills, 291; 4 Duer, 79. k-Sowell, Bankr. l-Pardessus Droit Com. n. 38; 1 Chitty Pr. 80; 2 Bouv. Inst. n. 1287. m-1 Liverm. Ag. 9.

signment he is bound to pursue the instructions of the consignor; as, if the goods be consigned upon condition that he will accept the consignor's bills when drawn upon him he is bound to accept them when presented,[n] or if he is directed to insure he must do so.[o]

Factors or Commission Merchants[p] are agents employed to sell goods or merchandise consigned or delivered to them, by or for their principals for a compensation commonly called factorage or commission.[q]

Where the agent accompanies the ship, taking a cargo aboard, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a factor; he is, however, usually known by the name of a supercargo.[r] A factor differs from a broker in some important particulars, viz.: He may buy and sell for his principal in his own name as well as in the name of his principal; on the contrary, a broker acting as such should buy and sell in the name of his principal.[s] Again, a factor is intrusted with the possession, management, disposal, and control of the goods to be bought and sold, and has a special property and a lien on them; the broker, on the contrary, has usually no such possession, management, control, or disposal of the goods, nor any other special property or lien.[t]

A domestic factor or commission merchant is one who resides in the same country with his principal. By the usages of trade, or intendment of law, when domestic factors are employed in the ordinary business of buying and selling goods, it is presumed that a reciprocal credit between the principal and the agent and third persons has been given; when a purchase has been made by such a factor, he, as well as his principal, is deemed liable for the debt; and in case of a sale the buyer is responsible both to the factor and principal for the purchase money; but this presumption may be rebutted by proof of exclusive credit.[u]

A foreign factor or commission merchant is one who resides in a different country from his principal. Foreign factors are held personally liable upon all contracts made by them for their employers, whether they describe themselves in the contract as agents or not. In such cases the presumption is that the credit is given exclusively to the factor. But this presumption may be rebutted by proof of a contrary agreement.[v]

A factor or commission merchant is required to use reasonable skill and ordinary diligence in his vocation.[w] He is bound to obey his instructions;[x] but when he has none he may and ought to act according to the general usages of trade[y]—to sell for cash when that is usual, or to give credit on sales when that is customary. He is bound to render a just account to his principal, and to pay him the moneys he may receive from him.

He has the right to sell goods in his own name; and when untrammeled by instruction, he may sell them at such times, and for such prices, as, in the exercise of a just discretion, he may think best for his employer.[z] He is, for many purposes, between himself and third persons, to be considered as the owner of the goods. He may, therefore, recover the price of the goods sold by him in his own name, and, consequently, he may receive payment, and give receipts, and discharge the debtor, unless, indeed, notice has been given by the principal to the debtor not to pay. He has a lien on the goods for advances made by him, and for his commissions. He has no right to barter the goods of his principal, nor to pledge them for the purpose of raising money for himself, or to secure a debt he may owe;[a] but he may pledge them for advances made to his principal, or for the purpose of raising money for him, or in order to reimburse himself to the amount of his own lien.[b] Another exception to the rule that a factor cannot pledge the goods of his principal is, that he may raise money by pledging the goods for the payment of duties, or any other charge or purpose allowed or justified by the usages of trade.[c]

It is a general rule that when property remitted by the principal, or acquired from him by his order, is found distinguishable in the hands of the factor or merchant, capable of being traced by a clear and connected chain of identity, in no case the link of it degenerating from a specific trust into a general debt, the creditors of the factor who has become bankrupt have no right to the specific property,[d] even when it is money in the creditors' hands;[e] but the rights of third persons dealing *bona fide* with the factor or commission merchant as a principal, where the name of the principal is sunk entirely, are to be protected.[f] See GENERAL STATUTES.

Forwarding Merchants are those who receive and forward goods, taking upon themselves the expenses of the transportation, for which he receives a compensation. He has no concern in the cars or vessels in which they are transported, and no interest in the freight. See BAILMENTS.

n-1 Liverm. Ag. 139. o-Id. 325. p-See generally 1 Parsons Contr. 80; 2 Kent Comm. 629, *et. seq.*; Story Bailm §§ 325, *et seq.* q-Paley Ag. 13; 1 Liverm. Ag. 68; Story Ag. §§ 33; Com. Dig. *Merchant* B. Malynes Lex. Merc. 81; Beawes Lex. Merc. 44; 3 Chity C. L. 193; 2 Kent Com. (3 Ed.) 622, note *d*; 1 Bell. Comm 385, §§ 408, 409; 2 B & Ald. 143. r-Beawes Lex. Merc. 14, 47; Liverm. Ag. 69, 70; 1 Domat *b.* 1 *t.* 16, § 3, art. 2. s-3 Chitty C. L. 193, 210, 541; 2 B. & Ald. 143, 48; 3 Kent. Comm. (3d Ed.) 622, note *d*; t-Paley Ag. 13 (Lloyd's Ed.); 1 Bell Comm. 385. u-Story Ag. §§ 167, 291, 293; 9 B. & C. 78; 15 East. 62. v-Story Ag § 268; Paley Ag. 248, 273; B. N. P. 130; Smith Merc. L. 46; 2 Liverm. Ag. 249; 1 B. & P. 398: 15 East. 62; 9 Barn. & C. 78. w-1 Ventr 121. x-3 N. Y. 62; 14 Pet. 479: 5 C. B. 895. y-14 Pet. 479; 7 Taunt. 164; 5 Day, 566; 3 Caines, 226; Story C. C. 43. z-3 C. B. 380. a-5 Cush. 111; 2 Mass. 398; 13 Id. 178; 1 M'Cord, 1; 1 Mass. C. C. 440; 5 Johns. 429; see 3 Denio, 472; 13 Eng. L. & Eq. 261. b-2 Kent Comm. (3d Ed.) 625-628; 4 Johns 103; 7 East. 5; Story Bailm. §§ 325-327 c-2 Gall. C. C. 13; 6 S. & R. 386; Paley Ag. 217; 3 Esp. 282. d-Cook Bank. L 400; 2 Str. 1182; 3 Maule & S. 562. e-2 Burr. 1369; 5 Ves. Ch 169; 5 T. R 277; 14 N. H. 38; 2 Dall. 60; 2 Pick. 86; 5 Id. 7; and see Willes, 400; 1 Bos. & P. 539, 648: for the rule as to promissory notes. f-7 T. R. 360: 3 Bingh. 139; 6 M & S. 14.

Masters of Ships are commanders or first officers of merchant ships; captains.

The master of an American ship must be a citizen of the United States;[g] a similar requirement exists in most maritime states. In some countries their qualifications and skill must be attested by examination by proper authorities; in the United States the civil responsibility of the owners for their acts is deemed sufficient.

A vessel sailing without a competent master is deemed unseaworthy, and the owners are liable for any loss of cargo which may occur, but cannot recover on a policy of insurance in case of disaster.[h] The master is selected by the owners, and, in case of his death or disability during the voyage, the mate succeeds. If he also dies in a foreign country, the consignee of the vessel, or the consul of the nation, may, in case of necessity, and in the absence of other authority, appoint a master. The master himself may, in similar circumstances of necessity and distance from the owners, appoint a substitute.[i] During the temporary absence of the master the mate succeeds.[j] See CHARTER PARTIES, CONTRACTS, MARITIME LAW.

Partners. It may be stated, as a general principle which governs all partnerships in *trade*, that each individual partner constitutes the others his *agents* for the purpose of entering into all contracts for him within the scope of the partnership concern, and, consequently, that he is liable to the performance of all such contracts in the same manner as if entered into personally by himself.[k] In truth, the law of partnership is a branch of the law of principal and agent. If two agree that they should carry on a trade and share the profits of it, each is a principal and each is an agent for the other, and each is bound by the other's contracts in carrying on the trade as much as a single principal would be by the act of an agent who was to give the whole of the profits to his employer. See PARTNERSHIP.

Principals are those who, being legally competent to do any act for their own benefit, or on their own account, confides it to another person to do it for them.[l] The word principal is used in opposition to agent, and in this sense it signifies that the principal is the prime mover. It is also used in opposition to the word surety; thus we say, the principal is answerable before the surety.

Every one of full age, and not otherwise disabled, is capable of being a principal; for it is a rule that whenever a person has power, as owner, or in his own right, to do a thing, he may do it by another.[m] Infants are generally incapable of appointing an agent; but under special circumstances they may make such appointments. For instance, an infant may authorize another to do any act which is beneficial to him, but not to do an act which is to his prejudice.[n] Idiots, lunatics, and other persons not legally competent, are wholly incapable of appointing an agent.[o]

THEIR LIABILITIES *to agents are:* 1. To reimburse him all his advances, expenses, and disbursements lawfully incurred about the agency, and also to pay him interest upon such advances and disbursements whenever interest may fairly be presumed to have been stipulated for or to be due to the agent.[p] 2. To pay him his commissions as agreed upon, or according to the usage of trade, except in cases of gratuitous agency.[q] 3. To indemnify the agent when, without his own default, he has sustained damages in following the directions of his principal. For example, when the agent has innocently sold the goods of a third person under the direction or authority of his principal, and a third person recovers damages against the agent, the latter will be entitled to reimbursement from the principal.[r]

—— *to third persons.* The principal is bound to fulfil all the engagements made by the agent for or in the name of the principal, and which come within the scope of his usual employment, although the agent in the particular instance has in fact exceeded or violated his private instructions.[s] And where an exclusive credit is not given to the agent, the principal is liable to third persons upon contracts made by his agent within the scope of his authority, although the agent contracts in his own name and does not disclose his agency.[t] But if the principal and agent are both known, and exclusive credit be given to the latter, the principal will not be liable though the agent should subsequently become insolvent.[u]

Where money is paid by a third person to the agent by mistake, or upon a consideration that has failed, the principal will be liable to repay it, although he may never have received it from his agent.[v]

A principal is affected by notice to his agent respecting any matter distinctly within the scope of his agency, when the notice is given before the transaction begins, or before it is so far completed as to render the notice nugatory.[w] The notice to the agent may be implied as well as express: *knowledge* obtained by the agent in the course of *that very transaction* is notice. Notice to a servant of the principal, or one employed by the principal, affects the principal only when given about the very thing the servant is employed to do. Notice to a corporation binds it only when made to an officer,

g-1 U. S. Stat. at L. 287. h-21 How. 7, 23; 6 Cow. 270; 12 Johns. 128, 136; 21 N. Y. 378. i-1 Parsons Marit. L. 387; 2 Sumn. C. C. 206; 13 Pet. 387. j-2 Sumn. C. C. 588; k-6 Bingh. 792; Story Partn. 1; 20 Miss. 122; 10 N. H. 16; Collyer Partn. § 195; Poth. Partn. c. 5. *n*. 90; 4 Exch. 623, 630. l-1 Domat. *b*. 1. tit. 15, Introd.; Story Ag. § 2. m-Com. Dig. *Atty*. (C. 1) Hemeccius ad pand. p. 1, 1, 3, tit. 1, § 424; 9 Co. 75 *b*; Story Ag. § 6. n-2 Kent Comm. 233-243; 9 Co. 75. 76; 3 Burr. 1804; 6 Cow. 393; 10 Ohio, 37; 10 Pet. 58, 69; 14 Mass. 463. o-Story Ag. § 6. p-Story Ag. §§ 335, 336, 338; Story Bailm. 196, 197; Paley Ag. 107, 108. q-Story Ag. § 324; Paley Ag. 100-107. r-Story Ag. § 339; 9 Met. (Mass.) 218. s-Story Ag. § 443; Smith Merc. L. 56, 59; 4 Watts. 222; 21 Vt. 129; 26 Me. 84; 1 Wash. C. C. 174. t-Story Ag. § 446. u-Id. § 447. v-Story Ag. § 451; Paley Ag. 293; 2 East. 509. w-2 Hill (N. Y.) 451; 1 Hill (N. Y.) 567; S. C. 7 Hill, 427, 1 Barb. Ch. 287; 3 P. Wms. 307; 2 Atkins, 630; 1 Id 384; 1 Ch. Cas. 34; 8 Ala. 519.

whose situation and relation to the corporation imply that he has authority to act for the corporation in the particular matter in regard to which the notice is given.[x]

—— *liabilities for unlawful or wrongful acts of agents.* The principal is not, in general, liable to a criminal prosecution for the acts or misdeeds of his agent, unless he has authorized or co-operated in such acts or misdeeds.[y] He is, however, civilly liable to third persons for the misfeasance, negligence, or omission of duty of his agent in the course of the agency, although he did not authorize or know of such misconduct, or even although he forbade it.[z] And he is liable for the injuries and wrongs of sub-agents who are retained by his direction, either express or implied.[a] But the responsibility of the principal for the negligence or unlawful acts of his agent is limited to cases properly within the scope of the agency.

A principal is not liable for the wilful acts of his agent whereby damage is occasioned to another, unless he originally commanded, or subsequently assented to the act.[b]

A principal is liable for the fraud or misconduct of his agent, so far, that on the one hand he cannot take any benefit from any misrepresentation fraudulently made by his agent, although the principal was ignorant and innocent of the fraud;[c] and on the other hand, if a party dealing with an agent suffer from such fraud, the principal is bound to make him compensation for the injury so sustained;[d] and this, although the principal be innocent,[e] provided the agent acted in the matter as his agent, and distinctly within the line of business intrusted to him.[f]

—— *In contracts made without mentioning the name of the principal*, the principal may avail himself of the agreement; for the contract will be treated as that of the principal as well as of the agent. If, however, the person with whom the contract was made was *bona fide* dealt with the agent as owner, he will be entitled to set off any claim he may have against the agent in answer to the demand of the principal; and the principal's right to enforce contracts entered into by his agent is affected by every species of fraud, misrepresentation, or concealment of the agent which would defeat it if proceeding from himself.[g]

—— *When goods are intrusted to an agent for a specific purpose*, a delivery by him for a different purpose, or in a manner not authorized by the commission, passes no property in them and they may, therefore, be reclaimed by the owner.[h]

—— *Where the principal gives notice to the debtor not to pay money to the agent*, unless the agent has a superior right from a lien or otherwise, the amount of any payment afterward made to the agent may be recovered by the principal from the debtor.[i]

Money paid by an agent may also be recovered by the principal under any of the following circumstances: 1. Where the consideration fails. 2. Where money is paid by an agent through mistake. 3. Where money is illegally extorted from an agent in the course of his employment. 4. Where the money of the principal has been fraudulently applied by the agent to an illegal and prohibited purpose.[j]

RIGHTS *of action under a contract made by an agent.* In contracts by deed no party can have a right of action under them but the party whose name is to them;[k] but in the case of a simple contract an undisclosed principal may show that the apparent party was his agent, and may put himself in the place of his agent;[l] but not so as to affect injuriously the rights of the other party.[m] When the name of the principal is disclosed at the time of the contract is made by the agent, the former is the proper party to sue upon the contract.

—— *Against third persons.* In general, the principal, as against third persons, has a right to all the advantages and benefits of the acts and contracts of his agent, and is entitled to the same remedies against such third persons in respect to such acts and contracts as if they were made or done with him personally.[n] But to this rule there are the following exceptions:

1. When the instrument is under seal, and it has been exclusively made between the agent and the third person; as, for example, a charter party or bottomry bond made by the master of a ship in the course of his employment. In this case the principal cannot sue or be sued on it.[o]

2. When an exclusive credit is given to and by the agent, and therefore the principal cannot be considered in any manner a party to the contract, although he may have authorized it and be entitled to all the benefits arising from it. The case of a foreign factor buying or selling goods is an example of this kind. He is treated, as between himself and the other party, as the sole contractor, and the real principal cannot sue or be sued on the contract. This is a general rule of commercial law, founded upon the known usage of trade, and it is strictly

x-3 C. B. 16; 19 Vt. 410–425; 4 Paige, 127; 1 Hill (N. Y.) 575; 3 Comst. 156–166; 1 Met. 308; Story Ag. §§ 140 *a*. 140 *b*. y-Story Ag. § 452; Paley Ag. 303; 1 M. & M. 433. z-Story Ag. § 452; Paley Ag 294, 307; Smith Merc L. 70, 71; 26 Vt. 112, 123; 6 Gill & J. 291. 20 Barb. 507; 7 Cush. 385. a-Story Ag. § 454; Paley Ag. 296; 1 Bos. & P. 409. b-Paley Ag. 298, 299; Story Ag. § 456; 9 Wend. 268; 23 Pick. 25; 20 Conn. 284. c-12 M. & W. 520; 1 T. R. 12; 2 Stra. 1183; 21 Vt. 129. 6 Cl. & F. 448; 8 C. & P. 316; 1 Hill, 317; 8 How. 134; 3 Story, 611. d-1 Salk. 289; 1 Campb. 124; 3 Strobh Eq. 263; 8 Texas, 6 e-7 Bing. 543; 4 T. R. 39-66; 1 Campb. 530; 20 E. L. & E. 285; 20 Barb. 493.

f-5 Esp. 135; 3 M. & W. 505; 2 Cr. & M. 392. g-Story Ag. §§ 420, 421, 440; 2 Kent Comm 632; Paley Ag. 324, 325; 3 Bos. & P 490; 7 T. R. 359, 360, note; 2 Caines, 299; 24 Wend. 458; 3 Hill (N. Y.) 72. h-Paley Ag. 340, 341; 3 Pick. 495. i-Story Ag § 429; 15 East. 65; 4 Campb 60; 6 Cow. 181, 186. j-Paley Ag. 335, 337. k-1 Salk. 197; 2 L. Rav. 1418. l-4 B & Ald. 437; 10 B. & C 671; 1 Campb. 337; 4 B. & C 664; 12 Mass. 80; 24 Vt. 33; 8 M. & W 834; 12 Id 808. m-7 T. R. 359; 5 B. & Ad. 389; 1 M. & W. 591; 7 Cush. 371; 10 B. Mon. 349; 15 M. & W. 231. n-Story Ag. §§ 418, 420; Paley Ag. 323; 8 La. 296; 2 Stark. 443 o-Story Ag. § 422; Abbott Ship Pt 3, Ch. 1, § 2; 9 Wend. 285; 1 Paine C. C. 252; 3 Wash. C C. 560

adhered to for the safety and convenience of foreign commerce.[p]

3. When the agent has a lien or claim upon the property bought or sold, or upon its proceeds, which is equal to or exceeds the amount of its value, the principal cannot sue without the consent of the agent.[q]

—— *Third persons are liable to the principal for any tort* or injury done to his property or rights in the course of the agency. If both the agent and third person have been parties to the tort or injury, they are jointly as well as severally liable to the principal, and he may maintain an action against both or either of them.[r]

The rights and powers of principals arise from obligations due to them by their agents or third parties.

Those in relation to their agents are:

1. To call them to an account at all times in relation to the business of the agency.[s]

2. When the agent violates his obligations to his principal, either by exceeding his authority, or by positive misconduct, or by mere negligence or omissions in the discharge of the functions of his agency, or in any other manner, and any loss or damage falls on his principal, the latter will be entitled to full indemnity.[t] But the loss or damage must be actual, and not merely probable or possible.[u]

3. Where both the principal and agent may maintain a suit against a third person for any matter relating to the agency, the principal has a right to supersede the agent by suing in his own name; and he may by his own intervention intercept, suspend, or extinguish the right of the agent under the contract.[v] But an exception to this rule arises in favor of the agent to the extent of any lien or other interest or superior right he may have in the property.[w]

Actions against agents to determine the right of a principal. Where money is paid to one as agent, to which another as principal has color of right, the right of the principal cannot be tried in an action brought by the party paying the money, against the agent as for money had and received to the use of such party; but such action should be brought against the principal.[x] For a party who deals with an agent (acting as such, and within the scope of his authority) has, in general, no right to separate him from his principal, and hold him liable in his personal capacity. The agent owes an account of his actions to his principal, and that he may be able to render that account, the law, except under special circumstances, refuses to impose upon him a duty to any third party.

Proxies are persons deputed or substituted to act for others or to represent them. A proxy is the agency of another who acts as a substitute for his principal; appearance of a representative; agency of a substitute. It is also the instrument by which a person is appointed so to act.

The right of voting at an election of an incorporated company is not a general right, and the party claiming it must show a special authority for that purpose.

A Ship's Husband is an agent appointed by the owner of a ship, and invested with authority to make repairs and attend to the management and other concerns of the ship. He is the general agent of the owners of the ship, and may be appointed orally or in writing. He is usually, but not necessarily, owner of the ship.[y] See MARITIME LAW.

Supercargoes are persons specially employed by the owners of cargoes to take charge of and sell to the best advantage merchandise which has been shipped, and to purchase returning cargoes and receive freight as they may be authorized. A supercargo is an officer or person in a merchant's ship whose business it is manage the sales and superintend all the commercial concerns of the voyage.

Supercargoes have complete control over the cargo and everything which immediately concerns it, unless their authority is either expressly or impliedly restrained.[z] Under certain circumstances they are responsible for the cargo.[a] A supercargo has no power to interfere with the government of the ship.[b]

Warehousemen are those who receive goods and merchandise to be stored in their warehouse, for hire. See BAILMENTS.

Wharfingers are those who own or keep a wharf for the purpose of receiving and shipping merchandise to and from it, for hire. See BAILMENTS.

Aggravation. See CRIMINAL LAW; PLEADING.
Aggressor. See CRIMINAL LAW; PLEADING
Agister. See ANIMALS.
Agreement. See AGENCY; CONTRACTS; INSURANCE.
Aid and Comfort. See CRIMINAL LAW.
Aiding and Abetting. See CRIMINAL LAW.
Air. See REAL PROPERTY.
Alia Enormia. See PLEADING.
Alias. See PRACTICE.
Alibi. See EVIDENCE; PRACTICE.
Alien. See CITIZEN; ENEMY; PERSONAL RELATIONS.
Alienate. See CONVEYANCES.
Alienation. See ESTATES; MEDICAL LAW.
Alimony. See DIVORCE.
Aliunde. See EVIDENCE.
Allegation. See PLEADING.
Allegiance. See CITIZEN.
Alliance. See INTERNATIONAL LAW.
Allision. See MARITIME LAW.
Allodium. See REAL PROPERTY.
Allonge. See INDORSEMENT.
Alloy. See MONEY.
Alluvium. See REAL PROPERTY.
Alms. See PAUPER.
Alteration. See CONTRACT.
Alternat. See INTERNATIONAL LAW.

[p]-Story Ag. § 423; Smith Merc. L. 66; 15 East. 62; 9 Barnew & C. 87; 4 Taunt. 574. [q]-Story Ag. §§ 403, 407, 408, 424. [r]-Story Ag. § 436; 3 Maule & S. 562. [s]-2 Bouv. Inst. 28. [t]-1 Liverm. Ag. 398; Paley Ag 7, 71, 74; Story Ag. § 217 *c.*; 12 Pick. 328; 20 Id. 167; 6 Hare Ch. 366; 7 Beav. Rolls. 176. [u]-Story Ag. § 222; Paley Ag. 7, 8, 74, 75; but see Id. 74, note 2. [v]-Story Ag. § 403; 4 Campb. 194; 3 Hill (N. Y.) 72, 73; 6 S. & R. 27; 2 Wash. C. C. 283; 7 Taunt. 237, 243; 1 Maule & S. 576. [w]-Story Ag. §§ 393, 397, 407, 408, 424. [x]-11 A. & E 926; 4 Burr 1984–1986; 8 Taunt 136; 5 Id. 815; 12 Barb. 456; 7 Johns. 179; 10 Pet. 137; 13 Id. 263; 7 Cowen, 456; 3 How. 236; Cowp. 565; 1 Id. 204; 3 M. & Sel. 344; Merc. Law, B. 1, *c.* 5, § 7; 12 M. & W. 588; 7 El. & E. 528. [y]-1 Parsons' Maritime Law, 97. [z]-12 East. 381. [a]-4 Mass. 115; see 1 Gill. & J. 1. [b]-3 Pardessus, *n.* 646; 1 Boulay-Paty Dr. Com. 421.

Alternative. See CONTRACTS.
Ambassador. See INTERNATIONAL LAW.
Ambiguity. See CONSTRUCTION; CONTRACTS.
Ambulatory. See WILLS.
Amenable. See CRIMINAL LAW.
Amendment. See LEGISLATION; PRACTICE.
Amends. See TORTS.
Amercement. See CRIMINAL LAW; PRACTICE.
Amicable Action. See PRACTICE.
Amicus Curiæ. See PRACTICE.
Amnesty. See GOVERNMENTAL LAW.
Amotion. See CORPORATIONS; REAL PROPERTY.
Amount Covered. See INSURANCE.
Amount of Loss. See INSURANCE.
Analogy. See ARGUMENT; PRACTICE.
Ancestor. See DESCENT; PERSONAL RELATIONS.
Ancient House. See HOUSE; REAL PROPERTY.
Ancient Lights. See LIGHTS; REAL PROPERTY.
Ancient Rent. See LANDLORD AND TENANT; RENT.
Ancient Writings. See WRITINGS.

ANIMALS. See PLEADING; PRACTICE; PROPERTY, ETC.; SALES; WARRANTY, ETC.

ANIMALS are all animated beings endowed with the power of voluntary motion, except those of the human species. They are either domestic or wild, base or valuable.

There are animals which, though domestic and reclaimed, are not such that, at common law, a larceny may be committed of them, by reason of the baseness of their nature. Of this class are dogs and cats; and others, though wild by nature and reclaimed by art and industry, as bears, foxes, apes, monkeys, ferrets and the like, fall within this class.[c] A larceny cannot be committed on the young of these animals in the nest, kennel, or den.[d] The owner of the land has, however, a qualified property in them by reason of their helplessness.[e] To be the subject of a larceny under the statutes the animal must be the property of another and of value. Animals of a valuable nature are those capable of being a qualified property, such as cattle, poultry, and the like. But see below.

Agistry is the taking and feeding of another's cattle in the public commons or upon one's own land, for compensation. Those who pursue this occupation are called agisters. They must not put more cattle upon a common or pasture than the herbage will sustain or than they have a right to do;[g] if they do they are liable in damages.[h] They are not, like innkeepers, bound to take all horses (or cattle) offered to them; but are not liable for any injury done to such animals in their care, unless they have been guilty of negligence, or from their ignorance negligence may be inferred.[i] Agisters of cattle have no lien,[j] in the absence of a statute allowing it.[k]

Beasts are any four-footed animals which may be used for food, labor, or sport, distinguished from birds, fish, etc. Beasts of the chase and beasts of the forest are all those wild animals which it is lawful to hunt; among which beside others may be included the bear, wolf, fox, etc.[l]

Bees, while unreclaimed, are by nature wild animals.[m] Those which take up their abode in a tree belong to the owner of the soil, if unreclaimed, but if reclaimed and identified they belong to their former owner.[n] If a swarm has flown from the hive of A. they are his so long as they are in sight, and may easily be taken, otherwise they become the property of the first occupant.[o] Merely finding a tree on the land of another, containing a swarm of bees, and marking it, does not vest the property of the bees in the finder.[p] They do not become private property until actually hived.[q]

Cattle, in common usage, signifies only beasts of the bovine genus, as oxen, bulls, cows and their young. In laws respecting domestic beasts, horses, sheep, mules, asses and swine are generally distinguished from cattle. Where, however, a law gives damages for a trespass by *cattle* breaking into an enclosure, this will include horses, etc.

Cows are animals of the bovine species that have had a calf,[r] and under penal statutes which mention both cows and heifers an improper naming of the one for the other, in an indictment, would be fatal.[r]

Cruelty to animals is in many cases an indictable offence, and punishable by fine, imprisonment, or both. The character of the acts which constitute cruelty is in general specified by the statute defining the offence and prescribing the punishment. See GENERAL STATUTES.

Dogs are animals of a domestic nature.

The owner of a dog has such property in him that he may maintain an action for an injury to him, or to recover him when unlawfully taken away and kept by another.[s]

Dogs, if dangerous animals, may lawfully be killed when their ferocity is known to their owner, or in self-defence,[t] but a person attacked cannot lawfully return to kill the animal in revenge. When a dog is bitten by a rabid animal it may be lawfully killed by any one.[u]

When, in consequence of his vicious propensities, a dog becomes a common nuisance, the owner may be indicted; and where one commits an injury, if the owner had knowledge of his mischievous propensity, he is liable for the injury.[v]

A man has a right to keep a dog to guard his premises, but not to put him at the entrance of his house, because a person coming there on lawful business may be injured by him, and this, though there may be another entrance to the house.[w] But if a dog is chained, and a visitor so incautiously go near him that he is bitten, he has no right of action against the owner.[x]

c-Co. 3d Inst. 109; 1 Hale Pl. Cr. 511, 512; 1 Hawk. Pl. Cr. 33736; 1 Bl. Comm. 236; 2 East. Pl. Cr. 614; see 1 Wms. Saund. 84, n. 2. d-Co. 3d. Inst. 109; 1 Russ. Cr. 153 e-2 Bl. Comm. 394. f-Story Bailm. § 443. g-3 Sharsw. Bl. Comm. 237; 1 Roll. Abr. 399. h-2 Id. 238 n. i-Holt. 457. j-Cro. Car. 271. k-23 Penn. St. 193; see 3 Hill (N. Y.) 485. l-See Co. Litt. 233; 2 Sharsw. Bl. Comm. 39. m-3 Binn. 546; 13 Miss. 333; see Inst. 2, 1, 14; Dig. 41, 1, 5, 2; 7 Johns. 16; 2 Bl. Comm. 392. n-15 Wend. 550; see 1 Cow. 243; 2 Dev. 162. o-Inst. 2, 1, 14. p-7 Johns. 16. q-Inst. 2, 1, 14; 3 Binney, 546. r-2 East. Pl. Cr. 616; 1 Leech Cr. Cas 105. s-1 Met. (Mass.) 555. t-10 Johns. 365; 13 Id. 312. u-13 Id. 312. v-B. N. P. 77; 2 Str. 1264; 1 Ld. Raym. 110; 1 B. & Ald. 620; 4 Camp. 198; 2 Esp. 482; 4 Cow. 351; 6 S. & R. 36; Addis, 215; 1 Ill. 492; 17 Wend. 496; 23 Id. 354; 4 Der. & B. 146; 10 Cush. 509. w-4 C. & P. 297; 6 Id. 1. x-3 Sharws. Bl. Comm. 154

Doves are animals of a wild nature. They are also called pigeons. Doves are not the subject of larceny unless they are in the owner's custody, as, for example, in a dove house; or in the nest and before they can fly, or otherwise in the actual possession of another.[y] So also where they are reclaimed and tame, and return to their house or box.[z]

Estray animals are those whose owner is unknown.[a] Any beast, not wild, found on one's premises, and not owned by the occupant. Proceedings in the taking up of stray animals are *ex parte*[b] (one-sided—by taker up), and governed by the general statutes.

A party who wishes to detain property as an estray must show an exact compliance with the law on the subject of taking up estrays, both on his own part and that of the officer before whom the appraisement was made.[c] He must perform all those acts which the law requires to be performed, in order to vest the property of the stray in him,[d] and that such acts have been performed must affirmatively, and in detail, appear on the record.[e]

If a man finds stray cattle in his field, he is not bound to impound or retain them for the owner, but may drive them off into the highway without being liable for a conversion.[f] But a person who chases a horse out of his field with a large, fierce dog, commits an unlawful act, and is liable for any injury which the act occasion.[g]

A person who takes an estray to keep for the owner, but does not pursue the course prescribed by statute, is not liable to an action, unless he uses the stray[h] or refuses to deliver it on demand.[i] Riding a horse to discover the owner is not use.[j] See GENERAL STATUTES.

Fish are animals of a wild nature. No one has any property in them until they are captured; and, like other wild animals, if having been taken they escape and regain their liberty, the captor loses his property in them. A person has no right to fish in the waters of another, and acquires no property in the fish caught except by the owner's consent. See FISHERY; REAL PROPERTY.

Game is birds and beasts of a wild nature, ...ched by fowling and hunting.[k] Laws reg... the killing or taking of birds and beasts ...e in the different States and may be con... reference to the GENERAL STATUTES.

Horses are animals of a domestic nature ... the age of four years and upwards;[l] under the age of four years they are called colts.[l] The word horse is used as a generic name for all animals of the horse kind.[m]

BORROWING renders the borrower liable for negligence, misuse, gross want of skill in use, and fraud. The lender is liable in case the thing lent is unfit or dangerous, and thereby occasions injury; as, if the owner of a horse, knowing it to be vicious and unmanageable, lends it to one ignorant of its bad qualities, concealing them from him, and by reason thereof the rider is thrown from it and injured.[n] The animal should be used only for the purpose, and to the extent stipulated. A borrowed horse cannot be used by a servant.[o] And one borrowing a horse for a week to go to Boston, keeping him a month, or goes to Albany, is responsible for any accident to the horse in his journey to Albany or after expiration of the week.[p] When no time is fixed a reasonable time for the purpose intended will be presumed. During the loan the borrower must care for and provide the horse with food, drink and shelter.[q] If from exhaustion he refuses his food he should be cared for and unworked until restored. If he dies from disease,[r] or is killed by inevitable accident, or the like, the borrower is not liable. When the purpose of the loan is accomplished or the time thereof is elapsed, he should be returned to his owner. A misuser of the animal will put an end to loan.[s] See "Hiring," below.

DEFECTS that are *patent*, that is, which are manifest, open and plain to an ordinary observer (as a horse minus an eye or tail), and those also which are known to the buyer, are not usually covered by a general warranty.[t] The former requires no skill to discover them, and the latter may be objected to or acquiesced in at the time of purchase. In the case of *latent* defects existing in such a condition that they could not be detected by the buyer, and are known to the seller, who fails to disclose them to the buyer, this is a constructive fraud, unless the animal is sold "with all faults." By consenting to purchase the horse "with all faults," the purchaser takes upon himself the risk of latent or secret defects, and calculates the price accordingly.[u] But even this kind of a purchase would be voidable if the seller had purposely, and to deceive the purchaser, covered, filled up, patched, plastered, or otherwise practised fraud to conceal any defects, and the seller would be held liable.[v]

HIRING out a horse and carriage to perform a particular journey carries with it the warranty of the person letting that the horse[w] and carriage, and each of them, is fit and competent for such journey, and this though a particular horse has been selected out of the owner's stables.[x] But if a horse is hired for one purpose and is used for another, and is injured, the hirer is liable for the damage sustained. The hirer is in all cases answerable for ordinary neglect.[y] If, therefore, he uses the hired horse as

y-9 Pick. 15. **z**-2 Denio Cr. Cas. 361; see Id. 362, n.; 4 C. & P. 131. **a**-2 Kent Comm. 359; Spellman Gloss. **b**-3 Mo. 302; 6 Id. 64. **c**-3 Mo. 302; 13 Ill. 64; 37 Mo. 119. **d**-8 Id. 344. **e**-3 Mo. 302; 6 Id. 64. **f**-18 Pick. 277. **g**-6 Blackf. 258. **h**-4 Pick. 249; 7 Watts, 557. **i**-4 Pick. 249. **j**-7 Watts, 557. **k**-Boc. Abr.; see 11 Met. Mass. 79. **l**-1 Russ. & R. Cr. Cas. 416. **m**-3 Brev. 9; see Yelv. 67, *a*. **n**-27 L. J. Q. B. 167; see 3 L. T. N. S. 785. **o**-1 Mod. 210, S. C.; 3 Salk. 271; 4 Sandf. 8. **p**-Story Bailm. 200; 5 Mass. 104; 16 Ga. 25. **q**-2 B. & B. 359; 1 Gow. 1. **r**-Palm. 548; 2 Y. & J. 394. **s**-2 Exch. 482. **t**-See 21 Tex. 300; 10 Ves. 507; 2 Caines, 202; 2 J. J. Marsh. 587; 2 Rolle 5; 2 Humph. 305; 2 Head. 314; 18 Penn. St. 203; 2 Eng. 166; 1 La. An. 389; 28 Ala. 424; 24 Conn. 562; 37 Vt. 155; 13 Rich. L. 98. **u**-3 Campb. 156. **v**-4 Taunt. 784, 785; 3 Campb. 508; 5 Bingh. 535; 2 Exch. 541; Story Sales, 126. **w**-10 L. T. 231, 308. **x**-10 L. T. 231. **y**-Jones Bailm. 25; 100 Mass. 40; 3 Allen 564.

a prudent man would his own, he is not answerable for any damage which the horse may receive.[s] If, however, he keeps the hired horse after a stipulated time, or uses it differently from his agreement, he is in any event liable.[a] If a horse is taken sick on an agreed journey, without fault of the hirer, the expense of the cure must be born by its owner.[b] If the hirer prescribe the medicine he is liable for improper treatment; but not so if he calls in a farrier.[c] The hirer must pay for his shoeing during the hire, unless the horses are driven by the servants of him who lets them.[d] If the hirer sells the horse the owner may recover its value of the purchaser, though the purchaser had in good faith given the hirer full value for it, as the hirer could give him no better title than he had himself.[e] If one under the pretence of hiring gets a horse out of the possession of the owner and offers it for sale, there is no criminal offence until the sale is actually effected.[f] If the horse were first hired in good faith and afterwards sold, this at common law is no felony.[g] If through the hirer's negligence the horse is stolen he must answer for it.[h] In general, the owner of a horse is liable for any accident which may befall it when fairly used by the hirer.[i] If a person hire a carriage and any number of horses, and the owner sends his postillion or servant with them, the hirer is discharged from all attention to them,[j] and any damage done through the negligence of the servants must be answered for by their employer or master.[k] The hirer of a horse and carriage is liable for damage occasioned by the negligence of himself or his servant. Where two persons hire a carriage they are both answerable for any damage occasioned by the negligent driving of one of them. Where it is hired by one only, the other, who is a mere passenger, is not liable.[l] Where a master and servant are together in a carriage, and an injury ensues, the master, from his mere presence, is a co-trespasser, if the act of his servant amounts to a trespass.[m]

SALES. See Defects, above; Unsoundness, Vice, Warranty, below.

UNSOUNDNESS is a disqualification for work which arises either from disease or accident.[n] If at the time of sale the horse has any disease which either does actually diminish the natural usefulness of the animal so as to make him less capable of work of any description, or which in its ordinary progress will diminish the natural usefulness of the animal; or if the horse has, either from disease or accident, undergone any alteration of structure that either does at the time, or in its ordinary effects, will diminish the natural usefulness of the horse, such horse is unsound.[o] *Sound* means that the animal is sound and free from disease at the time he is warranted sound;[p] and the only qualification which it is susceptible of arises from the purpose for which the warranty is given.[q] A horse is sound when he is free from hereditary disease, is in possession of natural and constitutional health, and has a physical perfection consistent with his natural formation.[r]

VICE is unsoundness; a horse is free from vice when he has no bad habits that make him dangerous, or are injurious to his health, or in any way diminishes his natural usefulness.[s]

WARRANTY is distinct from the contract of sale; and unless it is made a part of the contract of sale (as, having agreed as to the terms of the sale, the buyer says I will purchase of you if you will warrant the article so and so, etc.), there is no warranty founded on the sale.[u] Warranty is a distinct contract, and must be supported by a consideration; in the above example, the consideration is the purchase. If the warranty is made after the sale there must be a new and distinct consideration.[v] See WARRANTY.

Hunting, or the chase, is the act of acquiring possession of animals, wild by nature, by force, cunning, or address. The act of pursuing wild animals for the purpose of catching or killing them. It is practised for food, exercise, diversion, or for the destruction of noxious animals. The hunter acquires a right to such animals by possessing them, and they thereby become his property.[w] But no man has a right to enter the lands of another for the purpose of hunting without his consent.[x]

Injuries to animals of a domestic nature are the subject of an action at law for the damage sustained, and where it amounts to cruelty, in many States, to a criminal prosecution. See CRIMINAL LAW, PLEADING, PRACTICE.

Mischievous animals render their owners liable when known to them to be so, and they are responsible when they permit them to go at large, for the damage they may do.[y] A person may justify the killing of ferocious

Pounds are enclosures erected by authority, in which cattle and other beasts are confined and detained when taken in trespassing, estray, or going at large in violation of law.[z]

Property in.—In tame or domestic animals, such as horses, cattle, sheep, poultry and the

[s]-3 Camp. 5 n. [a]-Jones Bailm. 121; see 26 Miss. 413; 15 Gray, 306. [b]-Path. Lonage, 129; Story Bailm. 259; 3 Allen, 595; 13 Gray, 234. [c]-3 Campb. 4. [d]-Poth. Lonage, 107, 129; Story Bailm. 258. [e]-5 C. & P. 313; 1 C. B. 672. [f]-8 C. & P. 295; see 1 Leach. 212, 409, 420. [g]-8 C. & P. 295. [h]-Jones Bailm. 88; see 10 Cush. 117; 26 Vt. 316; 29 Tex. 40; 41 N. H. 282; Am. L. Rev. 1871. [i]-See 3 F. & F. 152; 2 C. B. N. S. 790, and 12 M. & W. 60; 23 L. J. Exch. 108. [j]-Jones Bailm. 88; 5 Esp. 263; 2 M. & R. 1. [k]-5 Esp. 35; 5 B. & C. 558; see also 5 B. & C. 556; 6 M. & W. 499; 5 B. & C. 547. [l]-4 Esp. 229. [m]-Cr. & M. 229; see also 1 Cr. & M. 354; 4 M. & G. 48. [n]-9 M. & W. 671. [o]-Chitty Contr. 7 Am. Ed. 464. [p]-2 M. & R. 113. [q]-See 1 M. & R. 137. [r]-4 Campb. 281. [s]-9 M. & W. 668; 2 M. & R. 157; 4 Campb. 281; 1 Stark. 127; 2 M. & R. 113; 2 Esp. 673; 10 Ala. 255; 1 Foster N H. 116; 5 Harring. 233; 28 L. J. Q.B. 9; 23 Ark. 730; 21 Id. 349; 19 Md. 50; 7 Car. & P. 85; R. & M. 136; 21 Ga. 69. [t]-2 M. & Rob. 210. [u]-37 Penn. St. 147; 100 Mass. 432; 41 Vt. 631. [v]-14 Wis. 258; 5 Harring. 233; 8 Bingh. 48 S. C.; see 1 M. & S. 74; 2 Bingh. 183, S. C.; 9 Monr. 356; 4 Gray 457; 5 Vt. 28; 9 Id. 285; 11 Pick. 97. [w]-4 Toull. *n*. 7. [x]-14 East. 249; Poth. Propriété Pt. 1. Ch. 2, *a*. 2. [y]-2 Esp. 482; 1 Holt. 617, 2 Str. 1264; Ld. Raym. 110; B. N. P. 77; 1 B. & A. 620; 2 C. M. & R. 496; 5 C. & P. 1. [z]-9 Johns. 233; 10 Id. 365; 13 Id. 312. [a]-4 Pick. 258; 5 Id. 514; 9 Id. 14.

like, a man may have an absolute property, because they continue perpetually in his possession and occupation, and will not stray from his house and person unless by accident or fraudulent enticement, in either of which cases the owner does not lose his property.[b] But in animals wild by nature a man can have no absolute property; they belong to him only while they continue in his possession, for if at any time they regain their natural liberty, his property instantly ceases, unless they have the intention of returning, which is only to be known by their habit.[c]

Animals, wild by nature, so long as they are reclaimed by the art and power of man, are the subject of a qualified property; but when they are abandoned, or escape, and return to their natural liberty and ferocity, without the intention of returning, the property in them ceases. While this qualified property continues, it is as much under the protection of the law as any other property, and every invasion of it is redressed in the same manner.[d] If an animal belongs to the class of tame animals, as for instance, to the class of horses, sheep, or cattle, he is then clearly a subject of absolute property; but if he belongs to the class of animals which are wild by nature, and owe all their temporary docility to the discipline of man, such as deer, fish, and the several kind of fowl, then the animal is the subject of qualified property, and which continues so long as the tameness and domestication remain. Whether the animal be wild or tame is referred to our knowledge of his habits, derived from fact and actual experience.

Pursuit alone gives no property in animals wild by nature.[e] The animal must have been brought within the power of the pursuer before property in the animal vests; for mere pursuit without bringing the animal within the power of the party is not sufficient. The possession must be so far established by the aid of nets, snares, or other means, that the animal cannot escape. An action will not lie against a person for killing and taking an animal which has been pursued by another, and was then actually in view of the person who had originally found, started, and chased it,[e] for the mere pursuit and being in view of the animal did not create a property, because no possession had been acquired.[f] And property in a wounded wild beast does not attach until the beast is actually taken.[g]

Sales of domestic animals are governed by the general law of sale of personal property, and whether they are in the owner's possession, or under his immediate control, at the time of sale, is not a matter of much moment. But to make a valid sale of animals of a wild nature, the vender must have a qualified property in them, produced by reclaiming, taming, or confining them, as deer in his park, doves in his dove-cot, or fish in his private pond, etc.

Young. It is a rule that the young of domestic or tame animals belong to the owner of the dam or mother, according to the maxim:[h] "The offspring follow the condition of the mother."[i] This is the law in case of slaves and animals.[j]

Animo. See INTENTION.
Animus Furandi. See STEALING.
Annexation. See PERSONAL PROPERTY; REAL PROPERTY.
Anno Domini. See PLEADING; TIME; YEAR.
Annual Assay. See MONEY.
Annuity. See CONTRACTS; PAYMENT.
Answer. See PLEADING.
Ante-Nuptial. See MARRIAGE.
Antenate. See ASCENDENTS; PERSONAL RELATIONS.
Anticipation. See ACTS.
Apartment. See HOUSE.
Apoplexy. See MEDICAL LAW.
Apparent. See PRACTICE.
Appeal. See PRACTICE.
Appearance. See PRACTICE.
Appointment. See AGENCY; AUTHORITY.
Apportionment. See CONTRACTS; INCUMBRANCES; REPRESENTATIVES.
Appraisement. See PRACTICE.
Apprehension. See PRACTICE.

APPRENTICESHIP. See CONTRACTS; PERSONAL RELATIONS.

AN APPRENTICE is a person bound in due form of law to a master, to learn from him his art, trade, or business, and to serve him during the time of his apprenticeship.[k]

Apprenticeship is a contract by which one person who understands some art, trade, profession, or business, and called the master, undertakes to teach the same to another, who is a minor, and called the apprentice, who, on his part, is bound to serve the master during a definite period of time, in such art, trade, profession, or business. It is the term for which an apprentice is bound to serve his master.[l]

Assignment. Apprenticeship is a relation which cannot, in the absence of a statute allowing it, be assigned.[m] Though if under such an assignment the apprentice continue with his new master, with the consent of all the parties and his own, it will be construed as a continuation of the old apprenticeship.[n]

Binding out. By the common law an infant could bind himself apprentice by indenture because it is for his benefit.[o] But on account of liability to abuse, this right has been regulated by statute, and is not binding upon the infant unless entered into with the consent of the parent or guardian; the father, if both parents are alive;[p] the parent and guardian where he has both, with the infant's consent, which must be made a part of the contract;[q] or if the infant is a pauper, then by the authorities and without his consent.[r] The contract

b-2 Bl Comm. 390; 2 Mod. 319, and next note. c-2 Bl. Comm. 396; 3 Binn. 546; Bro. Ab. Pro. 37; Com Dig. Bi. 4; 7 Co. 17 *b*; 1 Ch. Pr. 87; Just. 2, 1, 15; 3 Caines, 175; Coop. Just. 457-8; 7 Johns. 16; Bro. Ab. Dit. d-7 Co. 16–18. e-3 Caines, 175. f-20 Johns. 75. g-Inst. 2, 1, 13. h-Dig. 6, 1, 5, 2; Inst. 2, 1, 9. i-Inst. 2, 1, 19. j-1 Bouv. Inst. *n*. 167, 502. k-1 Bl. Comm. 426; 2 Kent Comm. 211; 3 Rawle, 307; Chitty App., 4 T. R. 735; Bouv. Inst. Index. l-Pardessus Droit Comm. *n*. 34. m-5 Binn. 423; 4 T. R. 373; Dougl. 70; 3 Keb. 519; 12 Mod. 554; 18 Ala. N. S; 99 Busb. 419. n-Dougl. 70; 4 T. R. 373; 19 Johns. 113; 5 Cow. 363; 2 Bail. 93. o-5 M. & S. 257; 6 T. R. 652; 5 Dowl. & R. 339. p-8 W. & S. 339. q-2 Kent Comm. 261; 8 Johns. 328; 14 Id. 374; 2 Penn. 977; 4 Watts. 80; 43 Me. 458; 12 N. H. 437; 4 Leigh. 493. r-3 S. & R. 158; 32 Me. 299; 3 Jones, 21; 15 B. Mon. 499; 30 N. H. 104; 5 Gratt. 285.

need not specify the particular trade to be taught, but is sufficient if it be a contract to teach such manual occupation, or branch of business as shall be found best suited to the genius or capacity of the apprentice.[a]

A Contract of apprenticeship is generally by deed or indenture,[t] to which the infant, as well as the parent or guardian, must be a party, or the infant will not be bound.[u] It continues, generally, if the apprentice be a male, during minority only; if a female, until she arrives at the age of eighteen.[v]

To be binding on the apprentice, the contract must be made as prescribed by statute.[w] An indenture not entered into according to law is utterly void, as concerns the apprentice therein bound; but it can only be avoided by the apprentice himself;[x] and if the apprentice do elect to avoid it, he will not be allowed to recover wages for his services, the relation being sufficient to rebut any promise to pay which might otherwise be implied.[y] The master will be bound by his covenants, though additional to those required by statute.[z]

The age of every apprentice must be inserted in the indenture; but the age as stated in the indenture is only *prima facie* evidence, and may be contradicted by proof of the true age.[a]

In a common indenture of apprenticeship the father is bound for the performance of the covenants by the son.[b] But in an action for non-performance or desertion by the son, he may answer that the master has abandoned the trade which the son was apprenticed to learn, or that he has driven the son away by cruel treatment.[c]

Duties, etc. An apprentice is bound to obey his master in all his lawful commands, take care of his property, and promote his interest; endeavor to learn his trade or business, and perform all the covenants of his indenture, not contrary to law. He must not leave his master's service during the term of the apprenticeship.[d] The apprentice is entitled to payment for extraordinary services, when promised by the master,[e] and even when no express promise has been made, under peculiar circumstances.[f]

The duties of the master are to instruct the apprentice, by teaching him, in good faith, the knowledge of the art which he has undertaken to teach him, though he will be excused for not making a good workman if the apprentice is incapable of learning the trade, the burden of proving which is on the master.[g] He ought to watch over the conduct of the apprentice, giving him good advice, and showing him a good example, and fulfilling toward him the duties of a father, as in his character of master he stands in the place of the parent. He is also required to fill all the covenants he has entered into by the indenture. He must not abuse his authority, either by bad treatment, or by employing his apprentice in menial employments, wholly unconnected with the business he is to learn, or in any service which is immoral or contrary to law;[h] but may correct him with moderation for negligence and misbehavior.[i] He cannot dismiss his apprentice but by consent of all the parties to the indenture,[j] or with the sanction of the court approving the indenture,[k] even though the apprentice should steal his master's property, or by reason of incurable illness become incapable of service—the covenants of the master and apprentice being independent.[l] He cannot remove the apprentice out of the State, unless such removal is provided for in the contract, or may be implied from its nature; and if he do so remove him, the contract ceases to be obligatory.[m]

Employment and Enticing Away, etc When an apprentice is employed by a third person without the knowledge or consent of the master, the master is entitled to all his earnings, whether the person who employed him did or did not know that he was an apprentice;[n] but in an action for harboring or enticing away an apprentice, a knowledge of the apprenticeship by the defendant is an indispensable requisite to recovery[o] in such an action.

The plaintiff should prove the apprenticeship by the indenture, which should be produced and proved in the usual way. It should be proved that the defendant knew of the apprenticeship at the time of his enticing away or harboring the apprentice,[p] but it is sufficient to show that the apprentice was enticed away or harbored by the defendant. The *damage* must be proved.[q] The value of the services lost should be shown. The measure of damages is not to be ascertained at the actual loss the plaintiff sustained at the time, but for the injury done by causing the apprentice to leave the plaintiff's employment.[r]

The defendant should be prepared to disprove the plaintiff's case; he cannot, however, avail himself of any objection to the indenture of apprenticeship.[s] He should reduce the damages as far as he can.

Termination, etc. Upon the death of the

a-9 Barb. 309; 1 Sandf. 672. t-1 Salk. 68; 4 M. & S. 283; 10 S. & R. 416; 1 Vt. 69; 18 Conn. 337; see 2 Kent Comm. 264; 1 Harrison Dig. 206–227. u-8 East. 25; 3 B. & Ald. 584; 8 Johns. 328; 2 Yerg. 546; 4 Leigh. 493; 4 Blackf. 437; 12 N. H. 438; see also 18 Conn. 337; 13 Barb. 286; 10 S. & R. 416; 1 Mass. 172; 1 Vt. 69; 1 Ashm. 267; 1 Mason C. C. 78. v-2 Kent Comm. 264; 5 T. R. 715. w-5 Cush. 417; 5 Pick. 250. x-9 Barb. 309; 8 Johns. 328; 5 Strobh. 104. y-12 Barb. 473; 2 Id. 208; but see 13 Met. (Mass.) 80. z-10 Humph. (Tenn.) 179. a-1 E. D. Smith, 408; 1 Sandf. 711. b-Dougl. 500; 3 B. & Ald. 59. c-4 Eng. L. & Eq. 412; 4 Miss. 480; 2 Pick. 357. d-6 Johns. 274; 2 Pick. 357. e-1 Am. L. Jour. 308; 1 Whart. 113. f-2 Cranch, 240, 270; 3 C. Rob. Adm. 237; but see 1 Whart. 113. g-2 Dana, 131; 5 Met. (Mass.) 37; 1 Dev. & Bat. 402. h-4 Clark & F. Ho. Lds. 234. i-Ashm. 267. j-1 S. & R. 330; 12 Pick. 110; 2 Barr. 766; 1 Carr & K. 622. k-1 Mass. 24; 2 Pick. 451; 8 Conn. 14; 1 Bail. 209. l-2 Pick. 451; 2 Dowl. & R. 465; 1 Barn. & C. 460. m-6 Binn. 202; 6 S. & R. 526; 2 Pick. 357; 13 Met. 80. n-6 Johns. 274; 3 N. H. 274; 7 Me. 457; 2 Aik. 243; 1 E. D. Smith, 408; 1 Sandf. 711. o-2 Harr. & G. 182; 1 Wend. 376; 1 Gilm. (Va.) 46; 5 Ired. 216. p-Peake R. 55; Peake E. v. 334; Willes, 582. q-5 East. 39; Burr. 1352. r-4 Moody, 12. s-2 H. Bl. 511; 7 T. R. 310, 1, 4, 1; Anstr 256.

master, the apprenticeship, being a personal trust, is dissolved.[1] Upon the death of one of two masters the indenture survives to and against the survivor. Upon the removal of the master from the State he may be released from the indenture if he has done justice by his apprentice. So, also, upon quitting his trade or business. See GENERAL STATUTES.

APPRENTICESHIP FORMS.

Apprenticeship Agreement (or Indenture)—General Form.

This agreement (*or* indenture) witnesseth:

That A. A., now aged —— years, and with the consent of P. A., his (father, *or* mother *in case the father be not living*) does by these presents apprentice himself unto M. M., of ——, to learn the art (*or* business, *or* profession, *or* trade) of (*state what*) from the date of these presents unto the —— day of ——.

That he will perform all the duties required by law of him, and otherwise conduct and demean himself as a conscientious, faithful and industrious apprentice ought.

That in consideration thereof said M. M. does hereby covenant, promise and agree to use the utmost of his endeavors to have said apprentice taught the art (*or* business, etc.) aforesaid, to read, write, elementary rules of arithmetic, and (*state what further, or* say —— months' schooling per year during said term), and in the meantime provide said apprentice with all necessaries, including food, lodging, clothing, laundry and medical attendance, and at the expiration of said term to give him —— dollars, —— clothes, and ——.

In witness whereof, said parties have hereunto subscribed their names, this —— day of ——.

A. A., A. P., M. M.

Apprenticeship Agreement (or Indenture)—General Form.

This agreement (*or* indenture) witnesseth:

That P. A., of ——, does by these presents bind out his (*or* her) son, A. A., and that said A. A. does hereby bind himself out as an apprentice to M. M., of ——, to learn the art (business, profession, *or* trade) of (*state what*).

That said A. A. is, at the date hereof, aged —— years.

That said A. A. shall dwell and serve said M. M. as such apprentice, from the date hereof until the —— day of ——.

That during all said term said apprentice shall faithfully serve his said master, keep his secrets, and everywhere and at all times readily obey his lawful commands. He shall do no damage to his said master, nor wilfully suffer any to be done by others; and should any to his knowledge be intended he shall give said master reasonable notice thereof; he shall not haunt or frequent taverns, bawdy or tippling houses, saloons or gaming places, and shall not absent himself from the service of his said master, but in all things and at all times shall demean and conduct himself as a good and faithful apprentice ought.

That said M. M., in consideration thereof, does hereby covenant, promise, and agree, to instruct and teach said apprentice, or cause him to be instructed and taught, the art (business, profession, *or* trade) aforesaid, to the best of his endeavors and means; to instruct and teach said apprentice, or cause him to be instructed and taught to read, write and cipher as far as the rule of three, if said apprentice be capable of learning the same; to find and provide said apprentice with good and sufficient food, clothing, lodging, and other necessaries during said term; and at the expiration thereof to give him —— dollars and —— clothing.

In witness, etc.

(*Signed*) P. A., A. A., M. M.

Apprenticeship Agreement (or Indenture)—General Form.

This agreement, made this —— day of ——, A. D. ——, between A. A., now aged —— years, and P. A., his father, of —— county, in the State of ——, and M. M., of —— county, and State of ——, witnesseth:

That A. A., of (his *or* her) own free will, does hereby bind (himself *or* herself) to serve M. M., as apprentice (*or* clerk) in the trade of a blacksmith (*or* other trade, profession, *or* employment), and to learn said trade (*or* profession, etc.) until (he *or* she is of the age of —— years, which will be on the) —— day of ——, A. D. ——.

That during all which time said apprentice shall serve said master faithfully, honestly and industriously, his secrets keep, and lawful commands everywhere obey; at all times protect and preserve the goods and property of the said master, and not suffer or allow any to be injured or wasted.

That he (*or* she) shall not buy, sell, or traffic in his own goods, or the goods of others, nor be absent from the said master's service day or night without leave; but in all things behave as a faithful apprentice ought to do, during said term.

That said master shall clothe and provide for the said apprentice in sickness and in health, and supply (him *or* her) with sufficient and suitable food, raiment and lodging; and shall use and employ the utmost of his endeavors to teach or cause said apprentice to be taught and instructed in the trade of (*here state the trade, etc., as above*).

That he shall cause said apprentice to be taught (*state what, as*) to read and write, and the elementary rules of arithmetic, the compound rules and the rule of three, and at the expiration of (his *or* her) time of service give (him *or* her).

(*If money is paid with the apprentice insert here*), and the said M. M. acknowledges receipt of —— dollars with the said A. A., from (his father *or* mother, P. A.), as a compensation for his instruction, as above mentioned.

(*Or if wages are to be paid for the service of the apprentice insert*), and said M. M. further agrees to pay said A. A. the following sums of money, to wit: for the first year of his service —— dollars; for the second year of his service —— dollars; for every subsequent year until the expiration of his term of service —— dollars; which said payments are to be made on the —— day of —— in each year.

And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each unto the other.

In witness whereof, the parties aforesaid have hereunto set their hands the day and year first above written.

(*Signature of Apprentice.*) A. A.
(*Signature of Master.*) M. M.
(*Signature of Parent or Guardian.*) P. A.

Apprenticeship Indenture or Agreement—General Form.

This indenture (*or* agreement), made this —— day of ——, between P. A., of ——, father, and his son A. A., aged —— years, of the one part, and M. M., of —— (*state occupation*), of the other part, witnesseth:

That said A. A., with the consent of his father, P. A., does by these presents bind himself out as an apprentice to said M. M., to be taught and exercise and employ himself in the (business, *or* occupation, *or* profession, *or* science, *or* trade, *as the case may be*) of (*state what*), in which said M. M. is now engaged, and to live with and serve as an apprentice, from the date hereof until the —— day of ——, (*or* for a term of —— years from the date hereof).

That during said time said A. A. shall and will to the best and utmost of his ability, skill and knowledge intelligently and faithfully serve, and be just and true to his said master, his secrets and counsel keep, and everywhere and at all times his lawful commands obey.

That he shall do and attempt no hurt to his said master, in person, goods, estate or otherwise, nor willingly suffer the same to be done by others, but forthwith give said master notice when he shall have any knowledge thereof.

That he shall not embezzle or waste his said master's goods or money, nor suffer the same to be done.

That he shall not lend his master's goods or effects to any person or persons whomsoever, nor

[1] 1 Salk. 66; Stra. 284; 1 Day. 30.

suffer the same to be done, unless by his knowledge and consent.

That he shall not traffic with, nor buy or sell, goods of his own or others during said term, without his said master's leave.

That he shall not play at cards, dice, nor any unlawful games, whereby he or his master shall suffer damage or loss.

That he shall not frequent, haunt, or visit playhouses, theatres, taverns, saloons, or ale-houses, except it be about his master's business there to be done.

That he shall not at any time, by day or by night, absent, depart, or quit the service of his said master without his leave.

And that in all things he shall and will behave, conduct, and demean himself to his said master as a conscientious, faithful, good, and industrious apprentice during said term.

That said M. M., in consideration of the premises (and the sum of —— dollars, the receipt of which is hereby acknowledged) does hereby covenant, promise, and agree:

That he will instruct and teach, or cause said apprentice, or otherwise cause him to be well and sufficiently instructed and taught in the (business, *or* occupation, *or* profession, *or* trade) aforesaid, after the best manner and mode of the time (*or* the best manner and way he shall be able).

That he shall and will allow and find said apprentice in food, drink, washing, lodging, and apparel, both linen and woollen, and all other necessaries in sickness and in health, which shall be convenient, necessary, and proper for such an apprentice during said term.

That he shall and will (*here state the extent of education to be given during the term*).

And that at the expiration of said term, he shall and will give said apprentice over and above the clothing he shall then possess the following articles of apparel (*stating them item by item*, as coat, vest, pants, shoes, stockings, underwear, linen, hat, etc.) fit and suitable for such an apprentice.

And for the true performance of all and singular the agreements and covenants aforesaid, the said parties bind themselves each to the other firmly by these presents.

In witness whereof, said parties have (interchangeably) set their hands (and seals) hereto this —— day of ——, A. D. ——.

(*Witnesses*) (*Signed*) A. A., P. A., M. M.

Consent of Father or Mother Indorsed.

I hereby consent to the binding of my son (*or* daughter), A. A., in the manner and for the purposes expressed in the within indenture (*or* agreement). P. P.

Apprenticeship Agreement (or Indenture)—Guardian Consenting.

This agreement (*or* indenture), made the —— day of ——, witnesseth:

That A. A., of ——, aged —— years, with the consent of G. N., his duly appointed guardian (herein indorsed), his father and mother being dead (*or* his father being dead and his mother refusing her consent), does by these presents bind himself unto M. M., of ——, as an apprentice in the art (*or* business, *or* occupation, *or* profession, *or* trade) of (*state what*).

That, etc. (*as in the above forms*).

Apprenticeship Agreement (or Indenture)—Magistrates or Overseers of Poor, etc., Consenting.

This indenture (*or* agreement), made this —— day of ——, witnesseth:

That A. A., of ——, with the consent of ——, and ——, justices of the peace, of said —— (*or* overseers of the poor of said ——, *or* J. J., judge of ——), hereon indorsed, does by these presents bind himself out to M. M., etc. (as in the above forms).

Apprenticeship Agreement (or Indenture)—Parent, Guardian, Trustees, etc., Consenting.

This agreement (*or* indenture), made this —— day of ——, witnesseth:

That A. A., of ——, aged —— years, with the concurrence and consent of P. A., his father (*or* G. N., guardian, his guardian, *or* T. R., U. S., and T. S., trustees of the —— in ——), does hereby bind himself out to M. M., etc. (as in the above forms).

Apprenticeship—Cancellation of Agreement, etc.

We hereby cancel the within agreement (*or* indenture) of apprenticeship.

Dated ——. (*Signed*) A. A., P. A., M. M.

Apprenticeship—Guaranty of Fidelity.

By the Father—Indorsed.

In consideration of the performance of the agreements and covenants specified in the within agreement (*or* indenture), by M. M., with my son, A. A. (and the further consideration of one dollar, the receipt of which is hereby acknowledged), I do hereby bind myself to said M. M., for the true and faithful observation and performance of all the matters and things by said A. A. agreed and covenanted therein, and that he shall well and truly serve said M. M.

Witness my hand this —— day of ——, A. D. ——. P. A.

Apprenticeship—Release.

Know all men by these presents:

That A. A., son of P. A., did by his agreement (*or* indenture), bearing date the —— day of ——, bind himself as an apprentice unto M. M., of ——, for a term of —— from the date thereof, as by said indenture more fully appears.

That, etc. (*stating the reasons for the release*).

That by reason thereof, said M. M. does hereby release and forever discharge said A. A. (and his father P. A.) of and from said agreement (*or* indenture), and all service (suretyship), and all other agreements, covenants, matters, and things therein contained, on their or either of their parts to be observed and performed, whatsoever, from the beginning of the world unto the date hereof.

In witness whereof, I have hereunto set my hand this —— day of ——, A. D. ——. M. M.

Approach. See MARITIME LAW.
Appropriation. See INTEREST; PAYMENTS.
Approval. See BONDS.
Approved Indorsed Notes. See NOTES.
Appurtenances. See REAL PROPERTY.
Arbiter. See AGENCY; ARBITRATION.
Arbitration and Award. See AGENCY; ARBITRATION.
Arbitrary Punishment. See PUNISHMENT.
Arbitration. See AGENCY.
Arbitrator. See AGENCY.
Archives. See GOVERNMENT.
Area. See HOUSE; REAL PROPERTY.
Argument. See PRACTICE.
Aristocracy. See GOVERNMENT.
Arm of the Sea. See WATER; REAL PROPERTY.
Armistice. See INTERNATIONAL LAW.
Arms. See MILITARY LAW.
Arraignment. See CRIMINAL LAW; PRACTICE.
Arrears. See PAYMENT.
Arrest. See PRACTICE.
Arrest of Judgment. See JUDGMENT; PRACTICE.
Arson. See CRIMINAL LAW.
Articles. See CONTRACT; PARTNERSHIP; PRACTICE.
Articles of Confederation. See CONFEDERATION; GOVERNMENT.
Articles of Impeachment. See IMPEACHMENT.
Articles of Partnership. See PARTNERSHIP.
Articles of War. See MILITARY LAW; WAR.
Artificial. See PERSON.
Ascendants. See GENEALOGY; PERSONAL RELATIONS.
Asphyxy. See MEDICAL LAW.
Asportation. See CRIMINAL LAW.
Assassination. See CRIMINAL LAW.
Assault. See CRIMINAL LAW.
Assay. See MONEY.
Assembly. See LEGISLATION; GOVERNMENT.
Assent. See CONTRACTS.
Assessment. See TAXATION; GOVERNMENT.
Assets. See DEBTOR; ESTATES; MERCANTILE LAW; PROPERTY, ETC.

ASSIGNMENT. See ACCOUNT; AGREEMENT; BOND; BOOKKEEPING; LEASE; MORTGAGE, ETC.

AN ASSIGNMENT is a transfer by writing, as distinguished from one by delivery. It is a transfer or making over to another the whole of any property, real or personal, in possession or in action, or of any estate or right therein. A transfer of title or interest by writing; the writing by which the assignment is made.

An assignment differs from a lease, which is the conveyance of a less term than the lessor has in the estate.

Every demand connected with a right of property, real or personal, is assignable. Rent to grow due; the right to cut trees, which have been sold on the grantor's land;[a] the services of an indentured apprentice;[b] a replevin bond;[c] a claim for sheriff's fees;[d] future debts;[e] a guarantee;[f] and a mere possibility, coupled with an interest, may be assigned.[g] As a general rule, all choses in action, such as bonds, mortgages, notes, judgments, debts, contracts, agreements, as well relating to personal as real estate, are assignable, and will pass to the assignee a right of action in the name of such assignee, against all parties liable to an action.[h]

When a *chose in action* is assignable, it may be assigned in separate parcels to different persons; and either of the assignees may maintain an action to recover the portion to him assigned.[i] Where, however, a debt is assigned in separate parcels, it is, in effect, a *splitting* of the cause of action, and the whole debt, notwithstanding the assignments, should be sued for in one action.[j] If the owner of some part of the debt will not join as co-plaintiff, he should be made a defendant. A *single* debt (*a single cause of action*) cannot be converted into *several* debts (*several causes of action*) unless with the consent of the debtor.[k]

Some choses in action are not assignable. For example, an officer's pay or commission;[l] or the salary of a judge;[m] or claims for fishing; or other bounties of the government; or rights of action for fraud or tort.[n] Nor can personal trusts be assigned; as the right of a master in his apprentice;[o] or the duties of a testamentary guardian.[p] A person cannot sell to another a debt against himself; a debtor has no assignable interest in debts owing by him. A demand due from a person to himself and another as partners, is, to the extent of his own interest in it, no debt against him.[q]

Consideration. An assignee of a right of action is not bound to show that he gave any valuable consideration for the assignment. The owner of the cause of action may give it away if he choose, and the donee will have as good a right as though he were an assignee for value.[r] In the absence of evidence to the contrary, it will be presumed the assignment was for a sufficient consideration.[s] Proof of a valuable consideration is only necessary to be made when a defence is set up, which, unless the plaintiff was purchaser for value, would conclude him;[t] as where the object is to prove that the alleged assignment is a mere sham.[u] And when, in pleading, the assignment is alleged to have been for value received, the allegation as to value received is immaterial.[v]

No formality is necessary to effect a transfer of a chose in action. Any transaction between the contracting parties which indicates their intention to pass the beneficial interest in the instrument from one to the other, is sufficient for that purpose; a debt or claim may be assigned by parol as well as by writing.[w]

Proof of Assignment. An assignment is proved by the evidence of the payee of the note in suit, that he had indorsed (or delivered without indorsement, for a valuable consideration)[x] the note to the plaintiff, and that he has no interest in the note when sworn.[y] The production by the plaintiff, on the trial, of an assignment to himself, after due proof of the execution thereof by the assignor, is sufficient evidence of a delivery of such assignment,[z] and that it was delivered on the day it bears date.[a]

Warranty. In every assignment of an instrument, even not negotiable, the assignee impliedly warrants that the instrument is valid, and the obligor liable to pay it;[b] and that there is no legal defence to its collection, arising out of his own connection with the original transaction.[c] That the party was competent to contract;[d] and that the amount is unpaid.[e]

Where a debt is assigned it carries with it all the collateral securities held by the assignor for its collection, although they are not mentioned or referred to in the assignment.[f] An assignment of a guaranteed note carries with it the guarantee;[g] and the assignment of a debt carries with it, as an incident, a collateral mortgage,[h] by which it is secured.

The proper technical and operative words in assignment are "assign, transfer, and set over"; but "give, grant, bargain, and sell," or any other words which show the intent of the parties to make a complete transfer, will operate an assignment.[i]

a-Hob. 173; 1 Greenl. Ev. § 27; Cruise Dig. tit. 1, § 45, *n*; 7 N. H. 522; 6 Me. 81, 200; 18 Pick. 569; 1 Met. 313; 4 Id. 580; 9 Leigh. 548; 11 Ad. & E. 34. b-5 Cow. 363; Will. Eq. Juris. 460. c-5 Hill, 293. d-23 How. 236; 14 Abb. 285. e-13 Abb. 475. f-1 Bosw. 352. g-7 Paige, 76; 17 How. (U. S.) 368; 2 Seld. 187. h-See Willard's Eq. Juris.; Burril Assignments, 65. i-2 Seld. 179; 8 How. 514. j-See 10 N. Y. 273; 3 Abb. 431. k-13 Mo. 300; 6 Cush. 282; 11 S. & R. 78. l-2 Anstr. 533; 1 Ball & B. Ch. (Ir.) 387; 1 Swanst. 74; 3 T. R. 681; 2 Beav. Rolls. 544; Turn. & R. 459; see 7 Met. 335; 13 Mass. 290; 15 Ves. Ch. 139. m-10 Humph. 342. n-1 Pet. 193; 6 Cole, 456; 3 E. D. Smith, 246; 22 Barb. 110; 26 Id. 635; 2 N. H. 293; 3 Litt. (Ky.) 41; 9 Serg. & R. 244; 6 Madd. Ch. 59; Mylne & K. 592. o-11 B. Mon. 60; 1 Mass. 172; 8 Id. 299; 8 N. H. 472. p-12 N. H. 431; 1 Hill, 375. q-11 Barb. 140. r-1 E. D. Smith, 400; 2 Id. 497; 4 Id. 220; 27 Barb. 178; 14 Id. 79; 38 Id. 574; 1 Abb 177. s-10 N. Y. 60; 16 Abb. 146. t-5 Sandf. 52; 2 Seld. 214. u-2 Abb. 81. v-3 Cranch. 193; 1 Abb. 177. w-2 Story Eq. 311; 4 Taunt. 326; Robert's Fr. 275; 1 Ves. 331; 17 How. (U. S.) 368; Id. 612; 4 Blackf. 380; 3 Sm. & Marsh. 647; 1 E. D. Smith, 273; 4 Id. 440; 1 Barb. 454; 39 Id. 163; 2 Hilt. 77; Id. 485; 19 Johns. 95; 15 Barb. 371; 1 Johns. 580; 12 Id. 346; 17 Id. 284. x-3 Kas 295. y-20 N. Y. 472. z-4 E. D. Smith, 423. a-31 Barb. 155. b-12 Sm. & Marsh. 302; 2 Ellis & Bl. 849. c-20 N. Y. 226. d-15 Id. 574. e-15 Id. 439. f-2 Hilt. 484 g-39 Barb. 163. h-5 Cow. 202. i-Watkins' Conv. (Preston Ed.) B. 2, C. IX.

ASSIGNMENT FORMS.

The essential requisites of an assignment are:

1. The proper technical and operative words of assignment, or their equivalent.

2. The description of the property or thing assigned (so that a stranger may know and distinguish it without difficulty).

3. The conditions, limitations, restrictions, etc., imposed, with time, manner, etc., of performance, if any.

4. The signature of the assignor.

When an assignment is made on conditions, with limitations, restrictions, etc., and the assignor does not want to lose control of the property or thing assigned (he having given the assignee possession), he must have it recorded or registered in the proper office, as if it were a mortgage on the property or thing assigned. And when all the conditions are complied with, he should enter satisfaction on the record, or give a receipt to that effect.

Assignment—Simple Forms.

I assign (*state what*) to E. F.
Dated, ——. (*Signed*) A. B.

Another.

I hereby assign and set over to E. F. the following articles, viz. (*naming them*).
Dated, ——. (*Signed*) A. B.

Another.

I hereby assign, transfer and set over unto E. F. all my title and interest in and rights under the following (*or* within) (*state what*).
Dated, ——. (*Signed*) A. B.

Another.

On account of (*state what*) I assign (*state what*) to E. F.
Dated, ——. (*Signed*) A. B.

Another.

For value received I assign, etc. (*stating what*) to E. F.
Dated, ——. (*Signed*) A. B.

Another.

In consideration of (*state what*) I assign, etc. (*stating what*).
Dated, ——. (*Signed*) A. B.

Another, with Conditions.

When the assignee has possession of the property assigned, this assignment, to be of effect, should be recorded in the proper office.

I (*or* we, *giving names of assignor or assignors, if desired*) hereby assign, transfer and set over unto E. F., etc. (subject to the conditions [or stipulations] herein contained) all the following described property, viz. (*describing it*).

In consideration thereof said E. F. has delivered (*or* paid, *state what*).

And it is hereby agreed

That said E. F. shall, on or before the —— day of ——, deliver (*or* pay, *state what*).

That said property shall not pass from his possession or the ownership vest in him until he has made said delivery or payment, etc., as is herein specified. (*Signed*) A. B., E. F.

Assignment—General Form.

With Power of Attorney.

In consideration of the sum of —— dollars (the receipt of which is hereby acknowledged) I do hereby assign, transfer and set over to E. F. (of ——), all my right, title and interest in and to (*here describe what*).

(And I do hereby constitute said E. F. my attorney, in my name or otherwise, but at his own costs and charges, to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of the premises).

Witness my hand (and seal) this —— day of ——.
(*Witness*) C. D. A. B. [*Seal.*]

Assignment—General Form.

With Conditions. With Power of Attorney.

Know all men by these presents:

That I, the undersigned, for value received, do hereby grant, assign, transfer and convey unto E. F. (*here describe the property assigned*).

To have and to hold the same forever, hereby appointing and constituting said assignee —— true and lawful attorney in —— name , place , and stead , for the purposes aforesaid, to ask, demand, sue for, attach, levy, recover, and receive all such sum and sums of money, which are now or may hereafter become owing and payable for or on account of all or any of the accounts, dues, debts, demands, judgments, rights, credits, and choses, above assigned, giving and granting unto the said attorney full power to do and perform all and every act and thing whatsoever requisite and necessary, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand this —— day of ——, A. D. ——.
(*Witness.*) A. B.

Assignment—General Form.

By Indorsement.

For value received, I assign (transfer and set over) the (within, above, or foregoing) written note (*or other instrument*), together with all my title and interest in and rights under the same, to E. F.
(*Signed*) A. B.

Assignment—General Form.

Personal Property, by Indorsement with Power, etc.

Know all men by these presents:

That the undersigned, A. B., in consideration of —— dollars, to me paid by E. F., have assigned, transferred and set over unto said E. F. all my title and interest in and rights under the within-written instrument, and every clause, article and thing therein contained.

That I hereby appoint and constitute said E. F. my attorney, in my name, place or stead, or otherwise, to his own use to take all legal measures which may be proper for the complete recovery and enjoyment of the assigned premise, with full power of substitution.

In witness, etc.

Assignment—General Form.

Property in Schedules Attached.

This assignment, made this —— day of ——, witnesseth:

That A. B. (of ——), in consideration of —— dollars, [the receipt of which is hereby acknowledged] assigns, transfers and sets over to E. F. (of ——) [his executors, administrators and assigns] all his title and interest in and rights under, accounts, debts, demands, goods, merchandise, notes, wares, etc., etc. (*according to the nature of the property scheduled*) set forth in the schedules (marked A, B, C, etc.) attached to and made a part of this assignment.

That said A. B. gives said E. F. [his executors, administrators and assigns] the full power to ask, demand, collect, receive, receipt for, compound, and give acquittance for the same or any part thereof; and in said assignor's name, or otherwise, but at his or their own costs, to prosecute and withdraw any suits at law or in equity therefore.

Given under my hand (and seal) (at ——), the day and year first above written. A. B.

Assignment—Account.

Know all men by these presents:

That I, A. B. (of ——), in consideration of —— dollars, the receipt of which is hereby acknowledged, do hereby assign, transfer and set over unto E. F. (of ——) (his executors, administrators and assigns, and to his and their own proper use and benefit), all my title and interest in and rights under any and all sum or sums of money now due or to grow due upon the annexed account or upon the sales (loans, services, etc.) therein mentioned.

That I do hereby give said E. F. (his executors, administrators and assigns) full authority and power to ask, collect, demand, receive, receipt for, compound and acquit; and in my name or otherwise to institute, prosecute and withdraw any action at law, or suits in equity therefore.

In witness, etc.

Assignment—Acknowledgment.

The assignor may in any case acknowledge his assignment before a competent officer, whose certificate should be indorsed on or attached to the assignment. Such acknowledgment will entitle the assignment to be introduced in evidence without proof of its execution,

and also enable the holder to have it recorded if necessary. For form of ACKNOWLEDGMENT, see that title, ante.

Assignment—Apprentice.

Apprenticeship is a relation which cannot, in the absence of a statute allowing it, be assigned.[w] Though if under such an assignment the apprentice continue with his new master, with the consent of all the parties and his own, it will be construed as a continuation of the old apprenticeship.[x]

Know all men by these presents:

That I (the within named) A. B. (of ——), for value received, hereby assign, transfer, and set over the within indenture and apprentice therein named unto E. F. (of ——), his executors, administrators, and assigns, for the residue of the term within mentioned; he and they performing all and singular the covenants therein contained, on my part to be kept and performed, and indemnifying me for the same.

In witness, etc. (*Signatures of old master, parent or guardian, apprentice and new master.*)

Assignment—Bill of Sale.

Know all men by these presents:

That A. B., by his deed and bill of sale, bearing date the —— day of ——, and which is hereunto annexed, did for the consideration (of ——) therein expressed, bargain, sell, and deliver to said C. D. the household goods, implements, and utensils in and about his dwelling-house at ——, a schedule of which is attached to said bill of sale hereunto annexed.

That said C. D., for a consideration of —— dollars, does by these presents bargain, sell, assign, and set over to E. F. all and every said goods, implements, and utensils which are in said bill of sale and schedule annexed mentioned, to have and to hold the same forever.

And said C. D. does hereby covenant that said goods, implements, etc., are, etc.

In witness, etc.

Assignment—Bill of Sale.

Part of a Vessel.

Know all men by these presents:

That I, the within-named A. B., in consideration of the sum of —— dollars (the receipt of which is hereby acknowledged) do by these presents grant, assign, transfer, and set over unto E. F. the within-written bill of sale, and all my title and interest in and rights under the same, and in the one full and equal sixteenth part of the within described and mentioned vessel, V, together with all her anchors, apparel, boats, cables, furniture, gunpowder, masts, munitions, ropes, sails, sail-yards, shot, tackle, and all other appurtenances within granted and to said vessel belonging. To have and to hold the same unto himself, his heirs and assigns forever.

That I do covenant, promise, and agree that said sixteenth part of said vessel, with the appurtenances, are and shall remain free and clear of all debts and encumbrances whatsoever by or through my means, consent, or procurement.

In witness, etc.

Assignment—Bill of Sale.

Part of a Vessel.

Know all men by these presents:

That I, the within-named A. B., in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do hereby assign, transfer, and set over to E. F. the within-written bill of sale of one full and equal sixth part of the within-mentioned steamer, "Century," and all her anchors, apparel, boats, cables, furniture, masts, munitions, oars, sails, tackle, yards, and all appurtenances thereunto belonging, and all my title and interest in and rights under said bill of sale, to have and to hold the same forever.

That I, the said A. B., do hereby for myself, my heirs, executors, and administrators, covenant and agree with said E. F. that said one-sixth part of said steamer, with the appurtenances, are now, and shall continue unto said E. F., his heirs and assigns, free and clear of all debts and encumbrances whatsoever made or suffered by me, or any other person whatsoever, by or through my consent, means, or procurement.

In witness, etc.

Assignment—Bond.

Know all men by these presents:

That I, A. B., the undersigned, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents assign, sell, and transfer unto C. D., his executors, administrators, and assigns, a certain written bond or obligation, and the conditions thereof, bearing date the —— day of ——, A. D. ——, executed by E. F. and W. his wife, to said A. B., and all the sum and sums of money due and to grow due thereon, together with all my title and interest in and rights under the same.

In witness whereof, I have hereunto set my hand this —— day of ——, A. D. ——. A. B.

Assignment—Bond.

Assignor to be liable.

For value received I do hereby assign, transfer, and set over to E. F. the within obligation, and all moneys due and to become due thereon.

In case the same cannot be recovered of the within-named C. D., I agree and promise to pay to said E. F. the amount thereof, together with all necessary and reasonable charges thereupon accruing.

Witness my hand, etc. A. B.

(*Witnesses*)

Another.

For value received I hereby assign, transfer, and set over to E. F. the within obligation, hereby guaranteeing payment thereof. A. B.

(*Witnesses*)

Assignment—Bond.

Assignor not to be liable.

For value received I hereby assign, transfer, and set over to E. F. the within obligation, and all moneys due (and to become due) thereon. All failure of recovery, liabilities, losses wholly at the risk of said E. F., without recourse in any event upon me. A. B.

(*Witnesses*)

Assignment—Bond.

Covenant of amount due; power to sue, etc.

Know all men by these presents:

That I, A. B., in consideration of ——, hereby assign, transfer, and set over unto E. F. a certain written bond or obligation, and the condition thereof, bearing date the —— day of ——. Executed by C. D. to me the said A. B.

That I have good right to assign said bond.

That there is now due thereon, according to the condition thereof, —— dollars, principal, and —— dollars, interest.

That said E. F. is hereby authorized and empowered at his own costs, and for his own use and benefit, to ask, collect, demand, receive, cancel, compound, discharge, and give acquittances for the same or any part thereof.

In witness whereof, etc.

Assignment—Bond, etc.

Covenants, Guaranty, Power to Sue, etc.

Know all men by these presents:

That C. D. (of ——), in and by a certain bond or obligation, bearing date the —— day of ——, became bound to the undersigned A. B. (of ——), in the sum of —— dollars, with interest, on the —— day of ——, last past.

That there remains due said A. B. of the principal and interest on said bond or obligation the sum of —— dollars.

That in consideration of —— dollars (the receipt of which is hereby acknowledged) said A. B. does by these presents sell, assign, transfer, and set over to E. F. (of ——), said bond or obligation, and all his title and interest in and rights under the same, and all sums of money due or to grow due thereon. Subject, however, to all the conditions thereof.

That there is now due on said bond or obligation, according to the condition thereof, principal, —— dollars, and interest, —— dollars (*or* interest from the —— day of ——).

That said A. B. hereby guarantees the payment (*or* collection, *or* collectability) of said sum.

w-5 Binn. 423: 4 T. R. 373: Dougl. 70: 3 Keb. 519; 12 Mod. 554; 18 Ala. N. S.; 99 Busb. 419. x-Dougl. 70; 4 T. R. 373; 19 Johns. 113; 5 Cow. 363: 2 Bail. 93.

That said A. B. has not received, and shall not receive payment of any of the sums secured to be paid or payable by said bond or obligation (saving and excepting—*state what exception, if any*), and shall not release, cancel or discharge the same or any part thereof, or do, or permit knowingly, any act or thing to hinder said E. F. from collecting or enforcing the same.

That said E. F. is hereby appointed, authorized, constituted and empowered my true and lawful attorney, irrevocable, with full power of substitution and revocation, for me and in my name, or otherwise, and for his sole use and benefit to ask, demand, enforce and receive of said C. D. the money due or to grow due on said bond or obligation; and on non-payment (*or* non-performance) thereof to sue for, enforce, recover and receive the same, and on satisfaction thereof to cancel and deliver up said bond or obligation, and give the customary or necessary acquittances, discharges or releases thereof.

In witness whereof, etc.

Assignment—Bond.

By Indorsement.

Know all men by these presents:

That I, the within-named A. B., in consideration of the sum of —— dollars, to me paid, the receipt of which is hereby acknowledged, do by these presents assign, convey and set over the within-written bond or obligation, and the sum of —— dollars mentioned in the conditions thereof, and all my title and interest in and rights under the same unto E. F. (his heirs, executors, administrators and assigns), subject nevertheless to the conditions thereof.

That I hereby authorize said E. F., in my name or otherwise, to demand, sue for, recover and enjoy said sum of —— dollars and interest, to his own use absolutely forever.

In witness, etc.

Another.

Know all men by these presents:

That I, the within-named A. B., for value received, do hereby assign, transfer, and set over unto E. F. the within-written bond or obligation and all sums of money payable by virtue thereof.

That I do hereby constitute said E. F. my lawful attorney, irrevocable, to demand, sue for, recover, receive and use the same for his sole use and benefit.

In Case of Death add:

That in case of my death before the same shall be recovered, that my legal representatives shall give said E. F. full power as aforesaid, to recover and use the same.

In witness, etc.

Assignment—Bond.

For the Payment of Money, etc.

Know all men by these presents:

That I, the undersigned, A. B., in consideration of the sum of —— dollars (the receipt of which is hereby acknowledged), do hereby assign, transfer and set over unto E. F. (his heirs, executors, administrators and assigns) all my title and interest in and right under a certain bond or obligation, in the words and figures as follows (*copying the bond at length*), (*or* a certain bond or obligation, bearing date the —— day of ——, executed by —— for, etc., with conditions, etc.)

That I authorize said E. F. to ask, demand, sue for, release, receipt, and acquit for the same, for his sole use and benefit, in the manner required by law, with full power of substitution.

In witness, etc.

Assignment—Bond.

For Peaceable Enjoyment of Vessel, etc., Assigned.

Know all men by these presents:

That A. B., by an obligation, under his hand, in the sum of ——, bearing date the —— day of ——, and reciting therein the transfer, by bill of sale, to C. D., of a certain vessel, of —— tons burthen, known as the V., whereof M. R. is master, and all appurtenances and things to said vessel belonging, free from all former grants, charges, or incumbrances whatever, with condition for the security and peaceable enjoyment of said vessel.

That said C. D., for the consideration of —— (the receipt of which is hereby acknowledged), does hereby assign, transfer and set over unto E. F. all his title and interest in and rights under said bond or obligation.

That said C. D. does hereby appoint, make and name said E. F. his lawful attorney, in his name, place and stead to ask, demand, receive, sue for, recover and release, and acquit said obligation for his own and proper use, employing whatever means, remedy, or course to that end which he may see fit lawfully to use, with full power of substitution.

In witness, etc.

Assignment—Chattels.

See ASSIGNMENT—PERSONAL PROPERTY, ETC., below.

Assignment—Claims.

For Money Due.

Know all men by these presents:

That I, A. B. (of ——), in consideration of —— dollars (the receipt of which is hereby acknowledged), hereby assign, transfer and set over to E. F. the annexed account of moneys due me by C. D., and all sums of money due and payable by virtue of the same, and all my title and interest in and rights under the same.

That said account and moneys shall be for the sole and proper use of said E. F., without any account to be given for the same.

That I hereby give and grant said E. F. full authority and power to demand, receive, sue for, and collect said accounts and moneys, and upon receipt thereof to give discharges for the same or any part thereof.

That I hereby covenant and agree to and with said E. F. that the sum of —— dollars is justly due and owing on said account, and that I have not received or discharged the same or any part thereof.

In witness whereof, etc.

Assignment—Contract.

Sale of Real Property.

See ASSIGNMENT—DEED, below.

Know all men by these presents:

That I, the undersigned, A. B., in consideration of —— dollars, do hereby sell, transfer, assign, and set over unto E. F. all my title and interest in and rights under a contract bearing date the —— day of ——, executed by C. D. (of ——) to me, for the sale to me of the following described real estate, situated in ——, to wit (*copy description given in the contract assigned*).

That this assignment is subject, nevertheless, to the conditions and covenants therein mentioned.

That I hereby authorize and empower said E. F., upon his performance of said covenants and conditions, to demand, enforce and receive of said C. D. the deed covenanted in said contract to be given; and all relief concerning the same to obtain in the same manner, to all intents and purposes as I myself might or could do were these presents not executed.

In witness, etc. A. B.

Assignment—Consent.

I hereby consent to the foregoing assignment, together with all conditions and terms therein contained. C. D.

Another.

I, the undersigned, C. D., in the foregoing instrument named, hereby consent to the assignment of that part of my agreement with A. B. (of ——), and agree to make and execute the conveyance therein mentioned to said E. F. upon the performance of said agreement. C. D.

Assignment—Copyright.

See title COPYRIGHT.

Assignment—Corporation or Company.

Know all men by these presents:

That "The C. Y. Company," (of ——) is a corporation organized (*or* existing) under (the laws of the State of ——, *or* An Act of the Legislature *or* General Assembly of the State of ——, Approved or Passed, March ——, Entitled, etc., *setting out the title of the act*).

That said company, in pursuance of a resolution of its directors (*or* trustees), passed on the —— day of ——, and in consideration of —— dollars (*if paid say:* the receipt of which is hereby acknowledged) hereby sells, transfers, assigns and sets over

unto E. F. all its title and interest in and rights under the following described property, to wit:

All the machinery, shafting, belting, fixtures, furniture, tools, patterns, dies, moulds, and their accessories, mentioned in schedule "A," hereunto annexed.

All stock and material of every kind, whether raw, manufactured, in process of manufacture, or otherwise, all waste, etc., etc., mentioned in schedule "B," hereunto attached

All office fixtures, furniture, conveniences, etc., etc., mentioned in schedule "C," hereunto attached, etc., etc.

That a more full and accurate description of the property hereby conveyed may be had by reference to a full and minute inventory thereof, made on the —— day of ——, and contained in an inventory-book of said company (and delivered by consent of parties to one G. H).

(Covenant of right to sell, value, etc., Warranty, etc., see *ante* and *post*.)

In witness whereof, the president and secretary of said company have hereunto set their hands and affixed the seal thereof (at ——), this —— day of ——.

P. P., *President*.
S. Y., *Secretary*.

(*Witnesses*) [*Seal.*]
G. H.
I. K.

Assignment—Debt.

I, the undersigned A. B. (of ——), in consideration of —— dollars (the receipt of which I hereby acknowledge), do assign, transfer, and set over to E. F. (of ——) a certain debt due and owing me from C. D. (of ——), for (*here state what the debt is for*), amounting to —— dollars.

I do hereby covenant that said sum of —— dollars is justly owing and due to me; that there is no counter-claim, cross-demand, or set-off against the same, and that the same is not, nor will be barred by the statute of limitations for —— from the date hereof. And that I have neither done nor shall do anything to discharge or lessen said debt, or hinder said E. F. or his assigns from collecting the same.

In witness, etc.

Assignment—Debt.

As security, with power, etc.

Know all men by these presents:

That A. B. (of ——), in consideration of ——, now due from him to E. F. (of ——), and to secure payment of the same to said E. F., do by these presents grant, assign, transfer, and set over all his title and interest in and rights under a debt due him from C. D. (of ——), for ——, amounting to —— dollars.

That said A. B. does hereby constitute and appoint said E. F. his attorney irrevocable, in his name, place, and stead, at his own costs and expense, to ask, demand, sue for, recover, receive, receipt for, and release said debt, for his own use and benefit.

Provided, nevertheless, that if said A. B., or his legal representatives, shall pay or cause to be paid said sum of —— dollars due within —— from the date hereof, said E. F., as aforesaid, then this assignment and every matter and thing herein contained shall be absolutely void and of no effect whatever.

In witness, etc.

Assignment—Deed.

See "*Assignment—Contract*," *etc.*, above.

Know all men by these presents:

That A. B. (of ——), the within-named (*or* undersigned) grantee, and W., his wife, in consideration of the sum of —— dollars (the receipt of which is hereby acknowledged), hereby grant, bargain, sell, assign, transfer, and set over unto E. F. (of ——) all the within (*or* following) described tract or parcel of land situated in ——, to wit (*describing it*), containing —— acres, more or less, together with the appurtenances, to have and to hold the same unto himself, his heirs and assigns forever.

[That said premises are the same that G. H., by the within-written conveyance (*or* a conveyance bearing date the —— day of ——) conveyed to said A. B. on the —— day of ——, and which is recorded in office of the ——, in deed book, No. ——, page ——.]

That said A. B. shall and will warrant and defend these presents against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from, or under him.

In witness whereof, etc. A. B.
(*Witnesses.*) W. B.

For form of "ACKNOWLEDGMENT," see that title.

Assignment—Dower.

By Heir.

The assignment of dower is an act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her.

The assignment may be made by the heir, or his guardian, or the devisee, or other persons in possession of the lands subject to dower,[a] or it may be made after a course of judicial proceedings, where a voluntary assignment is refused. In this case the assignment is made by the sheriff, who sets off her share by metes and bounds.[b] The assignment should be made within the time limited by law after the death of the husband, during which time the widow shall remain in her husband's principal residence.[c] The share of the widow is usually one-third of all the real estate of which the husband has been possessed during the marriage; and no writing or delivery is necessary in a valid assignment, the doweress being *in* according to the view of the law of the possession of her husband.[d] If the guardian of a minor heir assign more than he ought, the heir on coming of age may enforce an admeasurement of dower.[e]

Know all men by these presents:

That A. B. was in his lifetime, and at the time of his death, on the —— day of ——, seized in fee of divers lands and tenements in —— (*or* as follows: *describing them*), which upon his decease descended unto I. B.

That said W. B. is the widow of said A. B.

That said I. B. hereby assigns, endows, and sets over unto said W. B. the third part of said lands and tenements, to wit (*describing the same*).

That said W. B. shall have and hold said premises during her natural life as dower and in recompense and satisfaction of all dower which said W. B. ought to have in said lands and tenements.

In witness whereof, etc. } I. B.
Signed, sealed, acknowledged, and delivered in presence of W. I., T. S. }

For form of "ACKNOWLEDGMENT," see that title.

Assignment—Ground Rent.

Know all men by these presents:

That the undersigned A. B. (of ——), and W. his wife, for and in consideration of the sum of —— dollars (at or before the stating and delivery of these presents, the receipt of which is hereby acknowledged), have and by these presents do alien, assign, bargain, convey, confirm, enfeoff, grant, sell, set over, and transfer unto E. F. (of ——) all that certain yearly rent, charge, and sum of —— dollars, chargeable half-yearly, issuing and payable by C. D. (of ——), his heirs and assigns, on the first day of the months of January and July of each and every year, forever, without any deduction for taxes out of and for all that certain lot and tract of ground situated in ——, and described as follows, to wit (*describing it by metes and bounds*), together with all the ways, means, rights, privileges, remedies, power of entry, distress, and reentry for recovery, payments of the aforesaid yearly rent charge, and the arrearage thereof, and the reversions and remainders thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of them. To have and to hold the same together with the appurtenances forever.

That said A. B., for himself, his heirs, executors, and administrators, does by these presents covenant and agree to and with said E. F., his heirs

a-2 Penning. 521; 19 N. H. 240; 23 Pick. 80, 88; 4 Ala. (N. S.) 160; 4 Me. 67; 2 Ind. 388; Tudor L. Cas. 51. b-2 Bl. Comm. 136, 1 Washb. R. Prop. 229. c-See 20 Ala. (N. S.) 662; 7 Monr. 337; 5 Conn. 462, 1 Washb. R. Prop. 222, *n.* 227. d-The remedy of the widow when the heir or guardian refuses to assign dower: 4 Kent Comm. 63. e-2 Ind. 336; 1 Pick. 314; Co. Litt. 34, 35; Fitzh. Nat. Brev. 148; Finch. 314; Stat. Westm. 2 (13 Edw. 1.) *c.* 7; 1 Washb. R. Prop. 222-250, 1 Kent Comm. 63, 69; 2 Bouv. Inst. *n.* 1743.

and assigns, that he will warrant and forever defend these presents against himself and his heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from or under him, them, or any of them.

In witness whereof, etc.

(*Witnesses.*) A. B.
W. B.

For form of "ACKNOWLEDGMENT," see that title.

Assignment—Indenture.

See ASSIGNMENT—APPRENTICE, above.

Assignment—Indorsed.

General Form.

For value received, I assign (transfer and set over) the (within, above, or foregoing) written note (*or* other instrument), together with all my title and interest in and rights under the same, to E. F.

(*Witnesses.*) (*Signed*) A. B.

Assignment—Insolvent Debtor.

Know all men by these presents:

That I, A. B., of ——, am indebted to divers persons and unable to pay the several amounts of their claims in full, and desire to convey all my property for the benefit of all my creditors, without preference or priority.

That in consideration of the premises, I do by these presents grant, bargain, sell, assign, transfer and set over unto E. F., all my lands, tenements, hereditaments, goods, chattels, rights, credits and effects of every name, nature and description (saving only such property as is exempt by law from attachment and execution), in trust, nevertheless, to sell and dispose of and collect the same, with full power to compound, adjust and settle for the same or any part thereof, and apply the proceeds thereof as follows:

To pay all costs and charges of these presents, and the lawful expenses of executing the trust hereby created.

To distribute and pay the remainder of said proceeds, ratably and in equal proportions, to my creditors, in satisfaction and release of all debts by me owing.

To repay me, my executors, administrators and assigns the residue of said proceeds, if any there be.

In witness whereof, etc.

Assignment—Insolvent Debtor.

Know all men by these presents:

That A. B. is unable to pay all his just debts.

That said A. B., by the assent and concurrence of his creditors, who have subscribed their names to these presents, does hereby assign, transfer and set over all his estate, real, personal and mixed, his lands, tenements and hereditaments, goods, chattels and effects (saving only household furniture and supplies), goods, wares and merchandise, moneys, sureties for moneys, rights and credits of whatever nature soever, and all his title and interest in and rights under the same, unto E. F., in trust, nevertheless, for the benefit of all his creditors, as follows:

That said E. F. shall forthwith take possession of the premises, and with diligence, by private and public sale, and for the best price he can procure, convert the same into money, and collect all sum and sums of money aforesaid.

That said E. F., after deducting the costs, charges and expenses of said trust, and paying said A. B., in consideration of his services in the adjustment and settlement of his affairs, and for support and maintenance of himself and family, —— dollars, he shall pay and discharge, in equal proportion, the respective debts of all the creditors whose names are hereunto subscribed.

That said E. F., after full satisfaction and discharge of the debts of said subscribing debtors, shall, out of the residue, pay all other creditors of said A. B. in equal proportions.

That said E. F. shall pay over any surplus remaining to said A. B., his executors or administrators.

(*Add any further clauses which may be desirable.*)

(*Signed*) A. B. (*Signed*) E. F.

Creditors' Signatures. | *Creditors' Signatures.*

Assignment—Insolvent Debtor.

With Conditions, etc.

Know all men by these presents:

That A. B., with the assent and concurrence of his creditors, whose names are hereunto subscribed, and for the considerations hereinafter mentioned, hereby grants, assigns, transfers and sets over to E. F. and his assigns, all his household goods, his wares, merchandise, stock in trade, accounts, bills receivable, mortgages, notes and all his rights, credits and effects. In trust, nevertheless, to sell or dispose of the same, at public or private sale, at said assignees' (*or* trustees') discretion, and to collect and convert the same into cash, and after deducting the necessary and usual charges divide the whole of the proceeds and collections thereof among said subscribing creditors of said A. B., *pro rata* and in proportion to the amount of their respective claims against him.

Classes for insertion when applicable.

CONCEALMENT OF PROPERTY.

That in case said subscribing creditors, or any of them, shall at any time hereafter prove or make appear that said A. B., on the date of these presents, or at any time hereafter, was possessed of or interested in any other goods, wares, merchandise, rights, credits or effects whatsoever (saving wearing apparel), to the value of —— dollars or upwards, besides what are included or referred to in the annexed schedules, then said A. B. shall have no benefit whatever from these presents, or from any releases, receipts or acquittances by any of said creditors given; but such releases, receipts and acquittances shall, except for the amounts actually paid or value therefore received, be absolutely void.

CREDITORS NOT BENEFITED.

That every creditor who shall not come in and execute these presents within —— days from the date thereof, shall not be entitled to any distribution or advantage therefrom whatsoever; and in such case the proportion or proportions of the premises hereby assigned, to which they would otherwise be entitled to receive, shall be paid over to said A. B., or such person or persons as he shall in writing appoint.

CREDITORS' RELEASE.

That said subscribing creditors, for the considerations in this agreement mentioned, do severally for themselves (and partners) release unto said A. B. all manner of action and actions, accounts, bills payable, bonds, executions, judgments, deeds, mortgages, notes, and all claims and demands whatsoever, from the beginning of the world unto the date of these presents.

DEBTORS' ALLOWANCES.

That said A. B. shall be allowed the sum of five per cent. out of the net produce of all the estate hereby assigned which shall be paid him by said assignee (*or* trustee).

That said trustee shall, out of said trust moneys, pay the rent and taxes of the dwelling house of said A. B., on —— next, and the wages due the servants of said A. B., and all debts due from said A. B. under —— dollars apiece, provided said debts shall not exceed in the aggregate —— dollars.

DEBTORS' ASSISTANCE.

That said A. B. shall, upon reasonable notice, attend said trustee and assist him in making out all accounts relating to the subjects of this assignment.

DEBTORS' COVENANTS.

That said A. B. has not heretofore assigned, encumbered, received or discharged any part of the premises hereby assigned in trust as aforesaid, and that he will not do or suffer any act to hinder or obstruct said assignee (*or* trustee) from receiving or recovering the same or any part thereof, or such satisfaction as may be had for the same.

That said A. B. shall, at the request and costs of said subscribing creditors, execute and perform all further and reasonable acts necessary to the execution and performance of the trust herein, and for the better and further assuring and assigning of the premises, and for enabling said as-

signee (*or* trustee) to collect, recover, and receive the same and every part thereof.

DEBTOR'S POWER TO ASSIGNEE (*or* TRUSTEE.)

That said A. B., with the assent and concurrence of his said subscribing creditors, hereby appoints, authorizes, constitutes, and empowers said E. F., and his assigns, his lawful attorney irrevocable, in his name or otherwise, as is lawful and proper, to ask, demand, sue for, recover, and receive all and singular the premises assigned, and upon receipt of the same, or any part or satisfaction thereof, to give the necessary releases, receipts, and acquittances; to compound, compromise, and arbitrate all matters, when in his opinion the same is to the best interests of said creditors, and generally to do all acts necessary to effect the purposes of these presents.

INSURANCE.

That said assignee (*or* trustee) may, in his discretion, cause said trust estate to be insured, and deduct the necessary premiums of such insurance from the same.

PROVING CLAIMS.

That no dividend or distribution shall be made by said assignee (*or* trustee) of any part of the effects assigned in trust by these presents to or among any of the creditors, parties to the same, until such creditor shall have made affidavit or affirmation of the amount, character, date, items, and justness of his claim or demand, and that the same is founded on a sufficient legal consideration, before some person authorized by law to administer the same.

SALES.

That said assignee (*or* trustee) may dispose of said household goods, merchandise, etc., at such prices as he can (after due notice of such sales) obtain for the same.

SURPLUS.

That when said subscribing creditors shall have received the whole of their respective debts, and all allowances, charges, and commissions have been deducted from said trust moneys, said assignee (*or* trustee) shall deliver or pay over the remainder (if any) to said A. B., his executors or administrators.

TRUSTEE'S (*or* ASSIGNEE'S) ACCEPTANCE.

Said E. F. hereby accepts the trust created by the above instrument, and agrees fully and faithfully to perform the same. (*Signed*) E. F.

TRUSTEE'S (*or* ASSIGNEE'S) ACCOUNTING.

That said assignee (*or* trustee) shall not be liable or chargeable for any assets other than what he shall actually receive by virtue of these presents, nor be accountable for any losses that shall happen in the management and disposal of said estate occurring without his default or negligence.

TRUSTEE'S (*or* ASSIGNEE'S) COMPENSATION.

That said assignee (*or* trustee) may reimburse himself all necessary costs and expenses incurred in the management and performance of the trusts hereby reposed in him, together with an allowance and commission, as follows, etc.

TRUSTEE'S (*or* ASSIGNEE'S) COVENANTS.

That said E. F. covenants and agrees with said A. B., and with said subscribing creditors severally, that he will fully and faithfully execute and perform all the trusts herein and hereby reposed in him, and will at the request of said subscribing creditors, or their majority, render them his account in writing touching said trusts, and will make a just and speedy distribution of all trust moneys (less the necessary deductions herein specified) among said creditors according to the true intent and purpose of these presents.

TRUSTEE'S (*or* ASSIGNEE'S) DEATH, ETC.

That should said assignee (*or* trustee) die possessed of said trust estate and moneys, said subscribing creditors, or their majority, shall appoint, in writing under their hands, another person as assignee (*or* trustee) in the place and stead of said assignee (*or* trustee).

That upon reasonable notice to said A. B., or his executor or administrators, of such appointment, he or they shall thereupon deliver and transfer all and singular said trust estate and premises to such new assignee (*or* trustee), subject to the trusts in these presents declared, and to such other agreements, conditions, and covenants as shall be agreed upon by said subscribing creditors, or their majority, and said last-named assignee (*or* trustee).

TRUSTEE'S (*or* ASSIGNEE'S) RECEIPTS.

That the receipts of said assignee (*or* trustee) of or for any of said assigned premises shall be an effectual discharge to all persons to whom the same shall be given.

Assignment—Insolvent Debtor.

In most States general assignments in trust made by insolvent and other debtors for the discharge of their debts are regulated by the general statutes, which see.[a] It is, however, a well-established doctrine that the debtor must make an unconditional surrender of his effects for the benefit of those to whom they rightfully belong.[b] And any reservation for himself of power to revoke the conveyance; or change the trusts by giving a preference to other creditors at a future time; or direction that the surplus, after paying the preferred creditors, shall be returned to him, and all conditions, exceptions, or the like, will render the conveyance void, unless, indeed, they are allowed by statute.

Deeds, etc., regularly executed and acknowledged, should accompany the assignment where real estate is included in it. And all other evidences should in like manner accompany it.

Know all men by these presents:

That this assignment, made the —— day of ——, in the year ——, by A. B. and C. D., partners in trade and business, under the name, style, or firm of B. & D., of the first part, to E. F., of, etc., of the second part, witnesseth:

That whereas the said copartnership is justly indebted in considerable sums of money, and has become unable to pay and discharge the same with punctuality, or in full: and the said parties of the first part are now desirous of making a fair and equitable distribution of their property and effects among their creditors: Now, therefore, the said parties of the first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, released, assigned, transferred, and set over, and by these presents do grant, bargain and sell, release, assign, transfer and set over unto the said party of the second part, and to his heirs and assigns forever, all and singular the lands, tenements, and hereditaments, situate, lying, and being, within the State of ——, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, books of account, judgments, evidences of debt, and property of every name and nature whatever, of the said parties of the first part, more particularly enumerated and described in the schedule hereto annexed, marked "Schedule A"; to have and to hold the same, and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators, and assigns: In trust, nevertheless, and to and for the following uses, intents, and purposes, that is to say: that the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments, property and effects, hereby assigned, and sell and dispose of the same, upon such terms and conditions as in his judgment may appear best, and most for the interest of the parties concerned, and convert the same into money: and also to collect all and singular the said debts, dues, bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectable; and thereupon to execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid: and by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the just and reasonable expenses, costs, charges, and commissions, of executing and carrying into effect this

[a] 3 Summ. Ch. 345; 10 Paige, Ch. 445; 1 N. Y. 101; 20 Ga. 44. [b] 14 Johns. 458; 5 Cow. 547; 11 Wend 187; 6 Hill, 438.

assignment, and all rents, taxes and assessments due or to become due on the lands, tenements and hereditaments aforesaid, until the same shall be sold and disposed of; and by and with the residue, or net proceeds and avails of such sales and collections, the said party of the second part shall,

First. Pay and discharge in full the several and respective debts, bonds, notes and sums of money due or to grow due from the said parties of the first part, or for which they are liable, to the said party of the second part, and the several other persons and firms designated in the schedule hereto annexed, marked "Schedule B," together with all interest moneys due, or to grow due thereon; and, if said net proceeds and avails shall not be sufficient to pay and discharge the same in full, then such net proceeds and avails shall be distributed *pro rata*, share and share alike, among the said several persons and firms named in said schedule B, according to the amount of their respective claims; and,

Second. By and with the residue and remainder of said net proceeds and avails, if any there shall be, the said party of the second part shall pay and discharge all the other co-partnership debts, demands and liabilities whatsoever, now existing, whether due or hereafter to become due, provided such remainder shall be sufficient for that purpose; and, if insufficient, then the same shall be applied *pro rata*, share and share alike, to the payment of said debts, demands and liabilities, according to their respective amounts; and,

Third. By and with the residue and remainder of the said net proceeds and avails, if any there shall be, the said party of the second part shall pay and discharge all the private and individual debts of the parties of the first part, or either of them, whether due, or to grow due, provided such remainder shall be sufficient for that purpose; and, if insufficient, then the same shall be applied *pro rata*, share and share alike, to the payment of the said debts, according to their respective amounts; and,

Lastly. The said party of the second part shall return the surplus of the said net proceeds and avails, if any there shall be, to the said parties of the first part, their executors, administrators, or assigns.

And, for the better execution of these presents, and of the several trusts hereby reposed, the said parties of the first part do hereby make, nominate and appoint the said party of the second part, and his executors, administrators, and assigns, their, and each of their true and lawful attorney irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters and things, which can or may be necessary in the premises, as fully and completely as the said parties of the first part, or either of them, might or could do, were these presents not executed; and attorneys, one or more, under him to make, nominate and appoint, with full power of substitution and revocation; hereby ratifying and confirming all, and everything whatever, our said attorney and his attorneys shall do, or cause to be done, in the premises.

In witness whereof, the said parties of the first part have hereunto set their respective hands (and seals), the day and year above written.

Signed, sealed and delivered in the presence of G. H. } A. B. [*Seal.*] C. D. [*Seal.*]

Assignment—Judgment.

On Record.

For value received (*or* in consideration, etc., *as above*), I hereby assign and transfer the judgment in this or the above entitled action, together with all my title and interest in and rights under the same, to E. F. (*Signed*) A. B.

Attest:

C. C., *Clerk of said Court* (*or* J. P., Justice of the Peace.)

Assignment—Judgment.

State of ——, —— County. } ss. In the —— Court.

A. B., plaintiff, *vs.* C. D., defendant. } Judgment for $—— and interest at —p. ct. Judgment Record, Vol. —, page —.

For value received (*or* in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged), I do hereby assign and transfer the judgment in the above entitled action, together with all my title and interest in and rights under the same, to E. F. (*Signed*) A. B.

(*Witness*) G. H.

Assignment—Insurance Policy.

With Agent's Approval.

The property hereby insured, having been purchased by E. F., the —— Insurance Company consent that the interest of C. D. in the within policy may be assigned to said purchaser, subject, nevertheless, to all the terms and conditions therein mentioned and referred to.

Dated at ——, this —— day of ——.

A. A., *Agent.*

For value received, I hereby assign, transfer and set over unto E. F. (and his assigns) all my title and interest in and right under this policy of insurance, and all benefit and advantage to be derived therefrom.

Witness my hand (and seal) this —— day of ——.

(*Witness*) ——. C. D.

Assignment—Judgment.

Recovered by a Verdict.

Know all men by these presents:

That A. B., on the —— day of ——, in the —— court, recovered a judgment against C. D. for —— and interest thereon, at the rate of —— per cent. per annum, together with his costs, taxed at ——.

That (—— of) said judgment remains wholly unsatisfied.

That on the —— day of —— execution was issued for the same.

That said A. B., for a consideratien of —— (the receipt of which is hereby acknowledged) does, by these presents grant, sell, assign, transfer and set over all his title and interest in and rights under the same to E. F.

That said A. B. does hereby make, constitute and appoint said E. F. his true and lawful attorney, irrevocable, with full power of substitution and revocation, for his own use and benefit to prosecute said execution and all further process to satisfaction.

In witness, etc.

Assignment—Lease.

Know all men by these presents:

That I, A. B., (of ——), for and in consideration of —— dollars, to me duly paid by E. F., (of ——), do by these presents grant, convey, assign, transfer and set over unto said E. F. a certain instrument of lease, bearing date the —— day of ——, executed by C. D., (of ——), to me for a term of —— years, reserving unto said C. D. the yearly rent of —— dollars, payable (monthly *or* quarterly, etc.)

That this assignment shall take effect on the —— day of —— next, to continue during all the rest, residue and remainder of said term of —— years, subject, nevertheless, to the rents, covenants, conditions and provisions in said lease mentioned.

(That I do hereby covenant, promise and agree that said assigned premises are now free and clear of all assessments, assignments, back rents, bargains, demands, gifts, grants, encumbrances, executions, judgments, leases, liens, pledges, taxes, etc., etc., whatsoever).

In witness whereof, etc.

For form of "ACKNOWLEDGMENT," see that title.

Assignment—Lease.

Joint Interest of One to Another.

Know all men by these presents:

That A. B. and C. D. did, by their lease bearing date the —— day of ——, let unto E. F. and G. H. all that part and parcel of land (*or* lot No. —, etc.), situated in ——, and described as follows, to wit (*describing it*), together with the appurtenances, for a term of ——, at the —— rent of ——, with full power to underlet and assign said lease.

That said E. F., in consideration of ——, etc., does by these presents assign, transfer and set over all his title and interest in and rights under said lease and premises, unto said G. H., for and during the rest and residue yet to come and un expired of said term.

That said G. H. shall keep and save said E. F

bearing date the —— day of ——, is well and truly paid, according to the terms or tenor thereof, then this assignment shall be void.

Assignment—Servant.

See ASSIGNMENT—APPRENTICE, above.

In consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, I, the undersigned A. B., do hereby assign, transfer, and set over the within-named servant to serve E. F., his executors, administrators, and assigns in the manner and for the residue of the term within-mentioned. (*Signature, Master*) M.M.

Witnesses, etc. (*Signature, Servant*) S. T.

(*Signature of New Master*) M. R.

Assignment—Shares of Stock.

Know all men by these presents:

That I, the undersigned, for a consideration of —— dollars hereby assign all my title and interest in and rights under the shares, scrip, and capital stock and property of the company and corporation known as the C. Y. Company of ——, in the State of ——, and described as follows:

Abstract of Shares of Capital Stock, etc.

That I hereby covenant and agree with said E. F., and his legal representatives, that at the request of him, or them, I, and my legal representatives, shall and will at any time hereafter execute any instrument or writing which shall be necessary to vest completely in him or them all my said right, title, and interest in and to said property; and to enable him or them to possess, control, enjoy, and transfer the same, or any part thereof.

In witness whereof, etc.

Another.

For value received, I, A. B. (of ——), assign all my title and interest in and rights under —— shares (numbered consecutively from 10736 to 10746), in the —— Bank (*or* company) to E. F. (of ——), and constitute him, his assigns and substitutes, my attorneys, with full power to receive in his or their names, certificates for said shares, hereby obliging myself, at his or their request, to do all necessary matters and things for the more effectually transferring the said shares to him or them.

Witness my hand, etc. A. B.

Executed and acknowledged before me this —— day of ——, A. D. ——.

N. P., *Notary Public*,
in ——, county ——.

Assignment—Wages.

General Form.

Know all men by these presents:

That I, A. B. (of ——), in consideration of —— dollars, the receipt of which I hereby acknowledge, do hereby assign, transfer, and set over to E. F. (of ——), all claims and demands which I now have, and all which at any time between the date hereof and the —— day of —— next, may or shall have against C. D. for all sums of money due or to become due to me for services as ——.

That I do hereby appoint and constitute said E. F. and his assigns my attorney irrevocable to do and perform all acts, matters and things in the premises, in like manner and to all intents and purposes as I could if personally present.

In witness whereof, etc.

Assignment—Wages.

Sailors.

Know all men by these presents:

That A. B. is indebted to E. F. in the sum of —— for (upon *or* on account of) ——, which was due and payable on the —— day of —— last past.

That there is due said A. B. for his —— months' services on board the ship S., M. R., master, the sum of ——.

That by reason of the premises, in satisfaction and discharge of said indebtedness, and for the further consideration of ——, the said A. B. does hereby assign, transfer, and set over unto said E. F. all his right, title, and interest in and to said sum of —— dollars, the wages aforesaid (without recourse, etc.)

That said A. B. does hereby make, constitute, and appoint said E. F. and his assigns his true and lawful attorney, in his name or otherwise, to ask, demand, receive, and receipt for said wages.

In witness, etc.

Assignment—Without Recourse.

For value received, I hereby assign and transfer (*state what*), together with all my title and interest in and rights under the same to E. F.: Providing, always, that this assignment is without recourse. (*Signed*) A. B.

(*Witness*) G. H.

Assignment of Dower. See DOWER; WIFE.

Assignment of Errors. See PRACTICE.

Assumpsit. See PRACTICE.

Assurance. See CONVEYANCING; INSURANCE.

Assured. See INSURANCE.

Atheist. See PERSONAL RELATION; PRACTICE.

Attainder. See TREASON.

Attempt. See CRIMINAL LAW.

Attestation. See CONVEYANCES; WRITINGS.

Attesting Witness. See CONTRACTS; CONVEYANCES; WITNESS.

Attorneys. See AGENCY.

Attornment. See CONTRACTS.

Attorney-General. See OFFICE AND OFFICERS.

Auction. See SALES.

Auctioneers. See AGENCY; AGENTS.

Audita Querela. See PRACTICE.

Auditor. See OFFICE AND OFFICER.

Authentication. See PRACTICE.

AUTHORITIES. See EVIDENCE; LAW.

AN AUTHORITY is an enactment or an opinion relied upon as establishing or declaring the rule of law which is to be applied in any case. The opinion of a court, or of counsel, or of a text-writer, upon any question, is usually fortified by a citation of authorities.

The authority of the constitution and of the statutes and municipal ordinances are paramount; if there is any conflict among these the constitution controls, and courts declare a statute or ordinance which conflicts with the former to be of no authority.

The decisions of courts of justice upon similar cases are the authorities to which most frequent resort is to be had; and although in theory these are subordinate to the first class, yet in practice they continually explain, enlarge, or limit the provisions of enactments, and thus in effect largely modify them. The word authorities is frequently used in a restricted sense to designate citations of this class.

The opinions of legal writers of the vast number of treatises, commentaries, and text-books, are another and still more subordinate class of authorities. Opinions of a text-writer upon any particular point must be considered not merely as the opinion of the text-writer, but as the supposed result of the authorities to which he refers. If, on examination of those authorities, they are found not to establish it, his opinion is disregarded.[a] Where, however, the writer declares his own opinion as founded upon principle, the learning and ability of the writer, together with the extent to which the reason which he assigns commend themselves to the reader, determine the weight of his opinion. In estimating the learning and ability of an author, his judicial or non-judicial station is not a just test of his authority, though it may be borne in mind.[b]

An authority may be of any degree of weight from that of absolute conclusiveness down to the faintest presumption.

a-3 B. & P. 301. b-See 3 T. R. 64, 241; Ram. Judgments, 93.

Abbreviations are one or more letters used for a word, thus: Bl. Comm., for Blackstone's Commentaries, U. S. A., for United States of America. They are also arbitrary marks or signs, thus: $ for dollar, and the like. Christian names, articles of trade and commerce, quantities, qualities, as well as text-books, reports, etc.,[a] are frequently represented by abbreviations often understood by the individual, professional, tradesman, etc., only. In matters of importance, as accounts, agreements, amounts, dates, names, qualities, and the like, abbreviations should be avoided, as tending to misconstruction, misunderstanding, and controversy;[a] yet, if an abbreviation is adopted in the inception of any transaction, it should be carried through to its final consummation.

Abbreviations should approach as nearly as possible to the outlines of the original word.

Tables of abbreviations, etc., of authorities in general use, and cited in this volume, may be found in the various law catalogues, legal bibliography, reports, etc.

Authentication is a proper or legal attestation. Acts done with a view of causing an instrument to be known and identified. An act or attestation of the authenticity of any instrument, copy, or writing. See ACKNOWLEDGMENT; EVIDENCE.

AUTHENTICATION FORMS.

Authentication—General Form.

United States of America, State of ——, —— county, ss:

I, the undersigned (*here insert official title*), of ——, in ——, hereby certify that (*here state the subject of authentication*).

In testimony whereof, I have hereunto set my hand and official seal, at my office in ——, this —— day of ——, A. D. ——.

[*Seal.*] (*Signature and official title.*)

Authentication—Copy of Account.

State of ——, —— county, ss.

I hereby certify that the (above, *or* foregoing, *or* within) is an exact (exemplified) copy of the (administration, *or other*) account of A. B. (*or* A. R., administrator of the estate of D. D., deceased, *or* E. X., executor of the last will and testament of D. D., deceased, audited, passed, and filed in the office of the ——, of —— county, etc.)

In testimony whereof, etc.

[*Seal.*] (*Signature and official title.*)

Authentication—Copy on File.

State of ——, —— county, ss.

I hereby certify that I have compared the (above, *or* annexed, *or* foregoing, *or* within) copy and indorsements thereon with the original (*state what*), on file in this office, and that the same are full, true and correct transcripts of the same.

In testimony whereof, etc.

[*Seal.*] (*Signature and official title*).

Authentication—Copy of Inventory.

State of ——, —— county, ss.

I hereby certify that the above, etc., is an exact copy of an inventory of (*state what*).

In testimony, etc.

Authentication—Copy of Record.

State of ——, —— county, ss.

I hereby certify that the above (*or* annexed, *or* foregoing, *or* within) has been carefully compared with, verified, and is a correct transcript of the whole of (*state what*), as the same appears of record, Vol. —, pages — —, of (*state the kind or nature of record*), in the office of the ——, of ——, in ——.

In testimony, etc.

Authentication—Copy of Will.

State of ——, —— county, ss.

I hereby certify that the above (*or* annexed, etc.) is an exact copy of the last will and testament of D. D., deceased, which was duly admitted to probate, and is filed of record in the office of ——, of ——, etc.

In testimony, etc.

Authentication—Official Character.

State of ——, —— county, ss.

I, O. R., a (*giving official title*), in and for said county and State, do hereby certify that O. C., whose name is subscribed to the above (*or* annexed, *or* foregoing, *or* within—*state what*), is a (*state what, giving his official title, etc., in full*), in and for ——, and is duly qualified and acting as such. That I am well acquainted with the handwriting of said O. C., and that his signature to said instrument is genuine.

In testimony, etc.

Authentication—Transcript of Judgment.

State of ——, —— county, ss.

I hereby certify that the above is a full and correct transcript of a judgment entered on the —— day of ——, in the —— court, in favor of A. B., in an action wherein A. B. was plaintiff and C. D. defendant, as the same appears in Judgment Record No. ——, page ——.

In testimony, etc.

Citation of authorities is the reference to the text of the acts of legislatures, treatises, text-books, reports of causes decided by the courts, for the purpose of supporting the propositions advanced, and to offer facilities for their examination and comparison upon particular subjects.

The knowledge of the law is to a great degree the knowledge of precedents. This makes a frequent reference to such precedents necessary, in order to confirm a statement of the law. Constant reference to enacted law is absolutely necessary. Reference to works of legal writers is also necessary, to elucidate doubtful points of law. The laws of the general government are generally cited by their date, as: Act of June 15, 1876; Act of 1876, Ch. 170, U. S. Statutes at Large, etc. In most States reference is had to the General Statutes. Text-books and reports of cases decided in the various courts are cited by the number of the volume and page. Sometimes the book is cited by paragraphs or sections.

Law is that which is laid down or established by the supreme power of a State, by the legislature. It is the aggregate of those rules and principles of conduct which the governing power in a community recognizes, and which it will enforce and sanction, and by and according to which it will regulate, limit, or protect the conduct of its members. It includes not only the acts of the legislature and constitution but reports of adjudicated cases, text-books, treatises, etc.

Leading cases are those cases decided by a court of last resort which decides some particular point in question and to which reference is constantly or frequently made, for the purpose of determining the law in similar cases. The character of a leading case depends upon its priority, the character of the court, the amount of consideration given it, and its freedom from collateral matters and questions.

[a] See 4 C. & P. 51; 9 Co. 48.

Maxims are principles of law universally admitted as just, and consonant with reason. Maxims of law are similar to axioms in geometry.[c] They are authorities and principles and part of the general customs or common law of the land, and are of the same strength as statute law, when the judges have decided what is a maxim; and this belongs to the judges and not the jury.[d] Maxims of the law are considered law.[e]

Precedents are those legal acts, decisions, formulæ, instruments, etc., which are deemed worthy to serve as rules or models for subsequent cases. It is much better to stick to the known general rules than to follow any one particular precedent which may be founded on reasons unknown to us.[f] A former decision is in general to be followed, unless "manifestly absurd and unjust"; and in the latter case it is declared, when overruled, that the former sentence was not law, not that it was bad law. The consideration and deliberation upon which it was made is an important element.[g] The length of time during which it has been acted on as a rule of property is to be considered, and the length of time it has stood unquestioned; since where a rule declared to be law, even by an inferior tribunal, having been habitually adopted and acted upon by the community, becomes thus imbedded in the affairs of men, and it may frequently be better to enforce it as it is than to disturb or unsettle it. In order to give precedents a binding effect there should be a current of decisions.[h] The antiquity and frequency of their adoption in questions of property might unjustly affect vested rights by a departure from them, and this, therefore, is very cautiously done.

Written forms of procedure which have been sanctioned by the courts, or by long professional usage, and are commonly followed, are also precedents.[i] See PLEADING.

Principles are truths or propositions so clear that they cannot be proved or contradicted, unless by propositions which are still clearer. Principles are of two kinds—universal and first principles. Universal principles are those known as axioms and maxims. First principles are those which, *First*, are so clear that they cannot be proved by anterior or more manifest truths; *Second*, are almost universally received; *Third*, are so strongly impressed on our minds that we conform ourselves to them whatever may be our avowed opinions. Courts recognize but do not establish principles; thus "the right to defend one's self continues as long as there is an unjust attack," was a principle long before it was ever decided by a court.

Reason is that power by which we distinguish truth from falsehood and right from wrong, and by which we are enabled to combine means for the attainment of particular ends. Reason is the soul of the law, for when the reason ceases the law ceases.[j] A person deprived of reason is not, in many cases, criminally responsible for his acts, nor can he enter into any contract.

Seals are impressions upon wax, wafers or some tenacious substance capable of being impressed.[k] The public seal of a foreign state proves itself, and public acts, decrees and judgments exemplified under this seal are received as true and genuine,[l] if such state has been acknowledged within the jurisdiction within which the forum is located.[m] The seal of a notary public is taken judicial notice of the world over.[n] See SEALS.

Authority. See AGENCY; AUTHORITIES; CONTRACTS; GOVERNMENT.
Auter fois Acquit. See CRIMINAL LAW.
Auter fois Attaint. See CRIMINAL LAW.
Aver. See PRACTICE.
Average. See INSURANCE.
Averment. See PLEADING.
Avoidance. See PLEADING.
Avordupois. See WEIGHTS AND MEASURES.
Avow. See PRACTICE.
Avowry. See PLEADING.
Avulsion. See REAL PROPERTY.
Award. See AGENCY; ARBITRATION.
Away-Going Crop. See CROP; IMPLEMENTS; PERSONAL PROPERTY.
Back-Water. See REAL PROPERTY; WATER.
Back-Side. See CONVEYANCES; REAL PROPERTY; YARD.
Badge. See OFFICE AND OFFICERS.
Baggage. See BAILMENTS; CARRIERS; COMMON CARRIERS OF PASSENGERS.
Bail. See PRACTICE.
Bail-Bond. See PRACTICE.
Bail-Piece. See PRACTICE.
Bailable Action. See ACTION; PRACTICE.
Bailable Process. See PRACTICE; PROCESS.
Bailee. See BAILMENTS.
Bailiff. See OFFICE AND OFFICER.
Bailiwick. See PRACTICE.

BAILMENTS. See AGENCY; CONTRACTS.

BAILMENT is a delivery of personal property by one party to another, to be held according to the purpose or object of delivery, and to be returned or delivered over when the purpose or object of the delivery is accomplished. It is the delivery of goods in trust upon a contract, either expressed or implied, that the trust shall be faithfully executed on the part of the bailee.[o]

The Bailor is the person delivering the goods.

The Bailee is the person to whom the goods are delivered.

Practically, bailments are of three kinds:

1. Bailments which are for the benefit of the bailor, or some person whom he represents.

c-1 Bl. Comm. 68. d-Termes de la ley, Doct. & Stud. Dial. 1 Ch. 8. e-Co. Litt. 11, 67, 4 Co.; see Plowd. 27, *b*. f-Cas. *temp*. Tabot, 26; 1 Bl. Comm. 70. g-4 Co. 94. h-Cro. Car. 528; Cro. Jac. 386; 8 Co. 163. i-Stephen Pl. 392. j-Co. Litt. 97, 183; 1 Bl. Comm. 70; 7 Toull. n. 566. k-5 Johns. 239. l-2 Cranch. 187, 238; 4 Dallas, 416; 7 Wheat. 273, 335; 1 Denio, 376; 2 Comm. 85, 90; 6 Wend. 475; 9 Mod. 66. m-3 Wheat. 610; 9 Ves. Ch. 347. n-2 Esp. 700; 5 Cranch. 535; 6 S. & R. 484; 3 Wend. 173; 1 Gray, 175. o-2 Bl. Comm. 451. See Id. 395. A delivery of a thing in trust, for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Story Bailm. § 2. See Merlin *Repert*, *Bailm*. A delivery of goods in trust upon a contract, express or implied, that the trust shall be duly executed, and the goods restored by the bailee as soon as the purposes of the bailment shall be answered. 2 Kent Comm. 559. A delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purposes for which they are bailed shall be answered. Jones Bailm. 1.

2. Bailments which are for the benefit of the bailee, or some person represented by him.

3. Bailments which are for the benefit of both parties.

There are three degrees of care and diligence required of the bailee, and three degrees of negligence, for which he is responsible, according to the purpose and object of the bailment. Thus, in the first class, the bailee is required to exercise only slight care, and is responsible only for gross neglect; in the second, he is required to exercise great care, and is responsible even for slight neglect; in the third, he is required to exercise ordinary care, and is responsible for ordinary neglect.

Diligence is the doing things in the proper time.[b] The following are the three degrees of diligence:[b]

1. Ordinary diligence is that degree of diligence which men of ordinary prudence exercise in respect to their own concerns.

2. Great or extraordinary diligence is that which very prudent persons take of their own concerns.

3. Slight diligence is that degree of diligence which men, habitually careless, or of little prudence, generally exercise in the management of their own business.

Negligence consists of the following degrees:

1. Ordinary negligence is the want of ordinary diligence.

2. Slight negligence is the want of great diligence.

3. Gross negligence is the want of slight diligence.

There is a supplementary class of bailments, founded upon the policy of the law, in which the bailee is responsible for loss without any neglect on his part, being, with certain exceptions, an insurer of the safety of the thing bailed.

When a person receives goods or property of another to keep without recompense, and he acts in good faith, keeping them as his own, he is not answerable for the loss or injury, as he derives no benefit from the bailment; he is responsible only for bad faith or gross negligence.[c] But this obligation may be enlarged or decreased by a special acceptance;[d] and a spontaneous offer on the part of the bailee increases the amount of care required of him;[e] knowledge by the bailee of the character of the goods,[f] and by the bailor of the manner in which the bailee will keep them,[g] are important circumstances. So, when a person receives an article, and undertakes gratuitously some commission in respect to it, as to carry it from one place to another, he is only liable for its injury or loss through his gross negligence. It is enough if he keep and carry it as he does his own property.[h]

The borrower, on the other hand, who receives the entire benefit of the bailment, must use extraordinary diligence in taking care of the thing borrowed, and is responsible for even the slightest neglect.[i] He must apply it only to the very purpose for which it was borrowed;[j] he cannot permit any other person to use it;[k] he cannot keep it beyond the time limited;[l] and cannot keep it as a pledge for a demand otherwise arising against the bailor.[m]

In the third class of bailments the benefits derived from the contract are reciprocal; it is advantageous to both parties. In the case of a pledge given on a loan of money or to secure the payment of a debt, the one party gains a credit, and the other security, by the contract. And, in a bailment for hire, one party acquires the use of the thing bailed, and the other the price paid therefor; the advantage is mutual. So, in a bailment for labor and services, as when one person delivers materials to another to be manufactured, the bailee is paid for his services, and the owner receives back his property enhanced in value by the process of manufacture. In these and like cases the parties stand upon an equal footing; there is a perfect mutuality between them. And, therefore, the bailee can only be held responsible for the use of ordinary care and common prudence in the preservation of the property bailed.[n]

The diligence required is proportioned to the value of the property bailed, or the delicacy of the operation to be performed.[o] A man would not be expected to take the same care of a bag of oats as a bag of gold; or a bale of cotton, as a box of diamonds; or a load of wood, as a box of rare paintings; or a rude block of marble, as an exquisitely sculptured statue. The bailee should proportion his care to the injury or loss which is likely to be sustained by any improvidence on his part.[p]

A BAILEE is one to whom goods are bailed; the party to whom personal property is delivered under a contract of bailment. His duties are to act in good faith, and perform his undertaking in respect to the property intrusted to him, with the diligence and care required by the nature of his engagement. When the bailee alone receives benefit from the bailment, as where he borrows goods and chattels for use, he is bound to exercise extraordinary care and diligence in preserving them from loss or injury.[q] When the bailment is mutually beneficial to the parties, as where goods and chattels are hired or pledged to secure a debt, the bailee is bound to exercise ordinary diligence in pre-

b-Story Bailm.; 5 Kas. 433, 467. c-Edw. Bailm. 35, 67–74; 17 Mass. 479; 11 Mart. 402; 38 Me. 55; 3 Mas. C. C. *n.*; 2 C. B. 877; 4 Nev. & M. 170; 1 Ld. Raym. 913; see Story Bailm. § 64; C. C. Rob. Adm. 316. d-2 Kent Comm. 565; Story Bailm. § 63; Willes, 118; 2 Ld. Raym. 910; 3 Hill, 9; 7 Id. 533. e-2 Kent Comm. 565. f-Jones Bailm. 38. g-38 Me. 55. h-6 C. Rob. Adm. 141; 3 Mas. C. C. 132; 6 N. H. 537, 1 Const. 117; Edw. Bailm. 102–108; as to the amount of skill such bailee must possess and exercise, see 2 Kent Comm. 509; Story Bailm. §§ 174–178; 11 M. & W. 113; 5 T. R. 143; 2 Ad. & E. 256; 8 B. Mon. 415; 4 Johns. 84; 11 Wend. 25; 7 Mart. 460; 20 Id. 77; 3 Fla. 27; and more skill may be required in cases of voluntary offers or special undertakings; 2 Kent Comm. 573. i-Edw. Bailm. 138; 7 La 253. j-2 Ld. Raym. 915; Story Bailm. §§ 232, 233. k-1 Mod. 210. l-Story Comm. 257; 5 Mass. 104. m-2 Kent Comm. 574; Edw. Bailm. 141. n-Edw. Bailm. 38, 39; 13 Johns. 211; 9 Wend. 60; 5 Bingh. 217. o-8 Ind. 315. p-4 B. & A. 21, 36, 42; 5 Id. 342; 1 Stark. 238; 16 How. 475. q-Story Bailm. § 237; Edw. Bailm. 164.

serving the property.[r] When the bailee receives no benefit from the bailment, as where he accepts goods, chattels, or money to keep without recompense, or undertakes gratuitously the performance of some commission in regard to them, he is answerable only for the use of the ordinary care which he bestows upon his own property of a similar nature.[s]

The bailee is bound to redeliver the property, according to the nature of his engagement, as soon as the purpose for which it was bailed shall have been accomplished. In bailments which are beneficial to both of the parties to the contract, the bailee has a right to retain the thing bailed until the object of the bailment has been accomplished. A bailee for work, labor, and services, such as a mechanic or artisan, who receives chattels or materials to be repaired or manufactured, has a lien upon the property for services.[t] Other bailees, innkeepers, common carriers, and warehousemen, also have a lien for their charges.[u]

The bailee has a special property in the goods or chattels intrusted to him, sufficient to enable him to defend them by suit against all persons but the rightful owner. The depositor and mandatory acting gratuitously, and the finder of lost property, have this right.[v] A bailee, with a mere naked authority, having a right to remuneration for his trouble, but coupled with no other interest, may support trespass for any injury amounting to a trespass done while he was in actual possession of the thing.[w]

A bailee cannot dispute his bailor's title.[x]

A bailee is not responsible for losses by robbery,[y] lightning, tempest, inundation, and other like calamities, unless there has been some unjustifiable delay, or the party has taken upon him the risk of the casualty, or he is at the same time guilty of neglect.[z] But losses by mere private or secret theft, to excuse the party, depend upon the nature of the bailment, and the particular circumstances of the case.[a]

A BAILOR is one who bails a thing to another; the party who delivers personal property under a contract of bailment. The bailor must act in good faith toward the bailee;[b] he must permit him to enjoy the thing bailed according to the contract; and, in some bailments, as in hiring, warrant the title of the thing hired, and, probably, keep it in suitable order and repair for the purpose of the bailment,[c] according to custom, or as the parties may agree.

CARRIERS are those who undertake to transport goods from one place to another.[d]

Carriers are either common or private carriers.

Common carriers are such as carry goods for hire, indifferently for all persons.

The definition includes carriers by land and water. They are, on the one hand, stage-coach proprietors, railway companies, truckmen, wagoners and teamsters, carmen and porters, and express companies, whether such persons undertake to carry goods from one portion of the same town to another, or through the whole extent of the country, or even from one state or kingdom to another. And, on the other hand, this term includes the owners and masters of every kind of vessel or water craft who set themselves before the public as the carriers of freight of any kind for all who choose to employ them, whether the extent of their navigation be from one continent to another, or only in the coasting trade, or whether employed in lading or unlading goods, or in ferrying, with whatever mode of motive power they adopt.[e]

Common carriers of passengers are such as carry persons for hire, and are bound to carry all who offer.[f]

Private carriers are such as do not carry goods for hire indifferently for all persons.

COMMON CARRIERS. Where a carrier undertakes to carry only for the particular occasion, he cannot be held responsible as a common carrier. So, also, if the carrier be employed in carrying for one, or a definite number of persons, by way of special undertaking. To constitute one a common carrier, he must make it, for the time, a regular employment to carry goods for hire for all who choose to employ him.[g] This rule embraces the proprietors of stage wagons and coaches, omnibuses and railways;[h] also carters, expressmen, porters, shipowners, and all who engage regularly in the transportation of goods or money, either from town to town, or from place to place in the same town.

Common carriers are held to the responsibility of insurers for the safe delivery of property intrusted to their care, upon the grounds of public policy, to prevent fraud, and collusion with thieves, and because the owner, having surrendered up the possession of his property, is generally unable to show how or where the loss occurred.[i]

Common carriers are responsible for all loss or damage during transportation, from whatever cause, except the act of God, or the public enemy.[j] The carrier is not responsible for

r-Edw. Bailm. 223, 312; Story Bailm. 308, 309. s-Edw. Bailm. 66-74-102-108; Story Bailm. §§ 65, 67, 174-186. t-4 Bouv. Inst. 201, 309, 310, 355. u-Id. 307-309, 411-414, 547-552. v-Edw. Bailm. 55, 57, 61. w-4 Bouv. Inst. n. 3608. x-Edw. Bailm. 288, 289, 305, 535. y-Story Bailm. c. 1, § 26. z-Id. §§ 36-37. a-1 Humph. 99; 14 Eng. L. & Eq. 327. b-Story Bailm. §§ 74, 76, 77. c-Id. §§ 388-392. d-1 Parsons Contr. 632. e-Story Bailm. §§ 494-496; 2 Kent Comm. 598, 599; Redf. Rlys. § 124; 1 Salk. 249; 2 Ga. 348; 14 Ala. N. S. 261; 1 Bouv. Inst. n. 1020; it has been doubted whether carmen, 8 C. & P. 207, and coasters, 6 Cow. 266, were common carriers; but these cases stand alone, and are contradicted by many authorities, 19 Barb. 577; 24 Id. 533; 9 Rich. (S. C.) 193. f-19 Wend. 239; 10 N. H. 486; 15 Ill. 472; 2 Sumn. C. C. 221; 3 Brod. & B. 54; 9 Pick. 408. g-2 Kelly 349, 353; 1 Salk. 249; 2 C. & P. 598; 1 Nev. & Per. 22; 1 Pick. 50; 23 Vt. 186; 1 Conn. 54. h-Story Bailm. § 496, and cases cited. i-1 Daly (C. P.) 547. j-Aug. Carr. 70, § 67; 1 T. R. 27; 2 Ld. Raym. 909, 918; 1 Wils. 281; 1 Salk. 18, and cases cited; 4 Bingh. (N. C.) 314; 25 Eng. L. & Eq. 595; Story Bailm. § 490; 2 Kent. Comm. 597, 598; 7 Yerg. 340; 3 Munf. 239; 1 Dev. & B. 273; 2 Bail. 157; 6 Johns. 160; 21 Wend. 190; 23 Id. 306; 5 Strobh. 119; Rice, 108; 4 Zabr. 697; 2 Id. 273; 1 Conn. 487; 12 Id. 410; 4 N. H. 259; 11 Ill. 579; the act of God is held to extend only to such inevitable accidents as occur without the intervention of man's agency; 1 T. R. 27; 21 Wend. 192; 3 Esp. 127; 4 Dougl. 287.

losses occurring from natural causes, such as frost, fermentation, evaporation, or natural decay of perishable articles, or the natural or necessary wear in the course of transportation, provided the carrier exercises all reasonable care to have the loss or deterioration as little as practicable.[j]

Carriers both by land and water, when they undertake the general business of carrying every kind of goods, are bound to carry all which offer; and if they refuse, without just excuse, they are liable to an action.[k] But any common carrier, whether a natural person, or corporation, may restrict his business within such limits as he may deem expedient, and he is not bound to accept goods out of the line of his usual business.[l]

Authority of Agents and Servants. The board of directors have all the power that resides in the corporation, unless restricted by the charter and by-laws; other agents and servants cannot bind the company beyond their sphere of operation,[m] and an agent who assumes to bind the company beyond his sphere, cannot.[n] But the fact that a company has ratified other similar contracts of the particular servant might be evidence against them.[o] A notice by the company of want of authority in servants, renders their acts void.[p] A servant may bind the company even when he disobeys their directions, if acting in the scope of his authority.[q] A common carrier of goods is liable for the acts of all the servants of his sub-contractors,[r] and it makes no difference that the emoluments were allowed to be retained by the servants as a part of their compensation, unless this were known to the owner of the goods, and he contracts with the servants as principals.[s] An owner may countermand the destination of goods through the proper agent.[t] An agent's authority is a matter of fact.[u]

Baggage—Limitations and Restrictions.— They are not liable for merchandise which a passenger carries covertly,[v] and it makes no difference that the passenger has no other trunk.[w] Jewelry, being female attire, and a watch in a trunk is proper baggage.[x] So, also, is money for expenses,[y] books for reading,[z] clothing,[a] spectacles,[b] tools of trade, and many other similar things.[c] A carrier is responsible for baggage when the passenger goes by another conveyance.[d] Carriers cannot restrict all responsibility for baggage,[e] but may make reasonable regulations and follow them.[e]

Stage proprietors and omnibus drivers, who assume to carry luggage for all who apply, from railway stations about the towns, are responsible as common carriers; and it does not affect the responsibility of such carriers where they enter the names of passengers on way-bills, but do not enter the baggage;[f] where they are employed by hotel-keepers to transport their guests, both are responsible.[g]

—— *Responsibility for.* It is an elementary principle of law that railways, steamboats, and other carriers of passengers, although not liable for injuries to their passengers without their fault, are nevertheless responsible, as common carriers, for their baggage, or luggage.[h] Where one company checks baggage through a succession of lines, owned by different companies, each company becomes responsible for the whole route.[i] The baggage-check given at the time of receiving such baggage is regarded as *prima facie* evidence of the liability of the company, and such responsibility continues until the delivery of the same to the passenger or to his order;[j] a check therefor "stands in the place of a bill of lading;"[k] and where different railways, forming a continuous line, run their cars over the whole line, and sell tickets for the whole route, the action lies against either company for the loss of baggage;[l] they remain liable until a full and unequivocal delivery to the owner.[m] But the company is not liable unless the baggage is given in charge of their servants,[n] and if the servant accepts, the carrier is responsible for the baggage.[o] Their liability results from duty, and not from contract.[p]

Bill of Lading—Effect upon Carrier. A bill of lading, or carrier's acknowledgment of

j-B. N. P. 69; 2 Kent Comm. 299, 300; Story Bailm. § 492, *a*; 6 Watts. 424; Redf. Rlys. 141. k-2 Show. 332; 5 T. R. 143; 5 B. & Ald. 32; 8 M. & W. 372; 1 Pick 50; 5 Mo. 36; 15 Conn. 539; 2 Sumn C. C. 221; 6 Rly. Cas. 61; 6 Wend. 335; 2 Story C. C. 16; 12 Mod. 484; 4 C. B. 555; 6 Id. 775; 1 Ball & B. 54; 9 Price, 408. l-23 Vt. 186; 14 Penn. St. 48; 10 N. H. 481; 30 Miss. 231; 4 Exch. 369; 12 Mod. 484. m-18 Eng. L. & Eq. 557, in note; 16 Jur. 1069: S. C. 14 Eng. L. & Eq. 175. n-3 Foster, 275; 18 Conn. 484; 3 Exch. 268; 2 Duer. 341. o-3 Exch. 268; 2 Duer. 341. p-14 C. B. 647; S. C. 26 Eng. L. & Eq. 297; 18 Barb. 500; 26 Barb. 564; 1 Allen, 9; 18 C. B. (N. S.) 748. q-14 How. U. S. 468, 483; 5 Duer. 193; 2 C. & P. 599. r-2 Exch. 415: S. C. 5 Rly. Cas. 302. s-8 N. H. 146; 7 Id. 157; 2 Harr. 481. t-12 Iowa, 348; 16 Jur. 1069; S. C. 14 Eng. L. & Eq. 175. u-18 Barb. 500; 12 Iowa, 340; 16 Jur. 1069; S. C. 14 Eng. L. & Eq. 175. v-8 Exch 30; S. C. 9 Eng. L. & Eq. 477; 2 Bosw. 589; 3 Am. L. Reg. (N. S.) 126; S. C. 44: N H. 325; 25 Wend. 459; 10 Cush. 506; 6 Hill, 586, 12 Ga. 217; 3 E. D. Smith, 571. w-25 Wend. 459; 10 Cush. 506. x-4 Bing 218; 3 Penn. St. 451; 20 Mo. 513: 6 Porter, 242. y-9 Wend. 85; 19 Id. 534; 4 E. D. Smith, 50, 178; 1 Abb. Pr. 32; 30 N. Y. 594; 9 Humph. 6; 11 Id. 419: 6 Porter, 242. z-6 Porter, 242. a-6 Porter, 242. b-Newberry's Admr. 494. c-10 How Pr. 330: 40 Miss. 39: 10 Ohio, 145; 4 E. D. Smith, 178; Id. 181; 38 Ill. 219; 25 Ga. 61. d-2 Blatch. C. Ct. 336. e-4 C. B. (N. S.) 257; 5 Jur. (N S.) 1056. f-1 Strob. 468. g-4 Cush. 115. h-4 Bing 218; 6 Hill (N. Y.) 586; 10 N. H. 481; 26 Wend. 591; 7 Rich. 158; 13 Wend. 611; 2 Bos. & P. 416; 6 East. 564; S. C. 4 Esp. 177. i-8 N. Y. 37; 2 E. D. Smith, 184. j-1 C. B. 839; 2 B. & P. 416; 4 Bing. 218; 6 Hill, 586; 26 Wend. 591; 10 N. H. 481; 7 Rich. 158. k-7 Rich. 158; 3 E. D. Smith, 246; 10 C. B. (N. S.) 453; 6 Gray, 450; 4 E. D. Smith, 453; 7 Gray, 92, 86; 1 Hilton, 280. l-4 Seld. 37; 2 E. D. Smith, 84; 29 Barb. 35, 4 H. & N. 615: 5 Cush. 69. m-21 Wend. 354: 7 C. B. 839; 16 Id. 13: S. C. 29 Eng. L. & Eq. 347; 7 Hill (N. Y.) 47; 2 Bos. & Pul. 416; 2 Duer. 335; 16 B. Mon. 302, 308; 26 Wend. 591: 4 E. D. Smith, 453; 19 Wis. 40; 35 Vt. 605: 12 C. B. (N. S.) 75; S. C. 8 Jur. (N. S.) 1213; 49 Barb. 148: 36 Id. 557; 34 N. Y. 548. n-10 C. B. 726; S. C. 2 Eng. L. & Eq. 331; 12 C. B. 291; S. C. 6 Eng. L. & Eq. 397; 12 C. B. 304; S. C. 10 Eng. L. & Eq. 521; 1 Hilton, 244; 2 Duer, 335; 12 Ill 344; 13 Id. 746; 7 Cush. 155; 4 Ohio St. 722; 28 Miss. 792; 11 Rob. (Louis.) 24; 3 Dana. 91; 37 Miss. 391; 12 Jur. (N. S.) 266; L. R. 1 Q. B. 54; S. C. 6 B. & S. 961. o-21 Wend. 354; 31 Conn. 281. p-11 C. B. 655; S. C. 7 Eng. L. & Eq. 519; 36 N. H. 26; 1 E. D. Smith, 95; 4 Id. 453.

the receipt of goods, is generally the written evidence of the contract between the parties, and is expected to contain all the exemption from general responsibility which it is competent for the carrier to claim. Parol evidence is not admissible to vary the contract of shipment thus evidenced.[q] But as between immediate parties the bill of lading is not conclusive as to the quantity or condition of the goods at the time of shipment, especially when there was no opportunity to inspect them.[r] Between the consignor and carrier the bill of lading is (in the absence of proof to the contrary) evidence of the truth of its contents.[s] Questions of quantity and quality of goods cannot be raised where intermediate carriers are concerned.[t] A bill of lading may be explained,[u] but cannot be contradicted or controlled as to the terms of the contract, by oral evidence.[v] The goods must be forwarded according to the bill of lading.[w] If a shipper give separate bills of lading to the different owners of wheat, shipped in the same car, he is liable to each owner for the conversion of his portion.[x] The statement in a bill of lading that the goods were received in good order is not conclusive evidence of that fact; but it is competent to show that such was not the fact.[y] A bill of lading must be construed with reference to the nature of the route and the course of business.[z] The bill is conclusive as to third parties who act upon it.[a] A transfer by indorsement and delivery of the bill of lading passes to the indorsee all vested and contingent rights of action.[b] An exception in a bill of lading does not affect its general construction.[c] The bill as to the receipt of goods is evidence only as between the parties, but conclusive as to parties acting in good faith under it.[d] But in cases of fraud the estoppel will not bind the owner of a vessel or his interest in it.[e] Delivery must be made, if practicable, as agreed,[f] or the carrier must show loss by excepted risks.[f] Terms used in a bill of lading, as in other written instruments, will receive such construction as the usage of the business requires.[g] An assignment of a bill of lading transfers the title to goods but not the claim for damages.[h]

A passenger's baggage is not at his own risk by reason of any notice printed on his ticket, and posted in the company's office, unless such notice is brought home to the owner.[i]

BILLS OF LADING FORMS.

Bill of Lading—Domestic.

THE —— EXPRESS CO.

Place ——, Date.

Received from (*consignor's or shipper's name*).

One package (box *or* bundle, etc.); **value** (*state amount*).

Marked (*consignee's name and other marks or directions*).

It is a part of the consideration of this contract and it is agreed that the said Express Company are forwarders only, and are not to be liable or responsible for any loss or damage while being conveyed by the carriers or agents, to whom said property may be by said Express Company intrusted, or arising from the dangers of ocean or river navigation, railroads, steam, fire in stores, depots, or in transit, or from any cause whatever, unless in every case the same be proved to have occurred from the fraud or gross negligence of said Express Company or their servants; nor in any event beyond the sum of fifty dollars, at which the article carried is hereby valued, unless as otherwise herein expressed; nor liable for any damage to glass or any fragile article unless herein specially insured. And if the same is intrusted or delivered to any other express company or agent (which the said —— Express Company are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the depositor, and as such alone liable; and the —— Express Company shall not be in any event responsible for the negligence or non-performance of any such company or person, nor in any event shall said Express Company be liable for any loss or damage, unless the claim therefor shall be presented to them in writing at their said office, within thirty days after the time when said property has or ought to have been delivered. It is further agreed that said Company shall not in any event be liable for any loss or damage or detention caused by civil or military authority, or by rebellion, insurrection, or riot. Owner's risk against leakage or breakage. Glassware received only at shipper's risk.

Not negotiable.

Freight paid (*or* collect).

For the proprietors, A. A. (Bailee's Agent).

Bill of Lading—Domestic.

For Money, with Insurance added.

ADAMS EXPRESS COMPANY.

$——. Place, ——, Date.

Received from (*consignor's or shipper's name*) **one package, sealed and said to contain** (*state amount*).

Addressed (*give address, etc.*)

Upon the special acceptance and agreement that this Company is to forward the same to its agent nearest or most convenient to destination only, and there to deliver the same to other parties to complete the transportation —such delivery to terminate all liability of this Company for such package: and also, that this Company are not to be liable in any manner, or to any extent for any loss, damage or detention of such package, or of its contents, or of any portion thereof, occasioned by the acts of God, or by any person or persons acting or claiming to act in any military or other capacity in hostility to the government of the United States, or occasioned by civil or military authority, or by the acts of any armed or other mob or riotous assemblage, piracy or the dangers incident to a time of war, nor when occasioned by the dangers of railroad transportation, or ocean or river navigation, or by fire or steam, unless specially insured by this Company, and so specified in this receipt. In no event is this Company to be liable for a greater sum than that above mentioned, nor shall it be liable for any such loss unless the claim therefor shall be made in writing, at this office, within thirty days from this date, in a statement to which this receipt shall be annexed; and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to and inure to the benefit of, each and every company, or person, to whom the Adams Express Company may intrust or deliver the above described property for transportation, and shall define and limit the liability therefor of such other company or person.

Freight paid (*or* collect).

For the Company, A. A.

Insured by Adams Express Company, for ——, to —— only. For the Company,

Insurance, $——. A. A.

[q] 4 Ohio, 334; 2 Sumn. C. C. 567; Ang. Carr. §§ 228, 229. [r] 1 M. & R. 186; 7 Ad. & E. 29; 9 B. Mon. 112. [s] 11 Pick. 43; 7 W. Law J. 302; 3 Coms. 322; 4 Seld. 497; 24 Ind. 447; 13 La. An. 452; 19 L. Rep. 376; 16 L. Reg. 229; 10 Wis. 4; 50 Maine, 339; 18 Ill. 172; 9 Leigh. 347. [t] 18 Barb. 586. [u] 9 B. Mon 112; 19 L. Rep. 43; 16 Ill. 408; 28 Barb. 323. [v] 4 Ohio, 334; 2 Sumn. 567; 3 Gray, 97; Angell, Carriers §§ 228, 9. [w] L. Rep. July, 1857, 129; 3 Mich. 268: 9 Barb. 158; 12 La. An. 752; Id. 783; 30 L. Times, 26; 13 Ind. 518. [x] 18 N. Y. 518. [y] 23 Ill. 117; L. Rep. 1 C. P. 649; 14 La. An. 298. [z] 3 Wallace, 225. [a] 7 Allen, 454; Id. 456; 11 Gray, 458; 1 Bailey, 174; 34 Me. 554; 50 Id. 339; 1 Hilton, 221. [b] L. Rep. 1 P. C. 248; S. C. 12 Jur. (N. S.) 258. [c] 9 Allen, 299; 40 Ala. 184. [d] 18 How. (U. S.) 182. [e] 18 Id. 182. [f] 12 Gray, 488. [g] 16 Ohio, 421; 8 Bosworth, 213. [h] 9 Gray, 281; 3 Camp. 320. [i] 12 Gray, 388.

Bill of Lading—Domestic.

For Freight.

ADAMS EXPRESS COMPANY.

Place ——, Date ——.

Received of (*consignor or shipper's name*) **——.**
Value, —— dollars (*or* asked and not given).
For which this Company charges (*give amount*).
Marked (*consignee's name, and other directions, marks and figures*).

Which it is mutually agreed is to be forwarded to our agency nearest or most convenient to destination only, and there delivered to other parties to complete the transportation.

It is part of the consideration of this contract, and it is agreed, that the said Express Company are forwarders only, and are not to be held liable or responsible for any loss or damage to said property while being conveyed by the carriers to whom the same may be by said Express Company intrusted, or arising from the dangers of railroads, ocean or river navigation, steam, fire in stores, depots, or in transit, leakage, breakage, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said Express Company or their servants; nor in any event shall the holder hereof demand beyond the sum of fifty dollars, at which the article forwarded is hereby valued, unless otherwise herein expressed, or unless specially insured by them, and so specified in this receipt, which insurance shall constitute the limit of the liability of the Adams Express Company. And if the same is intrusted or delivered to any other express company or agent (which said Adams Express Company are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the shipper or owner, and as such alone liable, and the Adams Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person, and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to and inure to the benefit of each and every company and person to whom the Adams Express Company may intrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person. In no event shall the Adams Express Company be liable for any loss or damage, unless the claim therefor shall be presented to them in writing, at this office, within thirty days after this date, in a statement to which this receipt shall be annexed. All articles of glass or contained in glass, or any of a fragile nature, will be taken at shipper's risk only, and the shipper agrees that the Company shall not be held responsible for any injury by breakage or otherwise, nor for damage to goods not properly packed and secured for transportation. It is further agreed, that said Company shall not, in any event, be liable for any loss, damage, or detention caused by the acts of God, civil or military authority, or by rebellion, piracy, insurrection, or riot, or the dangers incident to a time of war, or by any riotous or armed assemblage. If any sum of money, besides the charge for transportation, is to be collected from the consignee on delivery of the above-described property, and the same is not paid within thirty days from the date hereof, the shipper agrees that this Company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this Company for such property while in its possession for the purpose of making such collection, shall be that of warehousemen only.

Freight paid (*or* collect).

For the Company, A. A.

Bill of Lading—Foreign.

Freight, Money, etc.

AMERICAN-EUROPEAN EXPRESS.

Place ——, Date ——.

Received of C. R.
One box (*or* package, etc.) **Value, $——.**
Numbered and marked as in the margin, to be forwarded by us only to ——, ——, as per address in "Marks and numbers."

It is agreed, and is part of the consideration of this contract, that said Company are not to be held responsible, except as forwarders, nor for any loss or damage arising from dangers of fire, at sea or on shore, accidents from machinery, boilers, steam, leakage, or any other accidents or dangers of the seas, rivers and steam navigation, of whatever nature or kind soever, or by dangers of railroads, restraints of princes or potentates, or for any cause whatever, unless the same be proved to have occurred from the fraud or gross negligence of ourselves, our agents or servants, and we, in no event, be liable beyond our route, as herein receipted. Valued under fifty dollars, unless otherwise herein stated. Not accountable for specie, jewelry, or precious stones, unless value is declared. Not accountable for leakage or breakage. Contents unknown.

Marks and numbers:

C. E. ——.

Freight, $——.
Insurance, $——.
Total, $——.
Duties and customs charges payable by consignee at destination.

For F. S. & Co., *Forwarders*.

A. A., *Agent*.

Bill of Lading—Domestic.

THE —— RAILROAD.

Place ——, Date ——.

Received from (*consignee or shipper's name*) **the following freight, marked as below, which we promise to deliver on the platform of the Company's freight station, at ——. Incidental dangers of railroad transportation, leakage, fire in cars or at stations, excepted.**

All goods offered for transportation must be in good order, and distinctly marked with name of station at which they are to be left, otherwise the Company will not be responsible for loss of goods or wrong delivery; nor will the Company be responsible for the safety of way freight, after its delivery on the platform of the station for which it is marked.

When receipts are required, duplicates ready for signing must be furnished by the consignor.

Marked ——.
Number and description of packages, ——.

(*Signed*) **Company's name by Agent.**

Bill of Lading—Domestic.

THE —— RAILROAD STATION.

Conditions.

Freight offered for transportation must be in good order, properly packed, and to prevent loss and miscarriage, the agents are instructed not to receive any packages or goods of any description whatever, unless they are plainly marked with the owner's name and destination.

The company will not be responsible for leakage of liquids, breakage of ware, nor will they hold themselves responsible for any goods lost, stolen, or damaged, beyond the value of fifty dollars per package.

When receipts are required, duplicates, ready for signing, must be furnished by the consignor.

Gunpowder, gun-cotton, and like combustibles, will not be received except by special arrangement at each consignment.

Coal oil and friction matches will only be received for transportation on Mondays and Thursdays, previous to 4 o'clock P. M. Packages containing these and all similar freight requiring extra caution, such as acids, turpentine, benzine, naphtha, etc., must be marked so as to plainly show the nature of their contents. Shippers concealing this in such cases will be held responsible for any damage resulting.

Received this —— day of ——, A. D. ——, of (*consignor or shipper's name*), **the following articles to forward, subject to the above conditions.**

Marked ——.
Number and description of packages.

(*Signed*)
Company's name by agent.

Bill of Lading—Domestic.

With Invoice.

THE —— RAILROAD.

Coal oil, friction matches, and gunpowder will be received for transportation on Mondays only until 4 P. M. Packages containing these and all similar freight requiring extra caution, such as acids, turpentine, benzine, naphtha, etc., must be marked so as to plainly show the nature of their contents. Shippers concealing this in such cases will be held responsible for any damage resulting.

When goods for more than one mark are comprised in one dray-load, separate receipts must be sent for each.

Received (*place*) **——, this —— day of ——, at**

——, of (*consignor or shipper's name*), the following articles, contents and conditions unknown.

Marked ——.

To be carried to and delivered ——, at —— Station, upon the terms and according to the agreement as specified on the back of this receipt (*see forms below*).

Number and description of packages.

(*Signed*) A. A.

For the Company.

Invoice.

To ——. Place ——, Date ——.

Receive and forward, subject to conditions of bill of lading attached, as follows:

Marks ——.

Number and description of packages. | Weight.

S. R., *Shipper*.

Bill of Lading—Domestic.

THE —— RAILROAD COMPANY.

Way Freight.

Place ——, Date ——.

Received of (*consignor or shipper's name*).

(*Specify articles or goods, bundles, bales, barrels, etc.*)

Marked ——, to be transported to ——, and delivered to ——, or order, upon the following terms:

1. The Company's liability is not to commence until the goods are actually received and ready for transportation, and it is to terminate on delivery at the Company's wharf or depot, or such other convenient place as they may provide for that purpose, or (if not sooner removed) shall terminate, without notice or demand, at the end of six working hours after they are ready for delivery at such point or place, and if not removed within that time they may be either held or stored at the sole risk and expense of the owner, or whom it may concern, and without insurance.

2. In the case of goods to be forwarded beyond this Company's line their liability is to extend only to their own portion of the route over which the goods are to be transported.

3. Except when their agents are guilty of gross negligence, this Company is not to be responsible for injuries to goods that may arise from the dangers of the seas or railroad, canal, river or lake transportation, or from providential or other unavoidable cause, or from fire, or from the effects of heat or cold, or from the perishable character or fragility of the goods themselves, such as furniture or castings; or from defective package, such as loss of contents of packages covered with cloth, injuries from breakage of glass or other brittle ware, leakage of liquids, escape of grain, or other small articles from bags, decay, rust on iron, deterioration, loss of weight by natural causes, etc., or for changes of the market during the period of transportation.

4. Claims for loss or damage shall be made in writing immediately, and if delayed for more than ten days after the delivery of the article, or after due time for the delivery thereof, the Company shall not be liable. In case of loss or damage to any of the goods herein mentioned, for which this Company would be liable, it is agreed that they shall have the benefit of any insurance that may have been or may be effected on said goods, and shall in no case be answerable over to the insurers.

5. In pursuance of a law of New Jersey, passed March 10th, 1853, authorizing Railroad Companies to limit their responsibility for $100 for every 100 pounds of goods, unless additional compensation be paid, it is agreed that this Company are not, in any case, to be liable for more than a dollar a pound for the loss or damage to the goods carried under this agreement.

6. In the case of goods received for transportation from connecting lines, this Company shall have the benefit of any exemptions from liability stipulated for in the bills of lading given to the shipper or consignor.

7. The goods herein referred to shall be subject to a lien, and may be retained for freight and charges on other goods, due from the party on whose account they are transported, as well as for freight and charges on the goods retained.

Not negotiable. (*Signed*) A. A.

For the Company.

Invoice.

To ——. Place ——, Date ——.

Receive and forward, subject to the conditions of bill of lading, from ——.

Marked ——.

For ——.

Weighing ——.

Measuring ——.

S. R., *Shipper*.

Bill of Lading—Domestic.

THE —— RAILROAD COMPANY.

Received at ——, this —— day of ——, of ——, the following articles, contents and conditions unknown, to be carried and delivered on the terms and according to the agreement as specified on the back of this receipt.

Marked ——.

Number and description of packages: ——.

AGREEMENT.

It is agreed, and is part of the consideration of this contract.

1. That all goods received for transportation shall be properly packed, and distinctly marked with the name of the consignee and the station where consigned; they shall also be accompanied by an invoice, stating date, weight, amount, value, and to whom consigned.

2. That the Company shall not be responsible for the melting of ice, decay or injury to perishable articles from heat or cold, or for any loss, injury, or damage from the danger of railroad transportation, explosions, fire in stores, depots, or in transit leakage, breakage, theft, or from any cause whatever, unless the same be proved to have occurred from the fraud or gross negligence of said Company or their servants; nor in any event beyond the sum of fifty dollars, unless otherwise herein expressed; nor liable for any damage to glass or fragile articles, unless herein specially insured. And when goods are intrusted to any other company or agent (which said —— Railroad Company is hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the owner, and as such alone liable: and the —— Railroad Company shall not in any event be responsible for the negligence or non-performance of any such company or person; nor in any event shall the —— Railroad Company be liable for any loss or damage, unless the claim therefor shall be presented to them in writing, at their office, within thirty days after the time when said property has or ought to have been delivered. The goods transported shall be subject to a lien—and may also be retained—for all arrearages of freight due on other goods by the same consignee or owner.

3. Storage will be charged on goods allowed to remain over twenty-four hours in the Company's depots or warehouses.

4. Articles requiring cooperage will be charged therewith.

5. Gunpowder, gun-cotton, friction matches, and like combustibles are not received or transported except by special contract to be made with the General Freight Agent. The Company's agents are authorized to open any packages supposed to contain the same, and the parties offering them under false invoices will be prosecuted according to law.

6. Goods at private turnouts shall be at the owner's risk until attached to, and after they are detached from, the train.

7. All articles will be at the risk of the owners at the several "way stations" and platforms where depot buildings have not been established by the Company, from the moment such articles are delivered from the cars as *directed* or *marked*.

8. The responsibility of the Company under this bill of lading to commence upon the shipment of the goods from this station, and to terminate when unloaded from the cars.

9. Machinery, furniture, stoves, agricultural implements, and all similar articles, when not packed in boxes, will always be at owner's risk of breakage from handling or any other cause.

Not negotiable.

A. A., *Receiving Agent*.

Invoice.

THE —— RAILROAD COMPANY.

Place ——, Date ——.

Receive and forward, subject to the conditions on back of receipt.

Received of ——.

Marked ——.

Number and description of packages: ——.

S. R., *Shipper*

Bill of Lading—Domestic.

THE —— RAILROAD COMPANY.

When goods for more than one mark are comprised in one dray-load, separate receipts must be sent for each.

Through and Local Freight will not be received after 5 o'clock P. M.

All freight must have the name of the station at which it is to be delivered *plainly marked* on the packages and on this receipt.

Place ——, date ——.

Received of (*consignor or shipper's name*).

Number and description of goods, etc., ——.

Marked ——.

To be transported to ——, and delivered to ——, or order, upon the terms and according to the agreement as specified on the back of this receipt.

AGREEMENT.

It is agreed, and is part of the consideration of this contract:

1. That all goods received for transportation shall be properly packed and distinctly marked with the name of the consignee, and the station where, and to whom consigned.

2. That the —— Railroad Company shall not be responsible for the melting of ice; decay or injury to perishable articles from heat or cold; or for any loss, injury, or damage from the dangers of railroad transportation, explosions, fire in stores, depots, or in transit, leakage, breakage, theft, or from any cause whatever, unless the same be proved to have occurred from the fraud or gross negligence of said Company or its servants; nor liable for any damage to glass or fragile articles, unless herein specially insured. And when goods are intrusted to any other company or person (which said —— Railroad Company is hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the owner, and as such alone liable; and the —— Railroad Company shall not in any event be responsible for the negligence or non-performance of any such company or person; nor in any event shall the —— Railroad Company be liable for any loss or damage unless the claim therefor shall be presented to them in writing at the office of said Company in ——, within five days after the time when said property has or ought to have been delivered. The goods transported shall be subject to a lien—and may also be retained—for all arrearages of freight and charges due on other goods by the same consignee or owner.

Freight to be paid upon the weight of goods as ascertained by the Company's scales.

3. Storage will be charged on goods allowed to remain over twenty-four hours in the depots or warehouses of said Company.

4. Articles coopered will be charged therewith.

5. Gunpowder, gun-cotton, friction matches, and like combustibles are not received or transported under this contract.

6. Goods at private turnouts shall be at the owner's risk until attached to and after they are detached from the train.

7. All articles will be at the risk of the owners at the several "way stations" and platforms where depot buildings have not been established by the Company, from the moment such articles are delivered from the cars as *directed* or *marked*.

8. Freight carried by this Company must be removed from the station at —— *during business hours* on the day of its arrival, or it may be stored at owner's risk and expense, and in the event of its destruction or damage from any cause while in the depot of the Company, it is agreed that said company shall not be liable to pay any damages therefor.

9. The responsibility of the Company under this bill of lading to commence upon the shipment of the goods from this station, and to terminate when unloaded from the cars.

Machinery, furniture, stoves, agricultural implements, and all similar articles, when not packed in boxes, will always be at owner's risk of breakage from handling or any other cause.

A. A., *Agent*.

Invoice.

Place ——, date ——.

THE —— RAILROAD COMPANY.

Receive and forward, subject to the conditions of bill of lading, from ——, to ——. (*State what.*)

Marked ——.

For ——. S. R., *Shipper*.

Bill of Lading—Domestic.

THE —— RAILROAD COMPANY.

Place ——, date ——.

Received of (*consignor or shipper's name*).

Number and description of packages.

Marked ——, Freight, $——.

To be transported to ——, and delivered to (*consignee's name*), or order, to be by us forwarded to (*state where*), by (*state whom*), or if by (him *or* them) refused to be sent, by any other direct and convenient route, upon the following terms, on payment of freight, as hereinbefore specified.

It is agreed, and is part of the consideration of this contract:

1. That all goods received for transportation shall be properly packed, and distinctly marked with name of consignee, and the station where, and to whom consigned.

2. That the —— Railroad Company shall not be responsible for the melting of ice; decay or injury to perishable articles from heat or cold; or for any loss, injury, or damage from leakage, breakage, or for any cause whatever, unless the same be proved to have occurred from the fraud or gross negligence of said Company or its servants: nor liable for any damage to glass or fragile articles, unless herein specially insured: nor in any event shall this Company be liable for any damage, unless the claim shall be presented to them in writing, at the office of said Company, within ten days after the time when the said property has or ought to have been delivered. Nor will the Company be responsible for any goods lost, stolen, or damaged, beyond the value of fifty dollars per package, unless the value is disclosed and receipted for. The goods transported shall be subject to a lien—and may also be retained—for all arrearages of freight, and charges due on other goods by the same consignee or owner. When goods are intrusted to any other railroad or transportation company (which is hereby authorized), such company so selected, shall be regarded exclusively as the agent of the owner, and as such alone liable: and the Company shall not in any event be responsible for the negligence or non-performance of any such company.

Freight to be paid upon the weight of goods as ascertained by the Company's scales.

3. Storage will be charged on goods allowed to remain over twenty-four hours in the depots or warehouses of said Company.

4. Articles coopered will be charged therewith.

5. Gunpowder, gun-cotton, friction matches, and like combustibles, are not received or transported under this contract.

6. Goods at private turn-outs shall be at the owner's risk until attached to and after they are detached from the train.

7. All articles will be at the risk of the owners, at the several "way stations" and platforms, where depot buildings have not been established by the Company, from the moment such articles are delivered from the cars as directed or marked.

8 The responsibility of the Company under this bill of lading to commence upon the shipment of the goods from this station, and to terminate when unloaded from the cars.

9. In pursuance of a law of New Jersey, passed March 10th, 1853, authorizing railroad companies to limit their responsibilities to $100 for every 100 pounds of goods, unless additional compensation be paid, it is agreed that this Company is not, in any case, to be liable for more than a dollar a pound for the loss or damage to the goods under this agreement.

Machinery, furniture, stoves, agricultural implements, and all similar articles, when not packed in boxes, will always be at the owner's risk of breakage from handling or any other cause

For the Company. A. A.

Invoice.

To the —— ——. Place ——, Date ——.

Receive and forward, subject to the conditions of bill of lading, from ——. (*State what.*)

Marked ——. For ——.

Weighing —— pounds.

Measuring —— cubic feet.

Freight paid (*or* collect) $——.

S. R., *Shipper*.

Bill of Lading—Domestic or Foreign.

Merchandise by Sailing, etc., Vessel.

Shipped in good order and condition, by A. B.

& Co., in and upon the (*kind of vessel*), called the (*name of vessel*), whereof (*name of master*) is master for this present voyage, and now lying in the port of ——, and bound for (*state destination*).

(*Describe goods.*)

Being marked and numbered as per margin, and are to be delivered in the like good order and condition at the port of (*state destination again*), (the dangers of the seas, fire and collision only excepted) unto (*consignee's name*), or to his (*or* their) assigns, he or they paying freight on the said merchandise at the rate of ——, and average accustomed.

In witness whereof, the master or purser of the said ship or vessel hath affirmed to two bills of lading of this tenor and date, one of which being accomplished the other to stand void.

Weight and contents unknown.

Marginal Invoice.

Draft of vessel as loaded:
—— feet, —— in. forward; —— feet, —— in. aft.
—— bushels. —— quarters.
@ —— s. —— d. per quarter.
Freight, £——.
Total, £——.
Dated at ——, this —— day of ——.
(*Signed*) M. R.

Bill of Lading—Domestic or Foreign.

Barrels, etc. General Form—Sailing Vessel, etc.

Shipped in good order and condition, by A. B. & Co., on board the (*kind of vessel*) called the (*name of vessel*), whereof (*name of master*) is master for this present voyage, and now lying in the port of ——, and bound for (*state destination again*).

(*Describe goods.*)

Which are marked and numbered as per margin, and are to be delivered in like good order and condition at the aforesaid port of (*state destination*), (the dangers of the seas, fire and collision only excepted) unto (*consignee's name*), or to his (*or* their) assigns, he or they paying freight upon the said merchandise at the rate of —— shillings —— pence per —— gallons gross gauge), delivered with five per cent. primage and average accustomed.

In witness whereof, the master or purser of the said vessel hath affirmed to —— bills of lading, all of this tenor and date, one of which being accomplished the rest to stand void.

Marginal Invoice.

Shipping Marks.	Brands.	Bbls.

Total No. bbls. ——.
—— gallons (gross gauge.)
—— payable bbls., @ —— s. —— d. per —— galls.
Freight, £——.
Primage, 5 per cent., £——.
Total, £——.

Gauge and contents unknown; not accountable for leakage or breakage.

Freight payable on barrels delivered full, part full, or empty.

Dated at ——, this —— day of ——.
(*Signed*) M. R.

Bill of Lading—Foreign or Domestic.

Shipped in good order and condition by (*state whom*), on board the (*kind of vessel*), called the (*name vessel*), whereof (*name of master*) is master, now lying in the port of ——, and bound for (*state destination*).

(*Describe goods.*)

Being marked and numbered as in the margin, and to be delivered in the like good order and condition, at the aforesaid port of (*state destination again*), (the dangers of the seas, fire and collision excepted), unto (*consignee's name*), or to his (*or* their) assigns, he or they paying freight for the said goods, in U. S. currency, at the rate of ——, with —— per cent. primage and average accustomed.

In witness whereof, the master or agents of the said vessel hath affirmed to (*give number*) bills of lading, all of this tenor and date; one of which being accomplished the others to stand void.

Not accountable for leakage, breakage, cooperage or rust. Weights and contents unknown.

To be received alongside within reach of vessel's tackles.

Lighterage, if any, at the expense and risk of consignees.

Marginal Invoice.

Marks and numbers, ——. Freight, ——. Primage, ——.)

Dated at ——, the —— day of ——.
(*Signed*) M. R.

Bill of Lading—Foreign or Domestic.

Cork for Orders—Sailing Vessel, etc.

Shipped in good order and condition, by A. B. & Co., in and upon the (*kind of vessel*) called the (*name of vessel*), whereof (*name of master*) is master for this present voyage, and now lying in the port of ——, and bound for Cork (*or* Falmouth, *or* Queenstown, *or* Plymouth, etc.) for orders.

(*Describe goods.*)

Being marked and numbered as per margin, and are to be delivered in the like good order and condition at the port of ultimate destination (the dangers of the seas, fire and collision only excepted) unto (*consignee's name*), or to his (*or* their) assigns, he or they paying freight on the said merchandise, as per terms and conditions of charter party, dated the —— day of ——, and fulfilling all other conditions thereof.

In witness whereof, the master or purser of said ship or vessel hath affirmed to two bills of lading, of this tenor and date, one of which being accomplished the other to stand void.

Marginal Invoice.

Marks, ——. Bushels, ——. —— quarters.
Weight and contents unknown.
Dated in ——, this —— day of ——.
(*Signed*) M. R.

—— lay-days were used in loading vessel at ——, leaving —— lay-days for discharging cargo at the port of discharge and awaiting orders at port of call.

Bill of Lading—Domestic.

Place ——, Date ——.

Shipped by (*state whom*) in apparent good order on board the steamship ——, with leave to transfer to any other steamship of the line, and bound for ——, with liberty to call at any port or ports, for whatever purpose.

(*Describe goods.*)

Marked and numbered as per margin, and to be delivered in like apparent good order at ——.

The acts of God, war or the enemy, restraint of governments, fire while on board the vessel, at sea, in port, or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers and steam navigation, of whatsoever nature or kind, excepted, and with liberty to sail with or without pilots, and tow and assist vessels in all situations, unto ——, or assigns, he or they paying freight therefor, as per tariff, and charges as per margins, in bankable money.

Weights, contents and condition of packages being unknown, no responsibility is assumed therefor, nor will the company be responsible for cooperage or mending, loss in weight, leakage, breakage, or rust; nor for frost, heat, natural decay of goods, or unavoidable exposure to weather; nor for the value of above merchandise, if all or part of it be taken out of the possession of this line, by process or color of law, the shipper having received notice of the fact; nor for goods not specified in this bill of lading. Goods to be taken from the wharf immediately after the arrival of the steamer, otherwise they will be stored at the owner's expense, and at his risk of fire, loss or injury, in the warehouse designated by the agent. And it is further agreed, that the receipt or possession of this bill of lading by the owner, shipper, consignee or agent of either or all of them, shall be deemed sufficient proof of their knowledge of and agreement to the foregoing.

Marginal Invoice, etc.

The goods herein referred to shall be subject to a lien, and may be retained for freight and charges on other goods, due from the party on whose account they are transported, as well as for freight and charges on the goods retained

No claims for loss or damage allowed, unless notified thereof at the time of the delivery of the goods, nor will any package be estimated to contain articles of more value than $100, unless specially certified to the contrary when shipped.

Marks and numbers, ——.
Freight, $——.
Charges, $——. A. A., for Agents.

Bill of Lading—Foreign.

Place ——, Date ——.

Shipped by (*consignor or shipper's name*), **in apparent good order, on board the steamship ——.**

(*Describe goods.*)

Unto (*give destination*).

Marked and numbered as per margin, with liberty to ship by or transfer to any other boats of the line, to call for any purpose at any port or ports, going or returning, to sail with or without pilots, to tow and assist vessels in all situations, and to stop at any wharves or landings at or between the ports of —— and ——, or other ports between or in the vicinity thereof. To be delivered, unless the same be taken out of possession by process or color of law, in like apparent good order (the acts of God, war or the enemy, restraint of government, collision, fire whilst on board the vessel or at sea, in port, or on shore awaiting shipment or delivery, piracy, robbery, theft and detention, accidents of the seas, rivers, inland and steam navigation of every nature and kind excepted) on wharf of this line at the port of ——, upon surrender of this bill of lading, and payment in bankable money of freight and charges thereon, and all arrearages of freight and charges upon other goods due by the same consignees or owners; or if the marks indicate a destination to a point beyond said port, to a connecting company or companies to be transferred and delivered by it or them to such person or persons upon such surrender and payment as aforesaid.

Upon the following conditions: In cases where the marks in margin, as above, indicate an ultimate destination beyond the port of ——, this line is authorized to deliver the goods from their wharf as above, notwithstanding anything hereinbefore mentioned, to any connecting steamboat, railroad, transportation, express or forwarding companies or agents, to be transported to such ultimate point, and delivered by them to the person or persons above named; which companies or agents so selected shall be regarded exclusively as the owner or consignee's agent, entitled to the benefit of the conditions and provisions of this and of their own bill of lading, if any, given therefor, and of all insurance. In cases of loss, detriment or damage to the goods, the transportation company in whose actual custody they shall be at the time of its occurrence shall alone be responsible therefor. This line shall not be liable beyond the port of ——, though it may have fixed, charged or received a through rate of freight, and may have delivered the goods as above provided, to be transported to such ultimate point.

This line is not responsible for the goods while on the pier or wharf awaiting shipment, nor after they have been discharged upon the wharf at the port of ——. Transportation companies taking possession of them for delivery to any place beyond are not responsible after their arrival at their wharf, depot or station at such place. The goods shall be received by the consignee or owner at the ultimate port of delivery, package by package, and if not taken away during the day of their arrival, may, at the option of this line, or at that of such other company, be sent to store, or be permitted to lay where landed, or be returned to the port of shipment,—all at the expense and risk of the owner, shipper or consignee.

No responsibility will be assumed for gold, silver, precious stones or metals, jewelry or treasures of any kind, pictures, plate-glass, china, glass or statuary, unless bills of lading are signed therefor, in which their nature and value are expressed, nor for goods not specified in this bill of lading, nor for any package beyond the value of $100, unless another valuation be in such bill of lading declared.

All claims for damage to goods must be adjusted in the presence of an officer of the company having the same then in custody before they are removed from the station or wharf. Their value, unless they shall subsequently have fallen in price, shall be taken to be their value or cost at the place and time of shipment. Unless written demand for damage done shall be made upon the company liable therefor, or upon the company which actually delivered the goods, within ten days after delivery, it shall be taken to have been waived, and no suit thereafter shall be brought to recover the same.

Weights, contents and condition of packages being unknown, no responsibility therefor is assumed. There shall be no liability for cooperage or mending, for loss in weight, for leakage, breakage, sweat or rust, nor for frost, heat, natural decay of goods, or unavoidable exposure to weather. Varnish, turpentine, camphene, burning fluid, or inflammable goods of any description, on deck only, and in all cases to be at owner's risk.

And it is further expressly stipulated, that in case the steamship shall be detained at the quarantine, and be there obliged to discharge the articles named in this bill of lading, that all risk and liability to the steamship or to the owners thereof, shall cease, and the obligations of the steamship under this bill of lading be deemed to have been fully accomplished, when the articles shall have been delivered from the tackles of the steamship, and all risks and expenses incurred thereafter shall be on account of the aforesaid owner, shipper or consignee.

The acceptance of this bill of lading is an agreement on the part of the owner of the goods to abide by all its stipulations, exceptions and conditions.

In witness whereof (*give number*) **bills of lading, all of this tenor and date, have been signed, one whereof being accomplished the others to stand void.**

Rates guaranteed only from —— to —— per 100 lbs. A. A.

For the parties in interest severally but not jointly.

Marks and numbers.

If 1st class	If 2d class	If 3d class	If 4th class	If 5th class	If 6th class

Freight, $——.
Charges, $——.
Insurance, $——.

Bill of Lading—Foreign.

Shipped in apparent good order and condition by (*consignor or shipper's name*) **in and upon the steamship called the ——, now lying in the port of ——, and bound for ——, with option to call at ——, or other intermediate ports.**

(*Description of goods.*)

Which are marked and numbered as in the margin, and are to be delivered in the like good order and condition at the port of —— (the act of God, the king's enemies, pirates, robbers, thieves, vermin, barratry of master, or mariners, restraints of princes and rulers, or people; loss or damage resulting from sweating, leakage, breakage, rust, decay, rain, spray, loss or damage from stowage or contact with, or smell or evaporation from any other goods, inaccuracies, obliterations or absence of marks, numbers, addresses or descriptions of goods shipped; injury to wrappers, however caused, or from any of the following perils, whether arising from the negligence, default or error in judgment of the pilot, master, mariners, engineers or other persons in the service of the ship, or for whose acts the ship-owner is liable, or otherwise, howsoever, namely, risk of craft or hulk or transshipment, explosion, heat or fire at sea, in craft or hulk, or on shore, either before lading or after unlading, boilers, steam or machinery, or from the consequences of any damage or injury thereto, however such damage or injury may be caused, collision, stranding or other peril of the seas, rivers, navigation or land transit of whatever nature or kind soever, and howsoever caused, being excepted, with liberty in the event of the steamer putting back to —— or into any port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods by any other steamer or vessel under and subject to all conditions and exceptions in this bill of lading. All fines, expenses, losses or damage which the ship or cargo may incur or suffer on account of incorrect or insufficient marking of the packages, or description of their contents, or dangerous nature thereof, shall be paid by the shippers or consignee [as may be required], and the —— shall have a lien upon the goods for the payment thereof, and with liberty to sail, with or without pilots, to call at any intermediate port, and to tow and assist vessels in all situations.

Unto (*consignee's name*), **or to his** (*or* their) **assigns. Freight on said goods to be paid at** (*state place or destination*), **at the rate of ——, with 5 per cent. primage and average accustomed.**

In witness whereof, the master or agents of the said ship hath affirmed to (*give number*) **bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.**

The goods to be taken from alongside by the consignees immediately the vessel is ready to discharge, or they will be liable to be landed by the master and deposited at the expense of the consignees, and at their risk of fire, loss or injury on the wharf, or in the ware

house or shed provided for that purpose or sent to the public store, as the collector for the district shall direct, at the expense and risk of consignees. The collector of the port being hereby authorized to grant a general order for discharge immediately after entry of the ship. Not accountable for gold or silver, manufactured or unmanufactured, or in shape of coin, plated articles, glass, china, jewelry, precious stones, trinkets, watches, time pieces, mosaics, bills, bank notes of any country, orders, notes, or securities for the payment of money, stamps, maps, writings, title deeds, paintings, engravings, pictures, statuary, silks, furs, lace, cashmere, manufactured or unmanufactured, made up into clothes or otherwise contained in any parcel or package shipped under a bill of lading, unless the value thereof be therein expressed, and extra freight, as may be agreed to, be paid. In case of damage, loss or non-delivery, liability under this bill of lading not to exceed the invoice value of the goods, and for that only if the goods are correctly described on the bill of lading. Freight on goods to order, and on all perishable goods must be prepaid, unless otherwise agreed upon. Prepaid freight will not be returned, goods lost or not lost. Shippers will be held accountable for all damage caused by goods of an inflammable, explosive, or otherwise dangerous character, shipped without permission or without full disclosure of their nature, whether such shippers shall be aware thereof or not, and whether such shippers shall be principals or agents only, besides incurring the penalty provided by the Act of Congress, 1851.

In case the vessel is prevented by ice in the river —— from reaching ——, the privilege is reserved at the vessel's expense, but without vessel's risk, to discharge and store the within-mentioned merchandise at ——, or other accessible point, in warehouses or lighters, to be forwarded as soon as practicable to ——, by lighters or rail, at the vessel's option and expense, but at the risk of the owners of the goods.

Merchandise to be received on quay at ——, and delivered therefrom by the person appointed by the agent of the —— line, and to be at owner's risk until removed, owner to pay the expense of watching, at the rate of three francs for twenty-four hours, and of delivery charge at not exceeding one franc, twenty-five centimes per ton.

Parcels for different consignees, collected and made up in single packages, addressed to one party for delivery in Europe, for the purpose of evading the payment of freight, will, upon examination in Europe by the customs, be charged the proper freight. Sample parcels have best attention, but no liability is taken for delivery.

Weight, gauge, contents and value unknown.

In accepting this bill of lading, the shipper or other agent of the owner of the property carried, expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed.

Marginal Invoice.

	Tons.	Cwt.	Qrs.	Lbs.	
Freight on ——, at — ₱ ton, £					
Freight on — ft. — in. at — ₱ ton					
Primage, —— ₱ cent.					
			£		Stg.
Charge to ——, £ 5 per cent.					
			Total, £		Stg.

Dated at ——, the —— day of ——. —. —.,
For General Agents.

Original Receipt.

Per steamer ——. Place ——, Date ——.

Received in apparent good order by ——, of ——, the following packages, to be forwarded subject to the conditions in the bills of lading.

Conditions: This is to be exchanged for the usual bill of lading of the line, notice of the terms of which is hereby admitted; and this property is received subject to all the provisions therein contained.

Full name of consignee must be given on this receipt.

Marked:

—— Line. R. C., *Receiving Clerk.*

No bills of lading will be signed on and after day of sailing of steamer by which goods under this receipt are shipped.

Duplicate Receipt.

Per steamer ——. Place ——, Date ——.

Received of (*consignor or shipper's name*).

Full name of consignee must be given on this duplicate.

Marked:

R. C., *Receiving Clerk.*

—— Line.

Bill of Lading—Foreign.

Shipped in good order and in apparent good condition by (*consignor or shipper's name*), in and upon the steamship called the ——, whereof —— is master for this present voyage, or whoever else may go as master in the said ship, and now lying in the port of ——, and bound for ——, with option calling at ——.

Description of goods.

Which are marked and numbered as in the margin, and are to be delivered in the like good order and apparent good condition at the aforesaid port of ——, (The act of God, the public enemy, pirates, robbers, thieves, vermin, barratry of master or mariners, restraints of princes and rulers, or people, loss or damage resulting from insufficiency in the strength of package, sweating, breakage, leakage, rust, decay, rain, spray, loss or damage from stowage or contact with or smell or evaporation from any other goods; inaccuracies, obliterations or absence of marks, numbers, addresses, or descriptions of goods shipped; injury to wrappers however caused;) or from any of the following perils (whether arising from the negligence, default, or error in judgment of the pilot, master, mariners, engineers, or other persons in the service of the ship, or for whose acts the ship-owner is liable, or otherwise howsoever), excepted; namely: risk of craft or hulk, or transshipment, explosion, heat or fire at sea, in craft or hulk, or on shore; either before lading or after unlading; boilers, steam or machinery, or from the consequence of any damage or injury thereto, howsoever such damage or injury may be caused; collision, stranding, straining, or other peril of the seas, rivers, navigation of whatever nature or kind soever or howsoever caused, being excepted: with liberty in the event of the steamship putting back into —— or into any other port, or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage to transship the goods by any other steamship, under and subject to all the conditions and exceptions in this bill of lading. All fines, expenses, losses, or damage which the ship or cargo may incur or suffer on account of incorrect or insufficient marking of the packages or description of their contents, or dangerous nature thereof, shall be paid by the shippers or consignees (as may be required), and the ship-owner shall have a lien upon the goods for the payment thereof, and with liberty to sail with or without pilots, to call at any intermediate port, and to tow and assist vessels in all situations.

Unto (*consignee's name*), or to his (*or* their) assigns, he or they paying freight and charges immediately on landing of the goods, without any allowance of credit or discount, at the rate of ——, with primage and average accustomed.

In witness whereof, the master or agent of said ship hath affirmed to (*give number*) bills of lading, all of this tenor and date: one of which bills being accomplished, the others to stand void.

The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of the cargo. This bill of lading, duly indorsed, to be given up to the ship's consignees in exchange for delivery order.

Weight, gauge, contents, and value unknown. The goods to be taken from alongside by the consignees immediately the vessel is ready to discharge. It being expressly understood and agreed to by the shippers, that all liability of said ship, under this bill of lading, ceases as soon as the articles named therein are delivered from the tackles of the ship at her port of destination, or otherwise they will be landed by the master and do

posited at the expense of the consignees and at their risk of fire, loss, or injury in the warehouse or shed provided for that purpose, or sent to the public store, as the collector for the district shall direct, and when deposited in the warehouse no expense for storage to be charged to the government, and the keys of the warehouse or shed to be delivered to and kept in charge of the officers of customs under direction of the collector. The collector of the port being hereby authorized to grant a general order for discharge immediately after entry of the ship. The Company is not accountable for gold or silver, or other presious metals, manufactured or unmanufactured, or in the shape of coin, plated articles, glass, china, jewelry, precious stones, trinkets, watches or clocks, timepieces, mosaics, bills, bank notes of any country, orders, notes or securities for payment of money, stamps, maps, writings, title deeds, paintings, engravings, pictures, statuary, silks, furs, lace, cashmere, manufactured or unmanufactured, made up into clothes or otherwise; contained in any parcel or package shipped under a bill of lading, nor for any claim, notice of which is not given before the removal of the goods, unless the value thereof be therein expressed, and extra freight to be paid as may be agreed upon, and not accountable for any of the same articles when shipped as passengers' luggage, or otherwise not under a bill of lading, when the value shall exceed $50, unless at the time of delivery the value shall be declared and the increased charge mentioned in the company's notices be paid. Not accountable for loss of or damage to goods which is capable of being covered by insurance, nor in any case for more than the invoice value of the goods, nor for any claim, notice of which is not given before the removal of the goods. Freight on goods to order and on all perishable goods must be prepaid unless otherwise agreed upon. Prepaid freight will not be returned, goods lost or not lost. Shippers will be held accountable for all damages caused by goods of an inflammable, explosive, or otherwise dangerous character, shipped without permission, or without full disclosure of their nature, whether such shippers shall be aware thereof or not, and may be seized and confiscated or destroyed by the ship-owner at any time before delivery without any compensation to the shippers or consignees, whether such shippers shall be principals or agents only, besides incurring the penalty provided by Act of Congress of 1851. The owners or agents of the line to have a lien on these goods, not only for the freight and charges herein, but for all previously unsatisfied freights and charges due to them by the consignee.

It is also stipulated that in case the whole or any part of the goods specified herein be prevented by any cause from going in said ship, the ship-owner is only bound to forward them by succeeding ships of this line. The ship-owner is not responsible for any discrepancy between the contents of the packages and the description of the same in this bill of lading.

Freight payable in —— upon the gross weight delivered. In accepting this bill of lading the shippers or other agents of the owners of the property carried, expressly accept and agree to all its stipulations, exceptions, and conditions, whether written or printed. The merchandise to be received and delivered according to the customs and usages of the respective ports.

Parcels for different consignees, collected and made up in single packages, addressed to one party for delivery in —— for the purpose of evading the payment of freight, will, upon examination in —— by the customs, be charged with the proper freight. Parcel samples have best attention, but no liability is taken for delivery.

Marginal Invoice.

Shipper's mark:——.

Tons. Cwt. Qrs. Lbs.

Freight on ——, at — ℔ ton, £				
Freight on — ft. — in. at — ℔ ton				
Primage, —— ℔ cent.				
£				Stg.
Charge to ——, £ 5 per cent.				
Total, £				Stg.

Dated at ——, this —— day of ——, A. D. ——.

A. A., For General Agents.

Place ——, Date ——.

Per steamer ——.

Received in apparent good order by ——, of ——, the following packages, to be forwarded subject to the conditions in the bills of lading.

Conditions: This is to be exchanged for the usual bill of lading of the line, notice of the terms of which is hereby admitted; and this property is received subject to all the provisions therein contained.

Full name of consignee must be given on this receipt.

Marked:

—— Line. **R. C., *Receiving Clerk.***

Per steamer ——.

Place ——, Date ——.

Received of (*consignor or shipper's name.*)

Full name of consignee must be given on this duplicate.

Marked:

R. C., *Receiving Clerk.*

—— Line.

Shippers are requested to fill up the receipt and duplicate.

Course of Business and Usages of Trade. Those who employ railway companies are bound to know their manner of transacting their business,[j] for the usages of any particular trade, such as are uniform and general, are presumed to be familiar to all having transactions in that trade or business. Contracts for transportation contain by implication known usages of the business.[k]

Damages and other Incidents. Damages for total loss are the value of the goods at the place of destination.[l] If the goods are only damaged the owner is bound to receive them and the amount of damage.[m] Upon evidence of a servant's unfaithfulness or negligence, some explanation must be given, or the company will be held liable.[n] A company is liable for special damages where they act in bad faith,[o] but ordinarily they are not liable for special damage.[p] The consignor owning the goods is the proper party to sue.[q] Actions may be brought in the name of bailees, or agents who have the rightful custody of the goods, and who make the bailment (but a recovery in such cases bars the claim of the general owner),[r] or in the name of the owner.[s] Where

j-25 Wend. 660; S. C. 6 Hill, 157; 23 Vt. 211, 12; 21 Ga. 526. k-10 Texas, 344; 28 Ga. 543. l-4 Whart. 204; 13 B. Mon. 239, 243; 16 Ill. 408; 11 La. An. 324; 26 Ga. 122; 2 Head. 488; 1 Hilton, 543; 13 Ind. 164; 3 Bosworth, 7; 4 Allen, 112; Sedgw. Dam. 356; 2 B. & Ad. 932; 12 S. & R. 183; 1 Cal. 108; 10 Cush. 416; 14 Ga. 283; 2 Gray, 564; 5 Bosw. 625; 54 Me. 376; 14 Mich. 489; 12 La. An. 352; L. Rep. 1 C. P. 329. m-5 Rich. 462; 2 Kernan, 509; 35 N. H. 390; 13 Ind. 263; 8 Gray, 215; 23 Wend. 306. n-2 Bing. (N. C.) 222; 14 Ill. 279; 1 Florida, 403; Newb. Adm. 504; Story Bailm. § 529 *a*; 10 Cush. 177; 1 H. & N. 408; S. C. 38 Eng L. & Eq. 335; L. Rep. 1 C. P. 559; S. C. 12 Jur. (N. S.) 321; 14 La. An. 429; 40 Miss. 39; 38 Ill. 219; 2 Iredell, 138. o-11 Exch. 742. p-10 C. B. 726; 35 N. H. 390; L. Rep. 3 P. C. 499. q-11 Cush. 155; 1 Q. B. 483; Id. 491; 3 B. & Ald. 277; 37 Penn. St. 170; 1 Johns. 215; 8 Cranch. 317; 8 How. (U. S.) 420; 10 Penn. St. 254; 3 B. & P. 582; 3 Taunt. 423; 4 Blackf. 364; Cheeves, 174; 3 H. & N. 1; 15 Johns. 39; 6 Hill, 588; 26 Wend. 591; 10 Watts, 337; 3 H. & N. 1. r-28 Vt. 268; 13 Barb. 57; S. C. 2 Kernan, 243. s-19 N H. 337; 23 Vt. 268 Hilt. 235; 32 Ill. 116.

a general property is in the consignee, he should sue.[t] If a carrier deviate from the regular route, and the goods are lost, it is a conversion.[u]

—— **rule of, etc.** To excuse a common carrier for damage and loss of goods during the carriage, the force must be above human control, or that of public enemies,[v] hence carriers are held as insurers against fire, unless caused by lightning.[w] If a carrier expose himself to perils, he must bear the loss, but not of delay from unknown perils.[x] He is liable for actual damage resulting from negligence and delay caused by his fault;[y] but only obvious actual damage can be recovered.

Demurrage. Demurrage is a claim by way of compensation for the detention of property which is subsequently restored.[z] An allowance made to the owner of a vessel for delay or detention in port beyond the appointed time of departure. This expense is paid by the merchant who causes the detention. Strictly speaking, it is only due when expressly stipulated for in the contract for affreightment.[a] A railway has no lien for the compensation impliedly due them, for the detention of their cars an unreasonable time, in discharging a cargo, the cars remaining during the time in a public highway.[b]

Philadelphia Demurrage and Lay-Day Scale.

As approved by the Philadelphia Maritime Exchange, on the 6th of June, 1882, and in the absence of any special agreement to the contrary, to be understood as thereafter governing all grain and petroleum charters made on Philadelphia account or for vessels to load at Philadelphia, is:

FOR VESSELS LOADING GRAIN, PETROLEUM, OR GENERAL CARGOES TO EUROPEAN PORTS.

For vessels registering. Tons.	Lay days for vessels loading grain. To load and discharge
From 200 to 250	21 days
" 251 to 300	22 "
" 301 to 350	23 "
" 351 to 400	24 "
" 401 to 450	25 "
" 451 to 500	26 "
" 501 to 550	27 "
" 551 to 600	28 "
" 601 to 650	29 "
" 651 to 700	30 "
" 701 to 800	31 "
" 801 to 900	32 "
" 901 to 1000	33 "
" 1001 to 1100	34 "
" 1101 to 1200	35 "
" 1201 to 1300	36 "
" 1301 to 1400	37 "
" 1401 to 1500	38 "
" 1501 to 1600	39 "
" 1601 to 1700	40 "
" 1701 to 1800	40 "

DEMURRAGE SCALE.

The demurrage on sea going sailing vessels shall be as follows, viz: For vessels of 200 tons or under, 12 cents per ton. For vessels over 200 tons, and not exceeding 500 tons, $24 for the first 200 tons, and 8 cents per ton for each ton additional. For vessels over 500 tons, and not exceeding 900 tons, $48 for the first 500 tons, and 6 cents per ton for each ton additional For vessels over 900 tons, $72 for the first 900 tons, and 5 cents per ton for each ton additional.

CASE CARGOES.

In absence of any fixed scale of days, either at Philadelphia or New York, it has been customary to use the barrel oil scale; and taking cases at five to the barrel, on the present scale, makes an arrangement satisfactory alike to vessel and shipper.

For Vessels Loading Petroleum for Foreign Ports.

2000 to 2500	bbls. capacity	10	lay days.
2501 " 3000	"	12	"
3001 " 4000	"	14	"
4001 " 5000	"	15	"
5001 " 6000	"	17	"
6001 " 7000	"	20	"
7001 " 8000	"	22	"
8001 " 9000	"	25	"

Customary despatch for discharging.

For steamer charters demurrage and lay-days are subject to special agreement.[c]

Duty in general, etc. It is a well-settled principle of the law that common carriers, both of goods and passengers, are bound to carry for all persons that apply, unless they have a reasonable excuse for the refusal so to do.[d] Railway companies, and others who carry goods, in any mode, for all who apply, are common carriers.[e] Railways are made liable as common carriers of passengers' baggage and of freight,[f] and their responsibility results, not from any contract, but from the nature of the office and business; and action may be in tort or contract.[g]

—— **at common law.** A carrier is bound to follow instructions given by the owner or his agent, unless that becomes reasonably impracticable, whether given at the time or before delivery.[h]

Express carriers who undertake to sell commodities intrusted to them are common carriers of the money received.[i] Usage to collect and return price will bind carriers.[j]

Railway companies, steamboats, and other carriers, who allow express companies to carry parcels and packages on their cars or boats, or other vehicles, are liable as common carriers to the owners of the goods for all loss or damage which occurs, without regard to the contract between them and such express carrier.[k]

—— **by course of business.** The business of common carriers is not one imposed upon any particular person, natural or artificial, and any one may undertake it at will, and may enter upon so much of the entire business as he chooses, and will be bound to the extent of their usage, and course of business;[l] but this question arises only when they refuse to carry.[m] They are bound to serve all who apply; for it is the general duty of all who undertake to serve the public in any particular business to serve all who come.[n]

A carrier cannot transship freight, except in cases of strict necessity.[o]

It is competent to prove whether goods usually arrive in a safe or damaged condition as a ground of presumption of negligence, or the contrary.[p]

An owner of goods consigned by railway is bound to take notice of the course of the business, and call for them at the ordinary time of arrival, and remove them, or the carrier is only responsible for ordinary negligence.[q]

t-13 Barb. 57. u-26 Ga. 617; 7 Allen, 351. v-6 Johnson, 160; 1 Smith's Leading Cases, 219, ed. 1847; 268 ed. 1852, and note of Am. editor; 21 Wend. 190; 5 Strob. 119; 1 Wilson, 281; 4 Zab. 697; 1 Murph. 173; Stewart L. C. 591, and note; 24 How. U. S. 386; 1 M'Cord, Law 439; 1 Bosw. 77; 30 Ala. 608; 31 Id. 501; 20 Wis. 594. w-2 Zab. 372, 379; 1 T. R. 27; 5 T. R. 389; 4 Bing. N. C. 314; Disney, 480; 20 Ill. 407; 26 Me. 181; 12 Barb. 595. x-6 Bing. 716; S. C. 4 M. & P. 540; 7 Blackf. 497; Wright, 193; 20 Penn. St. 171, 175. y-26 Ill. 205; 30 Penn. St. 242; 6 Duer, 275; 15 Wis. 129. z-9 Wheaton. 362. a-17 Barb. 184. b-10 Bosworth, 77. c-Young's Ship-owner and Master's Manual, 1876. d-6 C. B. 775; Story Bailm. § 591; 2 Sumn. 221, 224; 18 Barb. 500; 3 Brod. & B. 54, S. C. 9 Price, 408. e-7 Man. & G. 253; 8 M. & W. 421; Id. 749; 12 Id. 766; 6 Whart. 505; 19 Wend 534; 13 Id. 611; Story Bailm. § 500; Angell on Carriers, § 78; 9 Ill. 518; 2 Wend. 327; 27 Vt. 399; Id. 110; 30 L. T. 285; 8 El. & Bl. 728, 19 Barb. 346; S. C. 16 N. Y. 515. f-1 Met. 60; 2 Sumner, 221; 13 Wend. 611; 25 Id. 459, 25 Eng. L. & Eq. 287; S. C. 14 C. B. 255. g-8 Ad. & El. 963; 1 P. & D. 4. h-7 Moore, 283; S. C. 1 Bing. 34. i-4 Watts. 443; 11 Johns. 107; 2 Conn. 389; 1 Bailey, 553; 4 Grant, 407. j-39 Ill. 312; 3 Watts. 65; 1 Bailey, 553. k-6 How. 344; 9 B. Mon. 112. l-23 V 186; 6 How. U. S. 344; 23 B. & S. 66; 15 C. B. (N. S.) 680. m-4 Exch. 367; S. C 6 Rly. Cas. 61; 6 Wend. 335; 2 Story, 16; Dyer, 158; Godb. 346; 12 Mod. 482; 4 C. B. 555. n-12 Mod. 482. o-37 Ala. 505. p-Id. 11 Jur. (N. S.) 935. q-38 Vt. 402; 7 Allen, 98.

Freight of dangerous quality. The owner must inform the carrier of the character of the goods, whenever it is essential to be known, either on account of carrying the particular goods safely, or of carrying them in such a manner that other goods may not be damaged by coming in contact with them; and for any default in this particular the owner is responsible, not only to the extent of any damage occurring to the goods, but even beyond that.[q]

—— **delivery, time of.** A carrier is not bound, unless he stipulate absolutely to deliver goods by a particular time, to do more than to deliver in a reasonable time, under all the circumstances attending the transportation.[r] But if the carrier contract specially to deliver in a prescribed time, he must perform his contract, or suffer the damages sustained by his failure.[s] He is liable upon general principles, where the goods are not delivered through his default, to the extent of their value at the place. In the absence of a special contract the carrier is bound to deliver the goods at their destination; or, at the end of his route, to the next carrier, in a reasonable time according to his usual course of business,[t] or according to contract.[u] A delay caused by an unusual press of business will not make the carrier liable,[v] nor the loss of a bridge from an unusual freshet.[w] A carrier is excused by the custom and usual course of navigation.[x] Where two companies are using the same line, the one is not liable for delay caused by the negligence of the other.[y]

A carrier is liable upon general principles where the goods are not delivered through his default, to the extent of their value at the place of their destination; and this includes the profits of the adventure.[z] If the goods are only damaged, or not delivered in time, the owner is bound to receive them. He will be entitled to damages, but cannot repudiate the goods and recover from the carrier as for a total loss.[a]

In an action against a carrier for damage done to goods carried, it is enough to prove the good condition of articles when put into his possession and their deteriorated state when received from him. Any damage resulting from bad package will go to lessen the amount of damage.[b]

—— **bad package, internal decay.** Losses from natural causes, as frost,[d] evaporation,[e] or natural decay of perishable articles,[e] the carrier exercising all reasonable care to preserve them,[e] and from the natural and necessary wear by careful transportation,[e] in the mode to which the carrier is accustomed, or from the defective nature of the vessels or packages in which the things are put by the owner or consignor, will excuse the carrier. The carrier is not responsible for natural decay or leakage.[f] So, also, except for damages caused by delay, where the owner selects his own carriage, and loads it;[g] but the carrier must do all in his power to arrest damage to goods, though he may not have been in fault on account of, or responsible for its occurrence.[h] The owner must bear the damage of loss from dampness of the hold, as one of the accidents of navigation, if it be excepted from the risk, and is no fault of the carrier.[i] A bill of lading, stating the goods in good order, is only *prima facie* evidence of that fact and refers to the external appearance of packages.[j] The owner is responsible for loss from defects in the article.[j]

—— **Lien for.** A carrier is entitled to a lien for freight for goods carried;[l] but if he once deliver the goods this lien is waived.[m] Or, if the goods be damaged in a manner for which the carrier is liable, the owner may deduct the amount of injury from the freight.[n] But the goods must be carried, and ready for delivery, or the carrier has no right to detain them for freight.[o] But if freight through be paid to the first carrier, lien does not ordinarily attach.[p] A wrong doer cannot create a valid lien against the real owner.[q] A passenger carrier has a lien upon baggage for fare.[r] Carriers have no lien for a general balance of account.[s] Carrier's liens may be waived in the same manner as other liens.[t] But if a delivery be obtained by fraud, the goods will be restored by replevin.[u] The last carrier upon the route may detain the goods until the whole freight is paid,[v] and charges during transit of warehousemen and forwarders.

q-5 C. B. (N. S.) 149; Id. 882; 28 Vt. 180; 5 Jur. (N. S.) 648; S. C. 2 El. & Bl. 66; 11 C. B. (N. S.) 553; 8 Jur. (N. S.) 868. **r**-Story Bailm. 545, *a*; 5 M. & G. 551; 6 McLean, C. C. 296; 19 Barb. 36; 12 N. Y. 245. What is a reasonable time is to be decided by the jury, from a consideration of all the circumstances, 7 Rich. 190, 409. **s**-1 Duer, 209; 12 N. Y. 99. **t**-5 M. & G. 551; 6 McLean, 296; 7 Rich. 190, 409; 6 Duer. 375; 8 L. T. (N. S.) 421; S. C. 4 B. & S. 466; 16 Mo. 484; 5 W. & S. 123; 5 N. H. 358; 11 Mass. 229; 5 Man. & G. 316; 8 T. R. 259; 28 Mo. 124; 30 Ala. 608. **u**-18 Eng. L. & Eq. 557; 1 C. B. 637; S. C. 25 Eng. L. & Eq. 347; 1 Jones (N. C.) 211; 14 Wend. 210; Story Bailm. § 545, *a*; 14 Ill. 156; 22 Barb. 278; 1 Rich. 409; Id. 190; 2 Kernan, 99; Ang. Carriers, § 294; 11 Wis. 407; 28 Mo 124, 243; 30 Ala. 608; 7 H. & N. 400; S. C. 5 L. T. (N. S.) 399; 14 Iowa, 214. **v**-9 Barb. 36; S. C. 2 Kernan, 245; 18 Ill. 488. **w**-7 Rich. 409. Newb. Adm. 464. **x**-6 McLean, 296; 28 L. J. 51; 32 L. T. 94. **y**-1 C. P. 385; S. C. 12 Jur. (N. S.) 372; 32 Ill. 116. **z**-4 Whart. 204; 11 La. An. 324; Sedgw. Dam. 356; 2 B. & Ad. 932; see also 12 S. & R. 183; 1 Cal. 108. **a**-5 Rich. 462; 12 N. Y. 509; 35 N. H. 390. **b**-2 F. & F. 796; 3 F. & F. 77. **d**-1 Conn. 487. **e**-B. N. P. 69; 3 Kent Comm. 299, 300, 301; Story Bailm. 492, a; 6 Watts, 424; 37 Miss. 691; Ang. Carriers, §§ 210, 211, 212; 4 Kernan, 570; 3 Met. (Ky.) 51; 6 Duer, 375; Am. Ry. Times, No. 14; 16 Ill. 502; 20 Id. 623; 7 L. Reg. 348; S. C. 52 Penn. St. 414; 2 H. & N. 575; 28 Vt. 180; 5 Jur. (N. S.) 648; S. C. 2 El. & Bl. 66. **f**-1 Black. (N. S.) 170; Id. 156. **g**-20 N. Y. 232; 27 Ga. 535. **h**-18 Penn. St. 224; 12 La. An. 410; 21 Wis. 21. **i**-12 How. (U. S.) 272. **j**-18 Id. 231; 21 Id. 7. **l**-2 Ld. Raym. 752; 6 Humph. 70; 18 Ill. 488. **m**-13 B. Mon. 239, 243; 16 Ill. 408. **n**-13 B. Mon. 239, 243; 16 Ill. 408; Snow *vs.* Carruth, U. S. Dist. Ct. Mass., 19 Law Rep. 98; 1 Watts. 39; 5 Id. 446; 6 Whart. 435; 1 Scam. 462; 11 Ohio, 303; Lalor's Supp. to H. & Denio, 163; 6 Gray, 539. **o**-16 Johns. 348, and cases cited. **p**-8 Doug. (Mich.) 1; 1 T. R. 659; 8 Id. 330; 42 Me. 572. **q**-5 Cush. 137; 8 Gray, 262, 42 Maine, 197; 2 Ld. Raym. 866; 6 Whart. 418; 20 Wend. 267–275. **r**-Story Bailm. § 604; 2 Camp. 631; 26 Vt. 316. **s**-6 East. 519; 2 Halst. 108; 4 Burr. 2214; 2 Grant's Cas. 139; 26 Ill. 195. **t**-4 B. & Ald. 50; 26 Ill. 195. **u**-6 Hill, 43; S. C. 4 Denio, 496; 1 Sandford, 248. **v**-Lalor's Supp. to H. & Denio, 163; 19 Wend. 386; 4 Hill, 107; 1 Strange, 556; 1 Holt. N. P. C. 385; 1 Kent Comm. 642; 24 Maine, 339; 25 Mo. 76.

A carrier cannot sell goods in satisfaction of lien.[w] An owner may pay freight and sue for goods lost.[x] A carrier is bound to keep goods a reasonable time, if they are refused by the consignee.[y] The carrier's lien does not cover the expense of keeping it until the debt is paid, when it is detained against the will of the debtor,[z] but it covers the back charges.[a] The lien for freight in favor of the last company is not affected by defaults of the first company.[b]

Carriers have no lien for goods carried for the national government.[c]

If an owner accept goods at any intermediate place short of the original destination, he will be liable to pay freight *pro rata*.[d] And when the carrier pays for the loss of goods, it is equivalent to delivery, and he is entitled to deduct freight.[e] If goods are unlawfully detained, the consignee being ready to pay freight, may maintain trover, without formal tender.[f] A consignee, indorsing a bill of lading, without recourse,[g] or a mere agent for the delivery of goods for another, is not personally responsible for freight.[h] As in other cases of lien, a waiver will be presumed by an unconditional delivery of goods;[i] but a delivery of a part of the cargo will not operate as a waiver of the lien upon the portion not delivered.[j] It is a question of fact whether there has been a complete delivery.[k] There is no lien for a general balance;[l] such a custom is void.[m] A carrier's lien does not attach upon loading the goods on board, or until the voyage is entered upon,[n] or where there is a special contract as to payment.[o] Freight may be demanded before delivery,[p] but is only payable according to the bill of lading.[q]

Where a carrier claims more than is due, it dispenses with tender of the amount actually due.[r]

—— **Payment of.** A carrier is entitled to demand his pay in advance; but if no such condition is insisted upon at the time of the delivery of the goods, the owner is not obliged to tender the freight, nor in an action is it necessary to allege more than a willingness and readiness to pay a reasonable compensation to the carrier.[s] A refusal to carry excuses any tender of compensation.[t] Payment of freight and fare will sometimes be presumed.[u]

A carrier is not bound to receive goods which he is not accustomed to carry, or when his means of conveyance are all employed, or before he is ready to depart;[v] or where property is publicly exposed to the depredations of the mob,[w] or where goods are not safe to be carried.[x] So, too, he may excuse himself by showing that loss happened through negligence of the owner of the goods in packing or otherwise, or from internal defect, without his fault.[y] The carrier cannot refuse to carry a parcel because the owner refuses to disclose the contents. There should be uniformity in rate of charges.[z] Goods may be rated according to custom.[a]

Goods must be received, and carried in the order in which they are offered.[b]

Insurable Interest in Goods.—The carrier has an insurable interest in the goods, both in regard to fire and marine disasters, except such as result from inevitable accident, such as fire by lightning and the like.[b] Carriers may insure for their own benefit, and their insurable interest continues so long as the liability of carrier continues, even where they employ other carriers.[c] A warehouseman or wharfinger may insure and recover the full value of the goods "in trust."[d] Carriers, not responsible for loss by fire, may insure goods in their possession, describing them as "goods in trust as carriers," and recover their full value.[e]

Responsibility—Carrier's, begins when. The liability of the carrier begins when the goods are delivered to him, or his proper servant, authorized to receive them for carriage. A delivery at the usual place of receiving freight, or to the employees of the company in the usual course of business, is sufficient.[f] But where carriers have a warehouse at which they receive goods for transportation, and goods are delivered there not to be forwarded until some event occur, the carriers are, in the meantime, only responsible as depositaries;[g] and where goods are received, as wharfingers, or warehousers, or forwarders, and not as carriers, liability will be incurred only for ordinary negligence.[h] Where goods are so marked as to pass over successive lines of railway, or other transportation having no partnership connection in the business of carrying, the successive carriers are only liable from the time of receiving the goods.[i]

A delivery at the usual place of receiving goods with notice to the proper servant of the company is sufficient,[j] for a carrier is bound to keep goods safely after delivery to him for carriage, as well as to carry safely;[j] when goods are delivered to be carried, the carrier is

w-11 Barb. 41; 1 Strange, 556. x-28 Penn. St. 505. y-31 Law Times, 38; S. C. 2 Hurl. & Nor. 491. z-8 Ho. Lds 338; S. C. 6 Jur. (N. S.) 761. a-13 Iowa, 253; 12 La. An. 24. b-6 Allen, 246; 11 Id. 295; 4 G. Greene, 516; 32 Penn. St. 270. c-1 Maine, 301. d-1 Nott & M'C. 132. e-1 Bay, 101. f-9 Cush. 215. g-2 Exch. 37; 1 C. P. 689; 1 Taunt. 311; 10 Watts, 384; 13 East. 399. h-8 M. & W. 798. i-4 Allen, 212; 1 Black. 108. j-1 Gale, 17. k-Id. l-5 B. & Ald. 350. m-3 Scott, 521; S. C. 3 Bing. (N. C.) 99. n-3 Har. & G. 225; 5 Binn. 392. o-18 Johns. 157; 8 Wheaton, 605; 12 Moore, 361. p-Law Rep. 2 C. P. 348; 2 Moore, P. C. (N. S.) 277; 14 Gray, 149. q-3 Hurl. & Nor. 715. r-5 Id. 931. s-2 Show. 81; Id. 129 and notes; Cro. Jac. 262; 2 Show. 327; 8 M. & W. 372; 18 Ill. 288; 1 Hilton, 499; 12 Iowa, 191; 27 Mo. 17. t-1 East. 203; 2 Kent Comm. 598–599 and note; 14 Ala. 249, 261. u-3 Penn. St. 451; 1 Parson's Contr. 649. v-1 Ld. Raym. 652; 1 Ventris, 190; 2 Lev. 69; 3 Doug. 389; 19 Barb. 36. w-1 East. 604; 20 Wis. 594. x-Story Bailm. § 328; 2 Kent Comm. 599; Hodges Rlwys. 613; Ang. Carr. § 125. y-2 Greenl. Ev. 214; 5 Watts, 446; 19 Penn. St. 243; 3 Watts & S. 21; 31 Maine, 228; 11 Pick. 41; 6 Bing. 743; 22 Vt. 213. z-16 Ga. 558; 3 C. B. (N. S.) 324. a-40 Mo. 491; 13 La. An. 553. b-12 Barb. 595 c-12 Barb. 595; 13 Id. 353, 361. d-5 El. & Bl. 870; S. C. 34 Eng. L. & Eq. 116; 1 Black. (U. S.) 574, 582; 2 Sandf. S. C. 290; 8 Gray, 281. e-1 Ellis & Ellis, 652. f-20 Conn. 534; 2 Carr & K. 680; 2 M. & S. 172; 16 Barb. 383; Ang. Carr. §§ 129, 147, and cases cited. g-24 N. H. 71. h-7 Cow. 497. i-8 Rich. 246. j-1 Wilson, 281; 20 Conn. 354; 9 Ind. 400; 5 Bosw. 605; 2 Bos. & P. 416; 10 La. An. 776.

liable from the time of delivery,[k] but is not responsible on a continuous line of transportation until they receive the goods.[l] An acceptance by an agent is sufficient without a payment of freight.[m] It is a question of fact whether the carrier took charge of the goods.[n] It is sufficient to charge the company that the goods are put in charge of their servants.[o]

If goods are kept back by direction of the owner, the company are only responsible as depositaries;[p] and if the defendants are both warehousemen and carriers, and receive goods with instruction to forward immediately, they are liable as carriers.[q] Instructions to forward may be inferred from the course of business, in the absence of express proof.[r]

—— **For Carriage beyond the Company's Road.** In the absence of special contract, the carrier is only liable for the extent of his own route, and for safe storage and delivery to the next carrier.[s] He may undertake for the whole route,[t] and this is presumed when they are connected in business,[u] even though the connection is only temporary.[v]

Carriers are only responsible for safe carriage and delivery to the next carrier according to ordinary usage.[w] Where special directions are given to a carrier they must be followed.[x] And it makes no difference that portions of the route are by steamboat and other portions by land where no railway exists.[y]

Receiving freight for the entire route binds the carrier to that extent, unless proof be given to rebut that implication.[z]

—— **For Parcels carried by Express, etc.** Carriers who allow servants to carry parcels are liable for their loss,[a] and allowing perquisites to go to agents will not excuse a company.

An owner of parcels carried by express may look to the company,[b] and may sue any of the subsequent carriers in the line of transportation, guilty of a default in duty, although his contract was made with the first carrier, to whom he delivered the goods.[c]

Express companies are responsible as common carriers, and such companies who carry parcels or baggage from one city to another, or from one depot to another, are common carriers.[d] Omnibus lines and railways are, in the full sense of the term, common carriers.[e]

The limitations by which express companies may restrict their responsibilities must be made in such a mode as: 1. Presumptively to have come to the knowledge of the owner of the goods, or his agent, authorized to act on his behalf.[f] 2. They must be of such a natural and reasonable character that the law can recognize them as not inconsistent with good policy and fair dealing. An agent authorized to procure goods is competent to bind the owner by the conditions accepted by him.[g]

An express company is bound for safe carriage through its line, and for safe delivery to the next express agent, and in many cases for safe delivery at the point of destination,[h] and cannot be excused from this except by a clear and understanding stipulation to that effect on the part of the employer, and, in a particular which is reasonable, and not against good morals or good policy,[i] and must deliver to the consignee at the earliest moment after arrival, and within the usual business hours;[j] and inconvenience is no excuse for omitting personal delivery.[k]

Where goods are sent by carrier to be paid for on delivery, the consignee is entitled to a reasonable time to inspect the goods before he accepts them.[l]

Notice brought home to the other party will, in general, control the carrier's responsibility, except for negligence.[m]

—— **Carrier's, ends when.** The responsibility of a carrier terminates after the arrival of the goods at their destination, and a sufficient time has elapsed for the owner to receive them in business hours. After that the carrier may put them in a warehouse, and is only responsible for ordinary care.[n] And a

[k]-16 Barb. 383. [l]-8 Rich. 240; 4 Law J. 38, S. C. *nom.*; Dav. C. C. Rep. 83; 1 Hilton, 223. [m]-2 C & Kirwan, 680. [n]-2 M. & S. 172. [o]-2 Story 16: 8 Pick. 182: 12 M. & W. 766; 8 C. & P. 361; 1 Car. & M. 145: 23 Conn. 595; 21 Ind. 54. [p]-4 Foster, 71; 7 Cow. 497; 7 Mich. 515; 39 Ill. 335. [q]-25 Penn. St. 338; 3 Kernan, 569. [r]-4 Foster. 71. [s]-16 Vt. 52; 18 Id. 131; 23 Id. 186; 6 Hill (N. Y.) 158; 22 Conn. 1; S. C. 22 Conn. 502; 1 Gray, 502; 4 Am. Law Reg. 234. [t]-19 Wend. 534; 1 Florida, 403; 10 Rich. (N. C.) 382; 1 Hilton, 223: 24 Ill. 332; Id. 389. [u]-27 Vt. 110; 3 Sanf. 610; 8 Cow. 223; note Eds. Am. L. Reg. 4 vol. 238; 7 Rich. 201; 1 E. D. Smith, 115; Id. 234; 11 Exch. 790; S. C. 36 Eng. L. & Eq. 482; 1 H. & N. 517; 28 Law T. 260; S. C. 38 Eng. L. & Eq. 593; 5 H. & N. 969; 5 Jur. (N. S.) 1367. [v]-2 Kernan, 245, 255; 19 Wend. 534; 25 Id. 660; S. C. 6 Hill, 157; 8 M. & W. 421; 14 C. B. 255; 1 Parson's Contr. 686-687; 18 Wend. 175; 2 Bing. 170; 1 Sim. 52; 6 Hill, 157. [w]-28 Barb 485: 24 N. Y. 497; Davies, 82; 46 Barb. 103. [x]-20 Ill. 375; 38 Id. 389. [y]-2 H. & N. 702; 9 Ir. Com. L. 474. [z]-9 Iowa, 487; a corporation, established for the transportation of goods for hire between certain points, and receiving goods directed to a more distant place, is not responsible beyond the end of its own line as a common carrier, but only as a forwarder, unless it make a positive agreement extending its liability; 100 Mass. 29; 1 Gray, 502; 4 Allen, 520; 11 Id. 295, and cases cited; 47 Me. 572; 38 Vt. 665; 16 Mich. 119, 120; this principle is also laid down in the following cases: 6 Hill, 157; 18 Vt. 131, 140; 23 Id. 186, 209; 22 Conn. 1; 23 Id. 457; 24 Id. 468; Contra 19 Wend. 534; 3 Sandf. 610; 24 Ill. 372; 24 Id. 466; 34 Id. 389: 27 Vt. 110: 1 Fla. 403; 9 Barb. 317. [a]-23 Vt. 186, 203, 204; Parson's Contr. 656; 19 Johns. 235: 11 Mass. 99; 15 Id. 370; 2 C. & P. 613; 6 Wend. 351; 2 Id. 327; Angell on Carriers, § 101, n. 4; 2 Story, 16; 2 Kent, 609; 16 Mo. 126: 29 Ala. 263; 19 N. H. 122; 15 Ind. 345. [b]-6 How. 344; 39 Barb. 488. [c]-6 Binney, 129: 9 Vt. 407; 4 Taunt. 582; 15 East. 62; 5 B. & Ad. 389: 19 Wend. 534: 5 Sanf. 180; 22 Penn. St. 522: 5 Cusn. 145; 2 E. D. Smith, 195; 3 Barb. S. C. 388: 15 La. An. 14; 32 N. Y. 247; 1 Chitty Pl. 134: 4 C. B. (N. S.) 307, 311. [d]-1 E. D. Smith, 115; 28 Barb 403; 23 Ill. 197: S. C. 26 Id. 504; 8 Allen, 189; 2 E. D. Smith, 195; 5 C. B. (N. S.) 336: 7 Jur. (N. S.) 234; 9 Id. 1234: S. C. 1 B & S. 112; S. C. 12 C. B. (N. S.) 63: 6 How. 344: 97 Mass. 124; 36 Ga. 365. [e]-2 Bosw. 589. [f]-19 Ill. 556: Id. 578. [g]-7 H. & N. 400; S. C. 8 Jur. (N. S.) 58; 5 H. & N. 867. [h]-6 Allen, 254; [i]-4 Ohio St. 362: 10 Id. 65, citing Id. 145; 6 Allen, 486; 32 Mo. 256. [j]-7 Wis. 1; 17 Conn. 138. [k]-6 Bosw. 235; 17 Conn. 138. [l]-46 N. H. 49. [m]-1 West Va. 87; 3 C. P. 14; 2 C. & P. 76: 55 Penn. St. 53; Id. 140; 21 Wis. 152; 49 Barb. 21, 283; 15 Mich. 458; 36 Ga. 635, 532. [n]-10 Met. (Mass.) 472; 27 N. H. 86; 4 T. R. 581; 2 M. & S. 172; 2 Kent Comm. 591, 592; Story Bailm. § 444.

carrier's responsibility continues until an actual delivery to the consignee, or at his dwelling or place of business;[o] if he deliver a parcel to a wrong person, without fault on the part of the owner, he is liable as for a conversion;[p] but this mode of delivery has no application to the ordinary business of railways as common carriers of goods, for they are not bound to deliver ordinary freight,[q] or give notice of their arrival.[q] In carriage by water the carrier is, as a general rule, bound to give notice to the consignee of the arrival of goods.[r] Nothing more is ever required of carriers by ships and steamboats than landing goods at the wharf, and giving notice to the consignee, and keeping the goods safe a sufficient time after to enable the party to take them away; after that the carrier may put them in warehouse, and will only be liable as a depositary, for ordinary neglect.[s] Generally the consignee must have a reasonable time to remove the goods.[t] After this the carrier is only liable for ordinary neglect.[u] If the goods arrive out of time, the consignee must have time to remove them after knowledge of their arrival.[v] So, also, if the company's agent misinform the consignee.[w] When the consignee assumes control of goods the carrier is excused.[x] The keeping of goods in warehouse at intermediate points is not for the convenience of the carrier, but the owner of the goods.[y] If the next carrier has a place of receiving goods, responsibility ceases upon delivery there.[z] Warehousemen, who are also carriers, are generally held responsible on receipt of goods.[a]

Goods addressed by a carrier to his own agent does not terminate the carrier's responsibility upon delivery to him.[b]

Where goods have been tendered to the consignee and refused by him, there is no rule of law that the carrier is bound to give notice to the consignor; he is only bound to do what is reasonable;[c] he is bound to keep them as carrier, until the owner or consignee, by the use of diligence, has time to remove them; when his duty as carrier ceases,[d] he may put the goods in his own or another warehouse.[e] Where the carrier by water cannot find the consignee, he may exonerate himself, by delivery to a responsible warehouseman.' The carrier's responsibility ends when the warehouseman's crane is attached to hoist the goods.[g] An unlawful seizure, or invalid lien, is no excuse to the carrier for non-delivery.[h] In carriage by water, the delivery to the consignee must be according to the custom of trade, and the usages of the port, and in regular business hours.[i] A tender to the party entitled to receive the goods will exonerate the carrier, as such, and he will then only be responsible as an ordinary bailee;[j] but any reasonable arrangement between the carrier and consignee as to mode of delivery will be binding, and the carrier exonerated by delivery in the mode thus stipulated,[k] and he will be responsible for any injury to the goods resulting from not delivering in conformity to the arrangement.[l]

In carriage by water, in general, there must be notice to the consignee, and delivery at the wharf, or else the goods put in safe condition, to remain until called for.[m]

A carrier cannot charge for carrying to and from the depot, unless the customer requires such service to be performed by him.[n]

—— *Carriers—Notice restricting.* Common carriers may qualify their common law responsibility by special contract, but not so as to excuse gross negligence.[o]

So, also, by notice brought home to the knowledge of the owner of the goods, and assented to by him, the carrier may qualify his responsibility;[p] but as a matter of evidence it is received with caution, and the carrier must show the consignor acquiesced to the demands of the notice by making no remonstrance;[q] but neither will excuse the carrier for negligence.[r]

Notice of one kind will not excuse the carrier from responsibility of another.[s]

A written notice will not affect one who cannot read.[t] A carrier must see to it that his notice is made effectual,[u] and it must be shown that knowledge of notice came to the consignor.[v]

A carrier cannot stipulate for exemption from liability for negligence;[w] but he may be allowed to stipulate for exemption from responsibility as an insurer.[w]

o-5 T. R. 389; 2 Wm. Bl. 916; 3 Wil. 429, 433; 32 Mo. 256; 2 Hilton, 71; 2 Esp. 693; M'Clel. & Y. 136. p-3 Brod. & B. 177; 16 C. B. 163; 32 Eng. L. & Eq 338; 7 Allen, 341; 38 Barb. 574; 11 Wis. 407 q-23 Vt. 186, 209; 27 Id. 110; 1 Parsons' Contr. 661; 14 La. An 335; 14 Id. 411; 33 Ala. 630, 12 Id. 349; 14 La. An. 417 r-Redf. R'ys. § 130. s-4 T. R. 581; 8 Taunt. 413; S. C. 2 J. B. Moore, 500; 2 Kent, 605; 2 Head. 488. t-30 Penn. St 247. u-10 Met. 472; 4 T. R. 581; 6 Jones' Law, 343. v-2 Mich. 538; 14 Ga. 277; 4 Foster, 71; 11 Cush. 70, 16 Ill. 502; Id. 561; 9 Penn. St. 114; 35 Barb. 305. w-1 Gray, 277. x-11 Met. 509; 6 Id. 542, 14 Wend. 225; 20 Ill. 404; Id. 412; Id. 23; 11 Rich. Law, 337; 6 Mich. 243. y-4 T. R. 583; 32 Mo 471 z-8 Rich. 240; 4 Law J. 38; S. C *nom.* Day; C. C Rep. 83; 1 Hilton, 223. a-9 Barb. 317. b-16 N. Y 515. c-2 H. & N. 575. d-3 H. & N. 182 S C., 30 Penn. St. 247; 10 Met. 472; 4 T. R. 581, 6 Jones' Law, 343; 15 Johns. 39; 6 W. & S. 62; 32 N H. 523; 7 Foster, 86; 6 Whart. 505. e-10 Met 472; 1 Denio, 65; 30 Penn. St. 247, 250; 10 Barb. 612; 23 Vt 186, 211; 1 Gray, 263; 16 Ill. 502; 25 Ind. 434. f-11 Allen, 500. g-4 Esp. 262; 1 M. & W. 174. h-1 Camp. 451; M'Clel. & Y. 136; 10 Q. B. 517; 10 East. 530. i-1 Bosw & Pul. (N. R.) 16; 10 Vt. 56; 5 Watts & S. 123; 3 La An. 695; 28 N. Y. 78. j-23 How. (U. S.) 28. k-23 How. (U. S.) 28. l-1 Blatch C. C. 173. m-2 Curtis C. C. 21; 15 Ill. 473; 3 La An. 395; 21 Wis. 236; 1 Bailey, 553; 18 Barb. 32. n-6 C. B. (N S.) 639; 1 C. B. (N. S.) 437; 2 Law, J. (N. S.) 376; S C. 6 Jur. (N S.) 908. o-8 Penn. St. 479; 23 Id. 532; 31 Id. 242; 2 Rich. (S. C.) 201. p-5 East. 507; 5 Bing. 207, 2 M. & W 243; 6 How. 344; 3 Me. 228; 11 Id 442; 11 N. Y. 491; 9 Watts, 87; 6 W. & S. 465; 8 Penn. St. 479; 31 Id 209; 2 Rich. (S. C.) 286; 12 B. Mon. 63; 23 Vt 186; 4 Harr. & J. 317; 3 Kas. 205. The N Y courts have dissented from this rule, or held it with such qualifications as to leave it very little force. 19 Wend. 234; 26 Id. 594; 2 Hill, 623; 7 Id. 533; 13 Barb. 353; 14 Id. 524. q-6 How. (U S) 344; 31 Maine, 228; 3 Fairfield, 422, 21 Ga. 526; 7 Law Reg 352 r-31 Maine, 228; 4 Dutcher, 180. s-13 Q B. 347. t-2 Starkie's Cases, 279. u-2 Starkie, 53. v-2 Camp. 415; 10 M. & W. 161, 1 Holt N. P. C. 317, 5 Rawle, 179; 3 Fairfield, 422; Story Bailm. § 558; 4 Bing. 218; 3 Camp. 27; 3 Bing. 2; 16 Mich 243 3 H. & N. 813; 2 Starkie, 461; 3 B & C. 601. w-23 Vt. 205, and cases cited; 32 Penn. St 414; 3 Id 242; 10 Ill. 136.

It is reasonable to claim exemption from risk in transporting fresh fish.[x] So, in carrying dogs and horses, unless a value is declared, and a premium above that value paid,[y] for a fanciful value is often attached to these animals, and these limitations must be claimed at the time of the delivery to the carrier,[z] and the burden of showing the reasonableness of the condition annexed to the carrier's undertaking devolves upon the carrier.[a] The exception of one risk cannot cover another.[b]

A carrier is always responsible for negligence.[c]

NOTICE FORMS.

See "CONDITIONS" in "BILLS OF LADING," above.

Stoppage in transitu. Stoppage *in transitu*[d] is the right which resides in the vender of goods upon credit to recall them upon discovering the insolvency of the vendee, before the goods have reached him, or any third party has acquired *bona fide* rights in them.[e] A carrier is liable if he do not surrender the goods to one having the right of stoppage *in transitu*,[f] but may delay them until that right is determined.[g]

The right to stop goods *in transitu* is nothing more than the extension of the lien which the vender has on all sales, for the price, until after delivery (so long as the goods are under the control of the carrier,[h] but not when they reach the consignee's agent for another purpose),[i] to the very point of the goods coming to the actual custody of the vendee, or his agent.[j]

Carriers are compelled to solve the question of the claimant's right (upon admonition by telegraph from an unknown party miles distant), at their peril.[k]

Conflicting claims of this kind may be determined by replevin, or interpleader,[l] or the carrier may deliver the goods to the rightful claimant, and defend against the bailor.[m]

COMMON CARRIERS OF PASSENGERS. Common carriers of passengers are bound to carry all who offer.[n] They are responsible for the utmost care and watchfulness,[o] and this extends to everything connected with the transportation.[p] They are not responsible as insurers of the safety of their passengers as common carriers of goods are. But they are bound to the very highest degree of care and watchfulness in regard to all their appliances for the conduct of their business; so that, as far as human foresight can secure the safety of passengers, there is an unquestionable right to demand it of all who enter upon the business of passenger carriers.[q] And it will make no difference if the passenger do not pay his fare;[r] so also where the train is hired for an excursion,[s] or is under control of State officers.[t] Passenger carriers are not responsible for accidents without fault;[u] they contract only for their own acts.[v] They must adopt every precaution in known use.[w] It is their duty to inform passengers of peril requiring caution to escape.[x] A person purchasing a ticket becomes a passenger, and is entitled to protection on reaching his seat in the carriages.[y] Passenger carriers are bound to exclude disorderly persons from their carriages;[z] and a company is bound to fence its stations so as to hinder passengers entering by a dangerous way.[a] A passenger carrier who attempts to carry ordinary passengers and soldiers at the same time is responsible for the consequences.[b]

The passenger must be ready and willing to pay such fare as is required by the established regulations of the carriers in conformity with law. But an actual tender of fare or passage-money does not seem requisite in order to maintain an action for the absolute refusal to carry, and much less is it necessary in an action for any injury sustained.[c] The rule of law is the same in regard to paying fare in advance that it is as to freight, except that the usage in the former case being to take pay in advance; a passenger is expected to have procured his ticket before he had taken passage; and the law will imply payment according to such usages.[d] Carriers of passengers are bound to carry for the whole route for which they stipulate, and according to their public advertisements and the general usage and custom of their business.[e] But they are not bound to carry persons of offensive and disorderly con-

x-8 W. R 651; S. C. 3 H. & C. 337. y-2 B. & S. 122: S. C. 6 Jur. (N. S.) 954. z-9 Law, T. (N. S.) 86 15 Ir. Com. L. 37; 1 Jur. (N. S.) 12; 1 L. Bl. & S. 112; S. C. 7 Jur. (N. S.) 1234. a-9 Jur. (N. S.) 914; S. C. 10 H. Lds Cas. 473; 15 C. B. (N. S.) 582. b-52 Penn. St. 382. c Law Rep. 3 Exch. 9. d-"*In the passage*" merchandise is said to be "*in transitu*" while on its way to the consignee, Tayler's L. Gloss, p. 201. e-2 Kent Comm. 540 *et seq.*; 1 Henry Black. 357; S. C. 6 East 21; S. C. 2 T. R. 63; 1 Smith L. Cases, 388 and notes, where the whole law, Eng. & Am., on the subject will be found. See 12 Pick. 313. f-7 Taunt. 169; 3 East. 381; 4 T. R. 260. g-5 C. B. (N. S.) 149; Id. 882; 28 Vt. 180; 5 Jur. (N. S.) 641; S. C. 2 Bl. & El. 66; 11 C. B (N. S.) 553; 8 Jur. (N. S.) 868. h-4 Man. & Gr. 1080; 6 Duer. 606; 4 C. B. 618; S. C. 5 Jur. (N. S.) 248; 8 Taunt. 83; 1 M. & W. 20; 2 Id. 372; 3 T. R. 464; 4 Bing. 516; 3 Bos. & P. 119; 9 H. R. 108; S. C. 6 B. & C. 107, 10 M. & W. 436. i-18 How. (U. S.) 231; 23 Wend. 611; 20 Vt. 172. j-12 Pick. 313. k-34 Vt. 49; 5 Taunt. 759; 1 B. & Ad. 450; Story Bailm. § 582; L. Rep. 1 Adm. 370; L. Rep 1 P. C. 219; L. Rep. 6 Eq. 44. l-7 Bing. 399; 10 Id. 246; 18 Vt. 186. m-11 Vt. 323; 26 Id. 707; 37 Barb. 122; 1 Duer. 79; Story Bailm. § 450; 1 B. & Ad. 458. n-19 Wend. 239; 20 N. H. 486; 15 Ill. 472; 2 Sumn. C. C. 221; 2 Brod. & B. 54; 9 Price, 408. o-2 Esp. 533; 17 Ill. 496; 4 Met. 274; 2 Camp. 79; 1 C. & P. 636; Peake's Cas. 81; 9 Bing. 457; 13 Pet. (U. S.) 150, 181, 192. p-16 Vt. 566; 2 B. & Ad. 169; 4 Clarke (Ia.) 541; 3 Bing. 319; 11 Gratt. 697; 1 C. & P. 414; 13 Pet. (U. S.) 150, 181, 192; 21 Conn. 557; 13 Id. 319; 13 Wend. 611, 626; 1 McLean, 540; 2 Id. 157; 1 Gill. 406; 19 Wend. 236; 21 Conn. 245; 12 La. An. 84. q-2 Esp. 533; 17 Ill. 496. r-Hodges on R'ys, 621; 12 C. B. 578; S. C. 26 Eng. L. & Eq. 443; 5 Ind. 340; 15 N. Y. 444; 2 Redf R'ys, § 251, pl. 5; 21 Ind. 48; 30 Ill. 9; 25 N. Y. 442; 18 Ill. 416; 14 How. (U. S.) 843; 16 Ind. 469, 474; 26 Barb. 641; 29 Id. 602; 37 Ill. 484. s-5 Exch. 787; S. C. 2 Eng. L. & Eq. 360; 8 Ohio (N. S.) 570; 20 Ill. 235. t-20 Penn St. 497. u-See ante, DUTY AT COMMON LAW, RULE OF DAMAGES, etc. v-26 Ill. 373; 23 Id. 357; 18 N. Y. 408, 534; 11 C. B. (N. S.) 587, 594; 5 L. T. (N. S.) 682; S. C. 7 H. & N. 1037. w-2 F. & F. 730; 11 Allen, 312; 1 Moore P. P. C. (N. S.) 339; 1 Wallace, 543; 22 Ind. 26; 5 Bosw. 699. x-11 Minn. 277; 21 Conn. 245, 254; 1 Camp. 167; Law Rep. 3 C. P. 216. y-8 Allen, 227. z-7 Am. L. Reg. (N. S.) 14; S. C. 53 Penn. St. 512. a-6 C. B. (N. S.) 923. b-34 Conn. 554. c-6 C. B. 775; Story Bailm. § 591; 1 East. 203; 2 Kent. Comm. 598, 599. d-3 Penn. St. 451. e-1 Campb. 167; Story Bailm. § 600; 19 Wend. 534; 8 Eng. L. & Eq. 360.

duct, or those infected by contagion, or otherwise offensive in character, health, or habits, as to be unsuitable companions for other passengers.[f]

By-laws or Statutes. It is incident to all corporations to enact by-laws or statutes for the control of their officers and agents, and to regulate the conduct of their business generally. In the case of railways this includes the regulation of the conduct of passengers and others who are in any way connected with them in business; but such regulations must be reasonable and not against law.[g] By-laws in violation of common right are void.[h] By-laws are not required to be in any particular form, unless required by express provisions of the charter or laws of the State.[i] Railways may lawfully discriminate between fare paid in the cars and at the stations.[j] They cannot refuse to be responsible for baggage.[k] The by-laws or statutes operate upon the members of the corporation from their promulgation, and upon all others from the time of knowledge of the same.[l] Regulations for the accommodation of passengers, during the passage, must yield to the right of others to be carried;[m] this is the general practice in all modes of transportation in America.

By-laws of a company must be published.[n]

—— *As to Passengers.* Passenger carriers may establish reasonable regulations in regard to the conduct of passengers, and discriminate between those who conform to their rules in regard to obtaining tickets, and those who do not—requiring more fare for the latter.[o] Passengers may be required to go through on the same train or forfeit the remainder of their tickets.[p] Where one procures a railway ticket marked "good for this trip only" with the view to go in the next through train, but is unexpectedly detained, he may lawfully claim to go upon the ticket on a subsequent day.[q] Railway passengers, when required by the regulations of the company to surrender their tickets in exchange for the conductor's checks, are liable to be expelled from the cars for a refusal to comply with such regulation, or to pay fare again.[r] A passenger is liable to be expelled from the cars for refusal to exhibit his ticket at the request of the conductor in compliance with the standing regulations of the company.[s] Railway companies may exclude merchandise from their passenger trains.[t] A company is not bound to carry a person daily upon his paying fare, when his trunk or trunks contain merchandise, money, and other valuable matter, known as "express matter," where its by-laws exclude merchandise from passenger trains and confine its transportation to freight trains.[t]

An officer in fact may enforce the rules of the company,[u] but is liable for an excess of force.[v] A company cannot enforce a rule against a passenger where they are in fault.[w]

—— *As to Stations and Grounds.* Railway companies may exclude persons without business,[w] and regulate the conduct of others. The superintendent may exclude from the stations and grounds persons who persist in violating reasonable regulations prescribed for their conduct, and thereby annoy passengers and interrupt the officers and servants of the company in the discharge of their duty.[x]

A railway freight station or freight warehouse is not exempt from search-warrant; and it is not necessary that such warrant should be executed during the usual business hours, or that the officer should consult the person who has charge of such station.[y]

Damage—Rule of—For Injury of Passengers. The party injured must recover all his damages, present and prospective, in one action;[z] but these should be obvious and not merely conjectural.[a] New trials are allowed for excessive damages[b] only in extreme cases.[c] The plaintiff may show the value of his time lost.[d] There is no well-defined rule for estimating damages, it generally rests very much in the discretion of the jury.[e] In an action or loss of service, mental anguish cannot be included.[f] A woman claiming damages for personal injury cannot prove the state of her family or death of her husband.[g]

The right to damages is a question of law; the amount, one of fact.[h] Special damages cannot be recovered unless alleged and proved.[i] A plaintiff who claims damages for loss of time and business, may prove the nature of the business, and probable profits.[j]

Duty of connecting Companies to Passengers and others. A company is bound to keep its road safe;[k] and they cannot excuse themselves from liabilities for injury to passengers carried over any part of their road because it was occasioned by the act of another company.[l] Passenger carriers are bound to make their landing-places safe.[m] But those who ride upon freight trains by favor, can only require

f-2 Sumn. C. C. 221; 8 N. H. 523. g-6 Q. B. 383; 14 M. & W. 76; 2 Peere Wms. 207; Ang. & A. *c.* 10; 2 Kent Comm. 296; 1 Duv. 143; 5 Mich. 520; 5 Dutcher, 393; 6 Jur. (N. S.) 1113; S. C. 9 Id. 1081: S. C. 4 B. & S. 1059; S. C. 10; Ho. Lds. Cas. 404; 8 Jur. N. S. 640. h-5 Conn. 391; 17 Vesey, 315; 5 Coke, 64; 2 P. Wms. 207. i-Walford, 249; Hodges, 552, 553. j-34 N. H. 230; 29 Vt. 169; 18 Ill. 460; 53 Me. 279; 10 Ill. 353, 43 Ill. St. L. A. & T. H. R. R. *vs* South. k-10 Exch. 15; S. C. 28 Eng. L. & Eq. 439. l-6 Jones Law, 558. m-5 Mich. 520. n-12 C. B. 313; S. C. 11 Eng. L. & Eq. 546; 5 Am. Law. Reg. 364; see also upon the subject of by-laws to passengers on railways, Redf. R'ys, § 28 and notes. o-18 Ill. 460; 34 N. H. 230; 29 Vt. 160; 7 Met. 2 (Mass.) 596; 12 Id. 482; 4 Zab. 435; 29 Eng. L. & Eq. 143: Redf. R'ys, § 28 and notes; 24 Conn. 249. p-11 Met. (Mass.) 121; 1 Am. R'y Cas. 601. q-24 Barb. 514. r-22 Id. 130. s-15 N. Y. 455. t-5 Law Reg. 364. u-34 N. H. 320; 2 Dutch. 224. v-1 Law R 1 Q. B. 7; S. C. 12 Jur. (N. S.) 331. w-18 C. B. 46; S. C. 36 Eng. L. & Eq. 253; 7 Met. 596; S. C. 1 Am. R'y Cas. 389; 12 Met. 482. x-7 Met. 596; 8 N. H. 523; 12 Met. 482; S. C. 1 Am. R'y Cas. 410. y-41 Maine, 233. z-11 Ad. & Ell. 301; 18 Vt. 252; 20 Barb. 282; 10 Id. 621; 10 La. An. 33. a-20 Barb. 282; 10 Id. 621; 36 N. H. 9. b-12 Barb. 492; 19 Id. 461; 26 Id. 282; 18 Ill. 460. c-9 Johns. 45; 10 Id. 443. d-23 Wend. 425. e-11 Grattan, 697. f-10 La. An. 33; 10 Am. R'y Times, No. 12; 6 Am. L. Reg. 355. g-8 Gray, 45. h-4 H. & C. 232; S. C. Law Rep. 1 Exch. 117; 12 Jur. (N. S.) 233. i-47 Maine, 419. j-55 Penn. St. 396; 16 Mich. 180; 37 N. Y. 287. k-1 Ad. & El. 223; Id. 230; Redf. R'ys, § 145, pl. 7, 8, and note. l-4 Cush. 400. m-9 Foster, 9; 10 M. & W. 109; 27 Vt. 377; 19 N. Y. 127; 23 Ind. 534; 2 Seld. 397; 3 C. B. N. S. 346; 6 Id. 923; 8 El. & Bl. 1035; S. C. 31; L. T. 12.

such security as is usual upon such trains.[m] Owners of all property are bound to keep it in such a state as not to expose others to injury, as the fencing off a hole or area adjoining a highway, and dangerous to passers-by;[n] and this rule extends to railways, where persons are rightfully on them;[o] and one who keeps open works is bound to keep them safe for use.[p] Corporations are presumptively responsible to the same extent as natural persons in the same situation.

—— *Resulting from the Sale of Through Passenger Tickets in the form of Coupons.* The general duty of common carriers of passengers is not the same as where goods and baggage are ticketed through.[r] Through tickets in the form of coupons are to be regarded as distinct tickets for each road, sold by the first company as agents for the others, and may be used when the holder elects.[s] The first company are to be regarded as agents for the others.[t] If the business of the entire line is consolidated, it is different,[u] but in general it is not regarded as a case of partnership.[v] The companies being in different States and kingdoms makes no difference.[w] The first company were held liable for baggage not checked when demanded.[x] So, also, for an injury occurring on another line over which they had sold tickets.[y] A stage route intersected by a ferry hired to carry the coaches over, is responsible for the safety of passengers on the ferry.[z]

The sale of through tickets for an entire route composed of several successive companies of carriers having no partnership connection, does not render each company liable for the injuries to passengers occurring on any part of the route.[a]

Free Pass. One who rides upon a free pass, or in the baggage-car, is not thereby deprived of his remedy against the company for injuries received through their want of due care, provided he was at the time a passenger and without fault on his own part.

Injuries—Wrongful Expulsion from Cars. Where a passenger is wrongfully expelled from cars, the company is not held liable for exemplary damages unless they ratified the expulsion,[b] but upon principle the company should be liable for special damage. And in such cases they are trespassers if they refuse to deliver baggage.[c] The company must keep strictly to the terms of any by-law regarding the production of tickets when called for.[d] Conductors are bound to exclude disorderly or offensive persons.[e] One wrongfully expelled from the cars is not entitled to special damages, unless it occurs clearly without his fault.[f] Where a ticket is lost, the person is liable to pay fare.[g] One wrongfully put on shore, by a passenger boat, short of his destination, may show, to enhance damages, that it was done in an insulting manner.[h]

—— *Fault of the Party Injured.* Where a passenger is injured on a railway, the *prima facie* presumption is that it resulted from the want of due care on the part of the company.[i] But, nevertheless, it is competent to prove that the damage occurred without their fault.[i]

—— *From leaping from Carriages, etc.* Passengers may recover if they have reasonable cause to leap from the carriage and sustain injury;[j] but not where their own misconduct exposes them to peril.[k] But where one incurs peril by attempting to escape danger, the author of the first motive is liable for all the necessary or natural consequences.[l] But one leaps from cars because the train passes the station at his own risk,[m] but may recover compensation for the inconvenience, loss of time, and labor of travelling back.[m] If a person being safely seated is injured while leaving the cars, he cannot recover if he was guilty of negligence which contributed to his injury.[n] The company are bound to stop their trains at all stations where they profess to leave passengers a sufficient time for them to alight. If they do not, and one is injured in consequence, while attempting to leave the cars, the company are liable.[o] No recovery can be had when the passenger leaves on the wrong side.[p]

—— *Married Woman.* In a suit by the husband for injury to the wife, he may recover the expenses of the cure.[q] But such expenses cannot be recovered in a suit on behalf of the wife for her personal injuries.[r]

Law of Place. Corporations can only act in conformity with the law of the State or sovereignty by which they are created; hence, they are liable as carriers only, to the extent, and in conformity to the law of the State or jurisdiction where the contract was made or duly undertaken; and it will make no difference whether the action is in form "upon contract" or "for tort" (or wrong), this is in conformity to the general rule of law, upon the subject of contracts and torts.[s]

Liability—What will excuse a Company from carrying Passengers. A company is not bound to carry where the carriages are full.

[m] 9 Foster, 9; 10 M. & W. 109; 27 Vt. 377; 19 N. Y. 127; 23 Ind. 534; 2 Seld. 397; 3 C. B. N. S. 346; 6 Id. 923; 8 El. & Bl. 1035; S. C. 31; L. T. 12. [n] 2 Carr. & K. 661; 6 N. H. 147; 6 Johns. 90; 26 Vt. 602; 3 H. & N. 164; S. C. 31 L. T.; 11 Ad. & El. 223; 11 Exch. 257; 5 Duer. 674. [o] 14 Penn. St. 141. [p] 3 H. & Norm. 164; 4 Jur. (N. S.) 636; 5 B. & A. 837. [r] 4 E. D. Smith, 181. [s] 29 Vt. 421; 22 Conn. 1; S. C. Id. 502; 26 Ala. 733; 2 E. D. Smith, 184; 15 Mich. 332. [t] 29 Vt. 421; 22 Conn. 1; S. C. Id. 502; 26 Ala. 733; 2 E. D. Smith, 184; 31 N. Y. 661. [u] 11 Wend. 572; S. C. 18 Id. 175; 4 Sneed, 203. [v] 26 Ala. 733; 19 Barb. 222; 16 Md. 331. [w] 29 Barb. 35; 17 N. Y. 306. [x] 7 Allen, 339. [y] 7 H. & N. 987; S. C. 8 Jur. (N. S.) 1013. [z] 11 Minn. 277. [a] 22 Conn. 502; 29 Vt. 421; 2 E. D. Smith, 184; 19 Barb. 222; 26 Ala. N. S. 733; Redf. R'y, § 158, and cases cited. [b] 3 R. I. 88; 2 Redf. R'ys, § 225 [c] 3 Gray, 328. [d] Law Rep. Q. B. 7; S. C. 13 Law T. (N. S.) 231; Law Rep. 1 Q. B. 10; S. C. L. T. (N. S.) 323. [e] 11 Allen, 304; Id. 306. [f] Law Rep. 3 Q. B. 25. [g] 30 N. J. 388. [h] 8 Jur. 875. [i] Am. L. Reg. (N. S.) 715, 721; 36 Mo. 418; 14 How. (U. S.) 468; 7 Ind. 474; 5 Id. 340; 30 Ill. 9. [j] 9 Met. 1; 1 Sandf. 89; 13 Pet. (U. S.) 181; 17 Ill. 406; 24 Ga. 356; 1 Stark. 493. [k] 15 Ill. 468. [l] 23 Penn. St. 147, 150; 1 McLean, 510, 550. [m] 1 Id. 510, 550; 9 La. An. 441; 40 Miss. 374. [n] 6 Gray, 64. [o] 32 Penn. St. 292. [p] 33 Id. 318. [q] 3 Comst. 489; 20 Wend. 210; 14 B. Mon. 204. [r] 21 Conn. 571; 3 Comst. 489; 20 Wend. 210; 14 B. Mon. 204; 50 Barb. 628. [s] 9 Jur. (N. S.) 522; S. C. 1 H. & C. 219; 8 Jur. (N. S.) 568.

But it should undoubtedly be an extreme case to justify the absolute refusal of a passenger.[t] They are not bound to carry disorderly persons or those otherwise offensive—as infected by contagion, or offensive in person or conduct.[u] A carrier is liable in tort for breach of duty aside from any contract.[v] The purchase of a ticket does not constitute the contract;[w] the company has a right to impose reasonable regulations as to the carriage of passengers.[x]

—— *of a Carrier where both parties are in fault.* Railway companies are not liable as passenger carriers unless they are in fault,[y] nor when the plaintiff's fault contributes directly to the injury;[z] but where there is an intentional wrong on the part of the defendant, he is liable, notwithstanding negligence on the part of the plaintiff.[a] The plaintiff may recover for gross neglect of the company, although in fault himself,[b] but not where he knew his neglect would expose him to injury.[c] And he may recover, though riding in the baggage car.[d] But the company does not owe such duty to wrongdoers.[e] The plaintiff may recover, although out of his place on the train,[f] but he must be lawfully in the place where injured.[g] Passengers are bound to conform to the regulations of the company and directions of conductors.[h] Proof of the company's negligence is on the plaintiff,[i] negligence on the plaintiff's part is not presumed;[j] and after proof of presumptive negligence, the company must show that no reasonable precaution could prevent it.[k] One crossing a railway track must look out for trains or he cannot recover.[l] Rushing across a track when a train is approaching is foolhardy misconduct, and no recovery can be had for the injury.[m] So for injury the result of heedlessness.[n] Negligence to preclude recovery must directly tend to produce the injury.[o] Ordinarily, proof must be given of defendant's negligence, and that but for such negligence the injury would not have occurred.[p] Passenger carriers must provide suitable accommodations for all passengers,[q] then passengers must conform to the usages and rules of the company or fail to recover.[r] Where a passenger is injured by the fault of carrier's employees, he may recover, but not if done by his own invitation.[s]

—— *where one company uses the track of another.* A railway company which receives the cars of another company upon its track, placing them under the control of its agents and servants, and drawing them by its locomotive power, assumes toward the passengers the common liability of passenger carriers;[t] and it makes no difference in regard to the liability of the company to passengers passing over their road, whether they purchased tickets of them or of any other railway company or agent authorized to sell such tickets.[t]

Passenger carriers who run over other roads than their own are responsible for the entire route, and must take the risk of the negligence of the employees of the other companies.[u]

—— *where trains do not arrive on time.* A company is liable for not delivering a passenger according to contract,[v] but they may excuse themselves by special notice. They are liable for damages caused by the discontinuance of a train.[w] Carriers not performing according to previous notice are liable to all injured, as for breach of duty,[x] but are not liable for an injury caused by a stage company connecting with the railway.[y] They will not be liable where passengers mistake the place of changing cars, and, by remaining in the same car, are carried out of their intended route, upon proper notice of the course of their trains and places of changing cars.[z] In order to enable the plaintiff to recover special damages claimed to have been sustained by reason of the failure of a contract to carry him as a passenger, it must appear clearly and by affirmative proof that the damages were sustained without any fault on his part, and in spite of his utmost efforts to avoid them.[a]

Negligence—what is prima facie evidence of. Where a stage coach is overturned when laden with passengers, it is regarded as *prima facie* evidence of negligence in the proprietor or his servants.[b] And where any injury occurs to a passenger upon a railway, it has been considered *prima facie* evidence of the culpable neglect of the company.[c]

Payment of money into court in actions against. Payment of money into court where the declaration in tort is general, only admits damages to the extent of the amount paid.

t-16 Jur. 196; S. C. 8 Eng. L. & Eq. 362; 1 Redf. R'ys, § 131; Id. § 26, n. 6. u-2 Sumner, 221; 8 N. H. 523; 19 Wend. 239; 10 N. H. 486; 15 Ill. 472; 3 Brod. & Bing. 54; S. C. 9 Price, 408. v-2 El. & El. 844; 19 C. B. (N. S.) 310; S. C. 11 Jur. (N. S.) 672. w-9 C. B. (N. S.) 310; S. C. 11 Jur. (N. S.) 730; 13 L. T. (N. S.) 20. x-11 Ohio St. 457. y-22 Vt. 213; 11 East. 60; 6 Whart. 311; 19 Wend. 399; 21 Id. 188; Id. 615; 19 Conn. 507; 12 Barb. 492; 16 C. B. 175; 30 Eng. L. & Eq. 473; 11 Allen, 500; 5 Barb. 337; 8 Id. 368; 8 Rich. 120; 16 Ill. 548; 13 Cal. 599. z-22 Vt. 213; 1 Ad. & El. (N. S.) 29; 1 Moo. & M. 169; 2 C. & P 421; Id. 601; 6 Cow. 189, 119; 3 M. & G. 59; 1 Q. B. 29; 19 Conn. 566; 23 Id. 437; 26 Id. 591; 10 M. & W. 546; 5 C. & P. 190; 24 Ga. 75; 26 Ill. 255. a-2 Hill (N. Y.) 282; 3 M. & W. 244; 18 Ga. 679, 686; 1 Dutcher, 556; 21 Barb. 339; 16 Id. 558; 17 Barb. 94; 27 Id. 528; 4 Zab. 268, 824; 10 Ga. 440. b-19 Conn. 507; 4 Bing. 628; 3 B. & Ald. 304; 8 C. & P. 691; 10 C. B. (N. S.) 470; 7 H. & N. 736; 3 B. & S. 244. c-Butterfield vs. Forrester, 10 East. 60. d-1 Duer, 571; 22 Barb. 91; 43 Maine, 501; 6 Duer, 382. e-8 Barb. 368; 4 Penn. St. 375. f-23 Id. 532. g-1 Duer, 571–2. h-8 Penn. St. 479; 21 Id. 203; 7 Porter (Ind.) 474; 9 Rich. 84. i-7 Gray, 92. j-18 N. Y. 248; 27 Vt. 62; 37 Id. 501. k-18 N. Y. 408. l-18 Id. 422. m-24 Id. 430. n-4 H. & N. 781. o-27 Conn. 393; 8 C. & B. (N. S.) 568; 7 Jur. (N. S.) 168. p-11 Ir. Com. L. 377; 1 C. B. (N. S.) 588; S. C. 8 Jur. (N. S.) 796; 2 H. & C. 722; 13 C. B. (N. S.) 430; S. C. 9 Jur. (N. S.) 970; 3 H. & C. 596; 16 C. B. (N. S.) 399; 24 C. B. (N. S.) 54. q-34 N. Y. 670. r-7 Allen, 207; 8 Id. 234; 37 N. Y. 287; 53 Penn. St. 460; 10 Allen, 387. s-Law Rep. 3 C. P. 368, 374 & n. t-9 Cush. 24. u-5 Wall. 90; 3 Exch. 146. v-Hodges R'ys, 619; 19 L. Rep. 379. w-16 Jur. 196; S. C. 8 Eng. L. & Eq. 362; 5 El. & Bl. 860; 1 H. & N. 408; S. C. 38 Eng. L. & Eq. 335; 13 Vt. 388; 1 Redf. R'ys, § 131, n. 14. x-32 Miss. 17; 36 Id. 660. y-22 Conn. 1. z-6 Duer, 523. a-9 Bosworth, 412. b-13 Pet. 181. c-5 Q. B. 747; 8 Penn. St. 483; 25 Ill. 471; 16 Barb. 113, 356; 20 Id. 282; Redf. R'ys, § 149, n. 6, and cases cited.

But in cases of special contract it admits the contract and breach alleged.[d]

PRIVATE CARRIERS. Private carriers incur the responsibility of the exercise of ordinary diligence only like other bailees for hire.[e]

—— *for compensation.* Private carriers are bound to the same diligence and skill as prudent and careful men ordinarily exercise in similar employments. They must do everything, and omit nothing, which careful men are accustomed to do in similar business where they themselves are both the carriers and owners of the goods. Warehousemen and forwarders are responsible to the same extent as private carriers.[f] So, also, tow-boat owners and wharfingers.[g] Deputy postmasters are bound to care and diligence,[h] but not as common carriers.[i]

A common carrier may become a private carrier.[j] Where goods are injured while in the custody of a private carrier or warehousemen, the burden is upon him to show that it occurred from some other cause than his want of care, diligence, or skill.[k]

The recovery of judgment without satisfaction, against a private carrier, in an action of assumpsit, for not transporting and delivering the articles according to his contract, is no bar to an action against a third person who has purchased the property of the bailee.[l]

—— *without compensation.* A contract to convey without compensation is not binding until entered upon; then it must be faithfully performed; and if any damage befall the property in the course of transportation, through the fault of the carrier, he is responsible for it;[m] but his duty depends upon the nature of the property.[n] It is his duty to carry according to his known custom and usage.[o] If injury happen to the property while in the custody of the bailee, the interference of the bailor to remedy the evil will not release the bailee from the consequences of his default.[p]

A gratuitous bailee has such an interest in the property while in his custody, and is so far responsible for its security that he may maintain an action against a stranger for any injury to it.[q]

Warehousemen and wharfingers are not gratuitous bailees.[r]

COMMISSION is an undertaking without reward to do something for another with respect to a thing bailed.[s]

DEPOSIT is a naked bailment of goods to be kept for the depositor without reward, and to be returned when he shall require it.[t]

An irregular deposit arises where one deposits money with another for safe keeping, in cases where the latter is to return, not the specific money deposited, but an equal sum.

A quasi deposit arises where one comes lawfully into possession of the goods of another by finding.

The rule of responsibility in deposits is, that the bailee must act in good faith, and in the manner as he conducts his own affairs;[u] and special undertakings by the bailee are binding upon him to the extent understandingly made.[v]

The degree of diligence to be exercised by the bailee depends upon circumstances; he is not responsible for theft or robbery without his fault.[w]

A depository is bound to take only ordinary care of the deposit, which will, of course, vary with the character of the goods to be kept, and other circumstances.[x] He has, in general, no right to use the thing deposited,[y] unless in cases where permission has been given, or may from the nature of the case be implied.[z] He is bound to return the identical deposit, and in the same state in which he received it; if it is lost, or injured, or spoiled, by his fraud or gross negligence, he is responsible to the extent of the loss or injury.[a] He is bound to restore, not only the thing deposited, but any increase or profits which may have accrued from it; if an animal deposited bear young, the latter are to be delivered to the owner.[b]

In case of irregular deposits, as those with a banker, the relation of the banker to his customer is that of debtor or creditor, and does not partake at all of a fiduciary character. It ceases altogether to be the money of the depositor, and becomes the money of the banker. It is his to do what he pleases with it, and there is no trust created.[c] The banker is not liable for interest unless expressly contracted for; and the deposit is subject to the statute of limitations.[d]

If the bailee puts the goods to a use not justified by the bailment, he is guilty of a conversion, and responsible for all losses.[e]

In cases of a joint deposit, where there is a special undertaking to keep and restore to all jointly, the bailee cannot deliver to one.[e]

[d]-17 Jur. 532; S. C. 20 Eng. Law & Eq. 258: 16 Vt. 286; 7 Cush. 581; 6 M. & W. 9; 3 Id. 486; 6 Exch. 123; S. C. 3 Eng. L. & Eq. 548. [e]-Story Bailm. § 495; 13 Barb. 481; 1 Wend. 272; 1 Hayw. 14; 2 Dana, 430; 4 Taunt. 787; 6 Id. 577; 2 B. & S. 417; 2 C. B. 877; see ante, COMMON CARRIER. [f]-8 M. & W. 258; 1 Peake N. P. C. 114; 26 Miss. 253; 9 Wend. 268. [g]-13 Wend. 387; 2 Barb. S. C. 326; 3 Hill, 545. [h]-Cowp. 182; 5 Burr, 2709; 4 Id. 2149; 3 Wils. 443. [i]-2 Bay, 551; 8 Watts, 453. [j]-1 Wend. 272. [k]-9 C. & P. 632. [l]-13 N. H. 494. [m]-2 Ld. Raym. 909; S. C. Com. 133; 3 Mason, 132: 1 Stark, 237; 1 Swan. St. 452. [n]-38 Me. 55: 18 Id. 74; 14 S. & R. 275; 28 Vt. 180; 1 Moore & P. 583. [o]-38 Me. 55; Wright, 528; 20 Mo. 519. [p]-7 Watts, 542. [q]-1 B. & Ald. 59. [r]-11 Q. B. 43. [s]-Rutherford Inst. 105. [t]-Jones Bailm. 36, 117; 9 Mass. 470. A bailment of goods to be kept by the bailee without reward, and delivered according to the object or purposes of the original trust. Story Bailm. § 41. A contract, by which one of the contracting parties gives a thing to another to keep, who is to do so gratuitously, and obliges himself to return it when he shall be requested. See EXECUTIONS; PRACTICE, post. [u]-2 Ld. Raym. 913; 1 Id. 646; Jones Bailm. 46; 2 Strange, 1099; S. C. 1 Corw. 100; 17 Mass. 179–514; 7 Cow. 278; 3 Dana, 205; 23 Pick. 330; 1 B. & Ald. 59. [v]-Willes, 119; 3 Petersdorff, 363. [w]-Wright, 411; 3 Kas. 257; 3 Petersdorff, 363. [x]-See 14 S. & R. 275; 17 Mass. 479; 3 Mas. C. C. 132; 2 Ad. & E. 256; 1 B. & Ald. 59. [y]-Bac. Abr. *Bailm.* D. [z]-Story Bailm. § 90; Jones Bailm. 80, 81; 1 Bouv. Inst. *n.* 1008. [a]-Jones Bailm. 36, 46, 120; 17 Mass. 479; Hawks, 145; 1 Dane Abr. *c*; 17 Art. 1 & 2. [b]-Story Bailm. § 99. [c]-17 Wend. 94; 1 Merriv. 568. The legal remedy is a suit at law for debt; the balance cannot be reached by a bill in equity, as there is no trust raised. 2 Ho. L. Cas. 39; 1 Younge & C. Ch. 464. [d]-1 Phill. 401, 405; 2 Ho. L. Cas. 39, 40; see Sewell, Banking, 4 Blackf. 495. [e]-13 East. 197; Jones Bailm. 51; 7 El. & Bl. 234; S. C. 40 Eng. L. & Eq. 105.

A depository is not liable to an action for not restoring a thing, until after demand, unless he have put it to some use not justified by the bailment.[f]

Whenever a person receiving the goods has an option to return the same thing, or another article of the same kind and value, the property passes to him as effectually as in an ordinary case of sale and exchange, and the risk is with the bailee,[g] or person receiving the goods.

A mere deposit of money, or other thing, is always subject to recall at the election of the depositor.[h]

Money requires more watchful care than most other property.[i]

FORWARDING MERCHANTS are persons who receive and forward goods, taking upon themselves the expenses of transportation, for which they receive a compensation from the owners, but who have no concern in the vessels, cars, or wagons by which they are transported, and no interest in the freight. A forwarding merchant is not deemed a common carrier, but a mere warehouseman or agent.[j] He is required to use only ordinary diligence in sending the property by responsible persons.[k]

GRATIS undertakings are those without reward or compensation. When a bailee undertakes to perform some act or work gratis he is answerable for his gross negligence if any loss should be sustained in consequence of it; but a distinction exists between a misfeasance and a nonfeasance—between a total omission to do an act which one gratuitously promises to do and a culpable negligence in the execution of it—in the latter case he is responsible, while in the former he would not, in general, be bound to perform his contract.[l]

HIRE. Hire is a bailment in which compensation is to be given for the use of a thing or for labor and services about it.[m]

There are three species of this contract:

1. The hire of labor and work to be done, or care and attention to be bestowed, or the goods let by the hirer for a compensation.

2. The hire of the carriage of goods from one place to another for a compensation.[n]

3. The bailment of a thing to be used by the hirer for a compensation to be paid by him.

This contract arises from the principles of natural law; it is voluntary, and founded in consent; it involves mutual and reciprocal obligations; and it is for mutual benefit. In some respects it bears a strong resemblance to the contract of sale; the principal difference between them being that in cases of sale the owner parts with the whole proprietary interest in the thing, and in cases of hire the owner parts with it only for a temporary use and purpose. In a sale the thing itself is the subject of the contract; in hiring the use of the thing is the object.[o]

HIRING THINGS. The engagements of a person who takes anything to hire are to put the thing to no other use than that for which it is hired; to use it well; to take care of it; to restore it at the time appointed; to pay the rent or hire; and, in general, he ought to observe whatever is prescribed by the covenant, by law, and by custom;[p] and he stipulates for requisite skill and diligence to accomplish the purpose of the bailment, prudently and safely.[q]

In hiring horses, the hirer is bound to feed properly at his own expense, and treat the animals judiciously and prudently, unless where the owner retains control of the team by his driver.[r]

A hirer may allow his servants to use the thing, he being responsible for their conduct.[s] But he is not ordinarily responsible for the acts of the servants of the owner.[t]

The right of possession of the thing during bailment is in the bailee.[u]

If the thing fails to answer the purpose, the hirer is not bound to pay the price;[v] the same rule applies to letting of the use of things for a term of time at a fixed price.[w] The price is only due to the extent of the service.[w]

LETTING THINGS. The leading incidents of this class of bailments are as follows:

1. The thing bailed must be of a personal quality;

2. It must be tangible and under the power and control of the bailor, either as his own property, or under his own control, with the assent of the owner;

3. It must of course be a thing capable of being let;

4. There must be a price agreed between the parties, or at least it must be implied that a reasonable compensation is to be paid for the use in some way;

5. There must be a delivery of the thing to the bailee for a particular time, or for some particular use, and until that is accomplished. A hirer of things is bound to exercise watchfulness to keep them securely.[x]

In case of mere deposit of goods, or where there is only a payment for house room, and nothing for care and custody of the things bailed, the bailee is not responsible for the loss, unless upon proof of some particular default or neglect;[y] unless there was a total default in

f-9 Johns. 361; 2 Greenl. 308; Cox, 298; 3 Hill (S. C.) 284; 56 Penn St. 115; 38 Ill 289 g-1 Ohio St. 244; 3 Iowa, 599 h-33 N. H. 171: 2 E D. Smith, 60. i-Wright, 410; 1 Sneed, 248: 35 Mo 487. j-12 Johns 232; 7 Cow. 497 k-2 Cow. 593; see Story Bailm l-4 Johns. 84: 5 T. R. 143; 2 Ld. Raym. 913. m-2 Kent Comm. 456; Story Bailm. 359. n-Jones Bailm. 85, 86, 90, 103, 118; Kent Comm. 456; see COMMON CARRIERS, COMMON CARRIERS OF PASSENGERS, PRIVATE CARRIERS, above. o-Vinnius lib. 3 tit. 25, *in pr.* Poth. Lonage, *n.* *n.* 2–4; Jones Bailm. 86; Story Bailm. § 371; Parsons, Story, Contr. 2 Kent Comm. 456. p-1 Domat. 259; Bk. 1. tit. iv. § ii art 1; 1 Const. 121; Wh Am. Com 239; 13 Johns. 211; 1 Cow. 322: 6 Ga. 213. q-2 Ld Raym 909; 2 Fol. 62. b.; 3 Petersdorf Ab. 374; 1 Esp. N P. C. 314: 1 Gow. 30. r-2 Br. & B. 359; Story Bailm. 388–389: 3 Petersdorf Ab. 376, and note; 3 Camp. 4: 5 Esp. 35; Id. 263. s-1 Mod. 210; S. C. 3 Salk. 271; Story Bailm. § 400. t-5 B. & C. 547: 1 Redf Railw. 503. § 129: 24 Barb. 355; 3 Gray, 349: 6 M & W. 499 u-Yelv. 172; 10 Vt. 208; 5 Mass. 104; 3 Pick. 492; 12 Id. 139; 17 Vt. 499; 40 Ill. 320; 46 N. H 75. 2 Camp 335 v-3 Barb. 380. w-1 Head. 258; 1 Met. (Ky.) 288, 3 Ala. 562, 21 Texas, 478. x-2 C. B. 877; S C. 10 Jur. 435. y-10 Cush. 117; 9 Wend. 271.

delivering up the goods on demand, and no explanation, or an evasive one, or one that is improbable.[y]

WORK AND CUSTODY. All mechanics and artisans, who undertake to do work and repairs in the line of their employment, naturally become responsible for competent knowledge, skill, and experience, and also for the exercise of that diligence, care, and faithfulness which is requisite to the successful accomplishment of the work. And where the result of the undertaking is not successful, the laborer is not entitled to compensation; and he is also liable to an action for any injury to the materials furnished and with which he attempted to work.[z]

The general property of the thing bailed remains in the bailor, and if during the course of the work it is destroyed by fire or otherwise, without the fault of the bailee, the loss will fall on the bailor, and he will also be liable to the bailee for the work already accomplished;[a] but articles made to order are at the risk of the owner.[b]

In cases where the thing delivered for manufacture is not to be returned in specie but in kind, it is a sale, and not a bailment,[c] as where grain is delivered to be paid for in flour, etc.

Bailees for hire commonly have a lien for work and materials furnished by them.[d] But no lien can be created except by the owner's consent.[e]

Where work is not done in time, or according to contract, the bailor is only responsible for what it benefits him.[f]

A bailee for work for reward is not entitled to use material superior to those stipulated, with any view to higher compensation, unless there is evidence of the previous or subsequent assent of the bailor;[g] nor will the bailee be allowed to charge extra compensation for extra work, unless the deviation was previously or subsequently sanctioned by the bailor.[h]

Agisters of cattle or livery-stable keepers are only bound to use such care and diligence as prudent men do in their own affairs.[i]

INNKEEPERS. An inn is a house for the lodging and entertainment of travellers; often a tavern where liquors are furnished for travellers and others.[j]

An innkeeper is the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation.[k] But one who entertains strangers occasionally, although he may receive compensation for it, is not an innkeeper.[l]

A guest is a traveller who stays at an inn or tavern with the consent of the keeper.[m]

A boarder is one who being an inhabitant of a place, makes a special contract with another person for board, including food and lodging,[n] and is to be distinguished from a guest.[o]

A boarding-house or restaurant keeper is not an innkeeper, either as to duty, right, or responsibility.[p]

GUESTS—RIGHTS AND RESPONSIBILITIES. All who become the patrons of an innkeeper (not of a victualer, or boarding-house keeper, or a farmer, or other person), in his capacity as such, are guests. But it is requisite that the place where entertainment is sought be a common inn; and the guest must become a patron of the inn upon the expectation of both parties, to pay for what he receives; and the guest must not have changed his relation of a transient guest to that of a permanent boarder; for, if so, he is no longer entitled to that higher degree of responsibility which attaches to the office of an innkeeper. One may acquire the rights of a guest as to his horse by leaving him at the stable of an inn.[q] So, also, where, in addition to that, he took some of his meals at the inn.[r]

If, after taking lodgings at an inn, a guest leaves his horse there and goes elsewhere to lodge, he is still to be considered as a guest;[s] but not if he merely leaves goods for keeping, for which the landlord receives no compensation.[t] The length of time a man is at an inn makes no difference, whether he stays a day, a week, or a month, or longer, or only for temporary refreshment. So, always, that though not strictly *transient*, he retains his character as a traveller.[u] But if a person comes under a special contract to board at an inn, he is not, in the sense of the law a guest, but a boarder.[v]

Innkeepers are generally liable for all goods belonging to the guest brought within the inn. It is not necessary that the goods should have been in the special keeping of the innkeeper to make him liable. This rule is founded on

[y]-10 Cush. 117; 9 Wend. 271. [z]-1 Chit. Pl. 96, 140; 1 Car. & P. 352; 2 Id. 378; 2 Wils. 325; 8 East. 348; 1 Camp. 138; 3 Stark. 6; 1 Gow. 30. [a]-2 Kent Comm. 590; 1 Taunt. 137; 3 Burr. 1592. [b]-Story Bailm. § 427. a. [c]-3 Hill, 28; 3 Mason, 478; 8 Greenl. 101; 7 Cow. 752; 1 Ohio St. 244; 13 Mich. 10. [d]-Yelverton, 65, and note. [e]-19 Pick. 228. [f]-7 East, 479: 14 Johns. 377; 15 Vt. 515; 1 Barn. & C. 92; 2 Mass. 147: 19 Vt. 121; 3 Stark, 6: 1 Camp. 39, 190; 8 Vt. 54; 12 Id. 617. [g]-4 Taunt. 745, 749. [h]-24 Vt. 347; 11 Id. 549; 19 Id. 121; 3 T. R. 590. [i]-Holt. N. P. 547; 22 Texas, 657; 24 Mo. 600. [j]-Webst. Dict. Luke ii; in most of the States, the words Inn, Tavern, and Hotel are synonymous; Webst. Dict.; see 2 Kent Comm. (9th Ed.) 597:* note A. [k]-Bac. Abr. *Inns, etc.*; Story Bailm. § 475; "It ought to be a common inne" for passengers, not for neighbors or boarders; 8 Co. 32; it is not requisite that stables be connected with the house, or that travellers exclusively receive entertainment there, 3 B. & Ald. 283; 8 Co. 290; and it will not vary the character of the relation that one remains ever so long, or that terms of compensation are fixed by previous contract; 7 Cush 417; Story Bailm. § 477. [l]-2 Dev. & B. 424: 7 Ga. 296; 1 Morr. (Tenn.) 184. [m]-Bac. Abr. *Inns*, C. 5; 8 Co. 32. [n]-7 Cush. 424. [o]-Story Bailm. § 477, 26 Vt. 343: 26 Ala (N. S.) 271; 7 Cush. 417. [p]-6 Vt. 294; 1 Salk. 387; 1 Ld. Raym. 479; 3 El. & Bl. 144; S. C 25 Eng. L. & Eq. 76. [q]-1 Salkeld, 388. S. C. Ld. Raym. 866: Yelv. 67; Cro. Jac. 188; 26 Vt. 316: 1 Smith's Leading Cases, 50, note to Cayle's case; 8 Co. 32; Bac. Abr. Chitty Conrt. 476; 9 Pick. 280; 25 Wend. 653; 3 Hill, 486; 8 Blackf. 535; 16 Ala. 666. [r]-5 T. R. 273; 1 Smith L. Cas. 50, note to C's case; 53 Mann. 163; 33 Cal. 557. [s]-26 Vt. 316. [t]-1 Salk. 388; 2 Ld Raym. 866: Cro. Jac. 188. [u]-5 T. R. 273; 5 Barb 560. [v]-Bac. Abr. *Inns*, C 5; Story Bailm § 477; 26 Ala. (N. S.) 377; 26 Vt. 33[illegible], 343; see 7 Cush. 417

principles of public utility to which all private considerations ought to yield.[r]

A restaurant-keeper is not responsible as an innkeeper.[s] But one who occasionally entertains travellers may be an innkeeper.[t] And one is clearly not responsible, as such, to another not a guest.[u]

An innkeeper is responsible for an injury to a horse left at his stable, while driven for exercise.[v]

One wishing to become a guest at an inn, and ready and willing to pay for his entertainment, may recover damages for refusal to receive him.[w]

INNKEEPERS—DUTIES AND RESPONSIBILITIES. An innkeeper is bound to take in and receive all travellers and wayfaring persons, and to entertain them if he can accommodate them, for a reasonable compensation;[x] and he must guard their goods with proper diligence. He is liable only for the goods which are brought within the inn.[y] A delivery of the goods into the personal custody of the innkeeper is not, however, necessary in order to make him responsible; for, although he may not know anything of such goods, he is bound to pay for them if they are stolen or carried away, even by an unknown person;[z] and if he receive the guest, the custody of the goods may be considered as accessory to the principal contract, and the money paid for the apartments as extending to the care of the box and portmanteau.[a] The liability of an innkeeper is the same in character and extent with that of a common carrier.[b] He is responsible for the acts of his domestics and servants, as well as for the acts of his other guests, if goods are stolen or lost;[c] but he is not responsible for any tort or injury done by his servants, or others, to the person of his guest, without his own co-operation or consent.[d] But the innkeeper will be excused whenever the loss has occurred through the fault of the guest.[e]

An innkeeper is responsible presumptively for all losses, and can excuse himself only by showing that he did all in his power to prevent it.[f] He is responsible for all money and other articles the guest finds it convenient to carry with reference to his expenses and business. And if money is stolen from the guest, he may recover, although he omitted to put it in the safe;[g] but this will depend somewhat on the amount and use.[g] The obligation upon the guest to place his money in the safe seems to depend upon the amount and what is prudent.[h]

The guest must deposit his goods in the ordinary place, in care of the proper person. There is no particular course to be adopted by the guest, except to be prudent. It is the duty of the host to be watchful at all points.[i] He must not trust to the opinion of his guest, but see to it himself that the goods are positively kept safe. The omission of the guest to fasten his door, etc., will not excuse indifference on the part of the host. Where the guest exposes his money to be seen by others, and then leaves it within their reach, he has no redress if it is stolen.[j]

The guest must either take exclusive possession of his goods or else utterly disregard all ordinary precautions for safety, in order to exonerate the innkeeper;[j] and to charge the guest with negligence, exonerating the innkeeper, it should appear that the guest fully understood the danger and persisted in leaving his goods exposed.[k]

The innkeeper is responsible for all money and other property the guest finds it convenient to have with him, he using all reasonable precautions himself not needlessly to expose it to loss.[l] An innkeeper must furnish reasonable lodgings.[m]

A mere boarding-house keeper cannot be subjected to the responsibilities of an innkeeper.[n] And so if a guest takes a room at an inn for the purpose of selling goods therein, the landlord is presumptively not responsible for their safety.[o]

—— LIEN UPON THE EFFECTS OF THE GUEST. The innkeeper is entitled to a just compensation for his care and trouble in taking care of his guest and his property; and, to enable him to obtain this, the law invests him with some peculiar privileges, giving him a lien upon the goods brought into the inn by the guest; and, it has been said, upon goods on the person of his guest for his compensation;[p] and this, though the goods belong to a third person, if he was ignorant of the fact.[q] He has a lien upon all the goods of a guest in his custody for all expenses incurred;[r] and this will extend to his horse, harness and carriage, for the keeping of his horse, and probably for the whole sum due;[r] and this lien will not be affected by any defect in the title of the guest.[s]

r-2 Kent Comm. 459; 1 Hayw. 40; 14 Johns. 175; Dig. 4, 9, 1; see 3 B. & Ald. 283; 4 M. & S. 306; 1 Holt. N. P. 209; 1 Salk. 387; Carth. 417; 1 Bell. Comm. 469; Dane Abr. Index; Yelv. 67, *a*; 1 Smith L. Cas. 47; 8 Co. 32; 14 Barb. 193; 1 Cal. 221; 7 Cush. 417; 26 Vt. 242. s-1 Hilton, 193. t-2 Texas, 798. u-12 C. B. (N. S.) 638; 9 Jur. (N. S.) 1284. v-2 H. & C. 14; S. C. 9 Jur. (N. S.) 444. w-1 Car. & M. 494; 7 C. & P. 213; 8 M. & W. x-5 T. R. 274; 3 B. & Ald. 285; 1 C. & K. 404; 7 C. & P. 213; 4 Exch. 367. y-8 Co. 32; Jones Bailm. 91. z-8 Co. 32; 1 Hayw. 41; 14 Johns. 175; 23 Wend. 642; 5 Barb. 560; 7 Cush. 114; see 25 Eng. L. & Eq. 91; 27 Miss. 668; 1 Bell Comm. 469. a-Jones Bailm. 94; Story Bailm. § 470; 1 Bl. Comm. 430; 2 Kent Comm. 458–463. b-9 Pick. 280; 7 Cush. 417; 9 Humph. 746; 1 Cal. 221; 8 B. & C. 9; 31 Me. 478; 8 Blackf. 535; see 5 Q. B. 164; 23 Vt. 177; 26 Id. 317; 14 Ill. 129. c-7 Cush. 417; 5 Barb. 560. d-8 Co. 32. e-Story Bailm. § 483; 4 M. & S. 306; 1 Stark, 251, *n*; 2 Kent Comm. 461; 1 Yeates, 34. f-26 Vt. 316, 335. g-14 La. An. 324; S. P. Id. 524; 17 Ill. 302; 44 Barb. 31; 51 Id. 632; 14 Johns. 175; 1 Yeates, 34; 1 Cal. 221. h-27 Miss. 657; 21 N. Y. 111; 1 Bosw. 321; 4 E. D. Smith, 88; 13 Md. 126. i-3 F. & F. 306; 14 Johns. 175; 8 N. H. 508; 8 Wend. 547; 1 Ad. & El. 522; 53 Me. 163; 6 Hurl. & N. 205; S. C. F. & F. 283; 24 Barb. 384; 14 La. An. 524; 17 Q. B. 261; 4 Mam. & S. 306; 24 Ind. 347. j-2 Met. (Ky.) 439; 8 B & C. 9 1 Ad. & El. 522; 1 Hilton N. Y. C. P. 84. k-Redf. on Car. & Bailm. §§ 74, 76. l-7 Cush. 417, 427; 2 B. & Ad. 803; 6 Eng. L. & Eq. 349; 17 Q. B. 261; 1 Haym. 40; 2 Kent Comm. 592, 594; Story Bailm. 478, 481; 1 Yeates, 35; 12 Mod. 483, 487. m-See 8 M. & W. 269. n-12 Mod. 254; 1 Salk. 387; S. C. 1 Ld. Raym. 479; 4 Camp. 77; 3 El. & Bl. 144; S. C. 25 Eng. L. Rep. 76; 8 C. B. (N. S.) 254; 33 Cal. 557. o-4 Maule & Selw. 306; 1 Holt N. P. 209; S. C. 1 Stark. N. P. 249. p-3 B. & Ald. 287; 8 Mod. 172; 1 Show. 270; see 7 C. & P. 67; 3 Hill, 485; 1 Rich. 213; 26 Vt. 335; 3 M. & W. 248; Bac. Abr. *Inns, etc.*, D. q-3 Stark. 172; 12 Q. B. 197; 7 C. & B. 208; 11 Barb. 41. As to detaining the horse of a guest, see 25 Wend. 654; 9 Pick. 280. r-Story Bailm. § 476; 3 M. & W. 348. s-13 Q. B. 197; 1 C. B. (N. S.) 267; 10 Exch. 417; 28 Eng. L. & Eq. 443

An innkeeper has no lien upon the effects of his ordinary boarders for their expenses incurred.[t]

An innkeeper has a lien upon a traveller's horse put in his stable, although he lodge elsewhere. So, also, upon all property the guest leaves in his possession, for all expense incurred.[u]

The lien of an innkeeper is not affected by the fact that the guest is an infant.[v]

The landlord may also bring an action for the recovery of his compensation.

LOANS are bailments without reward. Bailments of articles for use or consumption without reward. The things so bailed.

A loan, in general, implies that a thing is lent without reward; but, in some cases, a loan may be for a reward; as, the loan of money.[w] It would be an inquiry too purely speculative, whether this use of the term loan originated in the times when the taking of interest was considered usury and improper—the bailment of money which was to be returned in kind—the supposition would furnish a reasonable explanation to the exception to the general rule that loan includes properly only those bailments where no reward is given or received by the bailee. In order to make a contract usurious there must be a loan,[x] and the borrower must be bound to return the money at all events.[y] The purchase of a bond or note is not a loan,[z] but if such a purchase be merely colorable, it will be considered as a loan.[a]

—— FOR CONSUMPTION. A loan for consumption is a contract by which the owner of a personal chattel, called the lender, delivers it to the bailee, called the borrower, to be returned in kind. For example, if a person borrows a bushel of wheat, and at the end of a month returns to the lender a bushel of equal value. This class of loans is commonly considered under the head of bailments; but it lacks one essential element of bailments: that of a *return* of the property; it is more strictly a barter or exchange; the property passes to the borrower.[b] Those cases, sometimes called *ventem* (the corresponding civil law term), such as where corn is delivered to a miller to be ground into meal, or wheat into flour, are either cases of *hiring* of labor and service, as where the miller grinds and returns the identical wheat ground into flour, retaining a portion for his services; or constitute a mere exchange, as where he mixes the wheat with his own, undertaking to furnish an equivalent in corn. It amounts to a contract of sale, payment being stipulated for in a specified article instead of money.

—— FOR USE. A loan for use is a bailment of an article to be used by the borrower without paying for the use.[c] A loan for use (called *commodatum* in the civil law) differs from a loan for consumption (called *mutuum* in the civil law) in this, that the *commodatum* must be specifically returned, the *mutuum* is to be returned in kind. In the case of a *commodatum* the property in the thing remains in the lender; in a *mutuum* the property passes to the borrower.

The loan, like other bailments, must be of something of a personal nature;[d] it must be gratuitous[e] for the use of the borrower; and this is the principal object of the bailment;[f] and must be lent to be specifically returned at the determination of the bailment.[g] The general law of contracts governs as to the capacity of the parties, and the character of the use;[h] he who has a special property may loan the thing, and this even to the general owner, and the possession of the general owner still be that of a borrower.[i]

The borrower may use the thing himself; but may not, in general, allow others to use it[j] during the time, and for the purposes, and to the extent contemplated by the parties.[k] He is bound to use extraordinary diligence;[l] he is responsible for accidents, though inevitable, which injure the property during any excess of use;[m] he must bear the ordinary expenses of the thing,[n] and must restore it at the time and place, and in the manner contemplated by the contract,[o] including also all accessories,[p] or increase. He must, as a general rule, return it to the lender.[q] The borrower of goods is responsible for any damage or loss, if it was occasioned by his neglect, or if he used the goods in a manner not warranted by the terms of the loan;[r] he is bound to exercise all the care and diligence that the most careful persons are accustomed to apply to their own affairs; and in his case the omission of the most exact and scrupulous caution is regarded as culpable.[s]

The borrower puts the thing to any other use at his peril, and he must do all he would to preserve his own property, of equal value.[t]

The borrower is not responsible for loss by robbery without his fault.[u]

The lender may terminate the loan at his pleasure;[v] he is perhaps liable for expenses, adding a permanent benefit.[w] The lender still

t-8 Rich. 423. u-25 Wend. 653: 9 Pick. 280. v-2 Duval, 147. w-7 Pet. 109. x-Cowp. 112, 770; Ves. Ch. 527; 2 Bl. 859; 3 Wils. 390. y-2 Sch. & L. Ch. Ir. 470. z-3 Sch. & L. Ch. Ir. 469; 9 Pet. 103. a-2 Johns. Cas. 60, 66; 12 S. & R. 46; 15 Johns. 44. b-4 N. Y. 76; 8 Id. 433; 1 Ohio St. 98; 3 Mas. C. C. 478; 1 Blackf. 353; Story Bailm. § 439. c-2 Kent Comm. (4th Ed.) 573. d-Story Bailm. § 223. e-2 Ld. Raym. 913. f-Story Bailm. § 225; 13 Vt. 161. g-Story Bailm. § 228. h-Id. §§ 50, 162, 302, 380. i-1 Atk. Ch. 235; 8 T. R. 199; 2 Taunt. 268. j-1 Mod. 210; 4 Sandf. 8. k-5 Mass. 104; 1 Const. 121; 3 Bingh. (N. C.) 468; Bracton, 99 100. l-3 Bingh. (N. C.) 468; 14 Ill. 84; 4 Sandf. 8. m-5 Mass. 194; 16 Ga. 25. n-Jones Bailm. 67. o-16 Ga. 25; 12 Texas, 373; Story Bailm. 99. p-16 Ga. 25; 2 Kent Comm. (4th Ed.) 566. As to the place of delivery see 9 Barb. 189; 1 Me. 120; 1 N. H. 295; 1 Conn. 255; 5 Id. 76; 16 Mass. 453, Chipman Contr. 25. q-7 Cow. 278; 1 B. & Ad. 450; 11 Mass. 211. r-Wright, 410; 1 Sneed. 248; 35 Mo. 487; 2 Ld. Raym. 909; 10 Johns. 172; 10 Mass. 125; Jones Bailm. 64. s-1 Abb. Dig. 368; 4 Sandf. S. C. 5; 14 Ill. 84; 17 Ind. 155; 21 Ill. 259; 3 Allen, 594; 9 Barb. 176; 13 Vt. 161. t-37 Ill. 259; Story Bailm. §§ 2, 3, 4. u-28 Ind. 167. v-9 East. 49; 1 T. R. 480; 9 Cow. 687; 8 Johns. 432; 16 Ga. 25. w-Story Bailm. § 274.

retains his property as against third persons, and, for some purposes, his possession.[r]

MANDATE is a bailment of property in regard to which the bailee engages to do some act without reward.[s]

Mandates and deposits closely resemble each other; the distinction being, that in mandates, the care and service are the principal, and the custody the accessory; while in deposits, the custody is the principal thing, and the care and service are merely accessory.[t]

The mandator is the person employing another to perform a mandate.[u]

The mandant is the bailor in a contract of mandate.

The mandatary is the one who undertakes to perform a mandate.

For the creation of a mandate it is necessary:[v] 1. That something should exist which should be the subject-matter of the contract; 2. That it should be done gratuitously; and 3. That the parties should voluntarily intend to enter into the contract.

There is no particular form or manner of entering into the contract of mandate prescribed, in order to give it validity. It may be verbal or in writing; express or implied; in solemn form, or in any other manner.[w] The contract may be varied at the pleasure of the parties. It may be absolute or conditional, general or special, temporary or permanent.[x]

A voluntary undertaking is not obligatory; but if entered upon, the confidence created by the delivery of the goods imposes upon the bailee the duty of performing the service according to the expectation thus voluntarily created.[y] But a bailee without reward, or profession of skill, is only bound to act according to his ability.[z] The mandatary, upon undertaking his trust and receiving his article, is bound to perform it as agreed upon,[a] and is responsible only for gross negligence;[b] but in considering the question of negligence, regard is to be had to any implied undertaking to furnish superior skill, arising from the known ability of the mandatary.[c] He must render an account of his proceedings, and show a compliance with the conditions of the bailment.[d]

One may, by special undertaking, or intermeddling with goods, make himself responsible for all losses.[e]

A mandatary may use the thing in a reasonable manner, by himself or his servants; but if he possesses skill, he is bound to use it the same as a hirer, who undertakes to use skill.[f]

A mandatary, who does not stipulate for compensation, must be understood to act without, unless the circumstances indicate the contrary.[g]

A promise of a bailee to return goods does not increase his responsibility.[h]

The question of gross negligence is one for the jury;[j] and the plaintiff must show it.[k]

The dissolution of the contract may be by renunciation by the mandatary before commencing the execution of the undertaking;[l] by revocation of authority by the mandator;[m] by death of the mandator;[n] by death of the mandatary;[o] by insanity or bankruptcy of either party;[p] and by change of state of the parties;[q] and, in some cases, by operation of law.[r]

PAWN OR PLEDGE is a bailment of personal property as security for some debt or engagement. It is when the debtor delivers any personal property to the creditor, to be kept by him until the debt is paid; and upon failure of the debtor to meet his obligation, according to its terms, to dispose of the pledge in payment of the debt as far as it will go, and if anything remains after full payment, to return it to the pledgor.

There is a clear distinction between mortgages and pledges. In a pledge the legal title remains in the pledgor. In a mortgage it passes to the mortgagee. In a mortgage the mortgagee need not have possession. In a pledge the pledgee must have possession, though it be only constructive. In a mortgage at common law, the property, on non-payment of the debt, passes wholly to the mortgagee; in a pledge the property is sold, and only so much of the proceeds as will pay his debt passes to the pledgee. A mortgage is a conditional conveyance of property, which becomes absolute, unless redeemed at a specified time. A pledge is not strictly a conveyance at all, nor need any day of redemption be appointed for it. A mortgagee can sell and deliver the thing mortgaged, subject only to the right of redemption.

r-11 Johns. 285; 6 Id. 195; 13 Id. 141, 561; 7 Cow. 753; 9 Id. 687; 1 Pick. 389; 5 Mass. 303; 1 T. R 480; 2 Campb. 464; 2 Bingh. 172; 1 B. & Ald. 59; 2 Cr. M. & R. 659. As to whether the property is transferred by a recovery of judgment for its value see 26 Eng. L. & Eq. 328; 2 Str. 1078; Metc. Yelv. 67, n.; 5 Me. 147; 1 Pick. 62; see generally Edw. Jones & Story Bailm.; Kent Comm.; Lect. 46; Chipman & Parsons, Contr. s-Story Bailm. § 137. t-Id. § 140. u-1 Brown Civ. Law. 382; Halif. Anal. Civ. Law, 70. v-Poth. Pand. 1, 17, *t.* 1, p. 1, § 1; Poth. de Mandat *c.* 1, § 2. w-Story Bailm. § 160. x-Wood Civ. Law, 242; 1 Domat *b.* 1, *t.* 15, §§ 1, 6, 7, 8; Poth. de Mandat *c.* § 3, *nn.* 34–36. y-2 Ld. Raym. 909; 5 T. R. 143; 4 Johns. 84; 2 Johns. Cas. 92; 3 Mason C. C. 132; 2 Murphy, 373; Wright, 410; 1 Sneed. 248; 35 Mo. 487. z-1 H. Bl. 158; 4 Mo. & M. 172; 2 Ad. & El. 256; 18 Maine, 174; 2 Murphy, 373; 3 Met. 91; 5 Ind. 131; Id. 462; 18 Ga. 495; 17 Ill. 170; 3 Met. (Ky.) 378; 21 Texas, 148. a-2 Ld. Raym. 919; 1 Taunt. 523; 5 B. & Ald. 117; 1 Sneed, 248; 6 Binn. 308; 5 Fla. 38. b-2 Kent Comm. (4th Ed.) 571–573; 1 H. Bl. 158; 4 B. & C. 345; 2 Ad. & E. 256; 16 How. 475; 3 Mason C. C. 132; 14 S. & R. 275; 17 Mass. 459; 2 Hawks. 146; 8 Met. (Mass.) 91. c-Story Bailm. §§ 177, 182; Jones Bailm. 14, 16; 20 Mart. 68; whether a bank is liable for neglect of its agent in collecting notes, see 22 Wend. 215; 3 Hill, 560; 8 N. Y. 459; 3 Hill (S. C.) 77; 4 Rawle, 384; 2 Gall. C. C. 565; 10 Cush. 583; 12 Conn. 303; 6 Harr. & J. 146; 4 Whart. 105; 1 Pet. 25. d-Story Bailm. § 191, *et seq.* e-1 Stark. 237. f-9 C. & P. 383; 11 M. & W. 113; 13 Wis. 104; 8 B. Mon. 415. g-12 La. An. 119; 16 Id. 155; 5 Bosw. 85. h-33 Barb. 241; Jones Bailm. 601. j-2 Ad. & E. 256; 3 Bingh. (N. C.) 468; 11 Wend. 25. k-3 East. 192; 4 Esp. 165; 2 Ad. & E. 80; 10 Watts, 335; see 3 Johns. 170; 2 Wheat. 100; 7 B. Mon. 661; 8 Humph. (Tenn.) 430. l-2 M. & W. 145; 1 M. & R. 38; 2 Ld. Raym. 909; 22 Eng. L. & Eq. 501; 8 B. Mon. 415; 3 Fla. 38. m-6 Pick. 198; 5 Binn. 316; 5 T. R. 213; see 4 Taunt. 541; 16 East. 382. n-6 East. 356; 5 Esp. 118; 2 Ves. & B. Ch. Ir. 51; 2 Mass. C. C. 244; 8 Wheat. 174. o-2 Kent Comm. 504; 8 Taunt. 403. p-Story Bailm. § 262–264; 2 Mason C. C. 242; 8 Wheat 174. q-Story Ag. § 481. r-Id. § 500.

A pledgee cannot sell and deliver his pawn until the debt is due and payment denied. Pledge and mortgage are, therefore, different in law.[a]

Any tangible property may be pledged. Hence, not only goods and chattels, and money, but also negotiable paper may be put in pledge. So may choses in action, patent rights, coupon bonds, and manuscripts of various sorts.[t] A life policy of insurance, or a wife's life policy may be pledged. So, also, a bank can pledge the notes left with it for discount, if it is apparent on the face of the notes that the bank is their owner. But the common law does not permit the pay and emoluments of officers and soldiers to be pledged from public policy.[u] Hence, probably, a fishing bounty could not be pledged, on the ground that pensions and bounties to soldiers, sailors, etc., for their personal benefit, cannot be pledged.

One may pledge future accessions to existing property;[v] as bricks to be made upon a brickyard, in security for the use of the same;[w] and the product of a farm to be held as security for rent.[x]

A pledge in security of a debt does not suspend the right of action upon the debt, unless it be so stipulated.[y]

The pledge of negotiable securities shuts out all equitable defences.[z]

Coupon bonds pledged are not to be collected by the pledgee, but sold in the market;[a] but he may collect the interest coupons as they fall due.[b]

A bond and mortgage secured on real estate may be pledged.[c]

Where an illegal debt is secured by pledge, the pledgor cannot recall the pledge without payment of the debt.[d]

Factors have no power to pledge the goods of their principals,[e] unless that power is expressly given by statute.[f]

The pledgee may assign the goods and debt so as to transfer his interest.[g]

A CO-PLEDGEE may hold a pledge for another pledgee also, and it will be a good pledge for both. If the pledge be not large enough for both debts after sale, and no other arrangement be made, the prior pledgee will have the whole of his debt paid before any part of the proceeds is applied to the subsequent pledgee. If there is no priority of time they will divide ratably. But an agreement between the parties will always determine the rights of two or more pledgees.[h] When possession is given to one of three pledgees, to hold for all three, the other two have a constructive possession, which is equally good, for the purpose of sharing, when in actual possession; hence the mere manual possession of one pledge will not give a right to discharge a whole debt of the holder, and a part only of his co-pledgee's. So, by the rule of constructive possession, if the holder should lose the pledge by his own negligence, he would be liable to his co-bailees out of actual possession, as well as to his bailor.

DELIVERY OF PLEDGE. The first essential thing to be done is the delivery of the pledge to the pledgee. Without his possession of the thing the transaction is not a pledge.[i] But a constructive possession is all that is required of the pledge. Hence, goods at sea or in a warehouse may pass by transfer of the muniments of title or by symbolic delivery. Stocks and equitable interests may be pledged; and it will be sufficient if, by proper transfer, the property be put within the power and control of the pledgee.[j] Stocks are usually pledged by delivery of the company's certificate, leaving the actual transfer to be made subsequently. But the joint stock company must be notified of the transfer.

Prima facie, if the pledgee redeliver the pledge to the pledgor, third parties without notice might regard the debt as paid; still this presumption may be rebutted. A temporary redelivery to the pledgor makes him only the agent or bailee of the pledgee, and the latter does not lose his special property or even his constructive possession.[k]

It is no objection to the validity of a pledge that the creditor has sufficient security for the payment of the debt; he is entitled to hold all his securities until the debt is paid.[l]

FACTORS cannot at common law pledge his principal's goods, and the principal may recover them from the pledgee's hands.[m] This power is, by statute, subject to various modifications, given to factors in many States.[n] See GENERAL STATUTES.

HOLDING THE PLEDGE FOR OTHER DEBTS. A pledge cannot, in general, be held for any other debt than that which it was given to secure, except on the special agreement and consent of the parties.[o]

a-3 Brown Ch. 21; Yelv. 178; Prac. in Ch. 419; 1 Ves. Ch. 358; 2 Id. 372; 1 Bulstr. 29; Com. Dig. *Mortgage;* 5 Johns. 260; 8 Id. 97; 2 Pick. 607; 5 Id. 60; 3 Penn. St. 208; 6 Mass. 425; 22 Me. 248; 6 Pet. 449; 2 Barb. 538; 4 Wash. C. C. 418; 2 Ala. (N. S.) 555; 9 Me. 82; 5 N. H. 545; 4 Denio, 489; 5 Blackf. 320; 3 Mo. 516; 4 Barb. 491; 3 Texas, 119; 1 Edm. Sel. Cas. 201; 1 Parsons Contr. 591, *et seq.* t-1 Ves. Ch. 278; 2 Taunt. 268; 15 Mass. 389, 534; 2 Blackf. 198; 7 Me. 28; 4 Denio, 227; 2 N. Y. 443; 1 Stockt. 667; Story Bailm. § 290. u-H. Bl. 627; 4 T. R. 248. v-1 Pick. 398; 4 Mason, 515; 1 Pet. (U. S.) 448. w-14 Pick. 497. x-18 Vt. 461. y-19 Pick. 117; 34 Vt. 89; 23 Me. 202; 11 Met. 226; 10 Ala. 535; 7 S. & M. 179; 1 La. An. 344; Id. 379; 14 N. H. 567; 1 Grant. Cas. 397; 10 B. Mon. 239; 6 Cal. 643; 4 Ind. 425; 10 Bosw. 208; 11 Iowa, 410; 7 Mich. 355; 12 Ind. 427; 14 Ohio St. 1; 13 Minn. 232. z-13 Gray, 7. a-1 Beasley, 323. b-48 Maine, 335. c-48 Maine, 335; 9 Bosw. 322; Id. 532. d-6 Allen, 139. e-5 T. R. 604; Story Bailm. § 325; 3 B. & A. 616; 3 B. & C. 342; 15 Mass. 389; 1 M. & S. 140, 484; 6 Id. 1; 5 Johns. Ch. 429; 2 Kent. Comm. 625; 5 Cush. 111; this question is very fully discussed in Parsons Marit. L. 363. f-7 B. & C. 517; 6 M. & W. 572; 2 M. & R. 22; 3 Denio, 472; 4 Id. 323; 2 Sandf. 68. g-20 Pick. 399; Story Bailm. § 324; 6 Met. h-12 Mass. 321. i-37 Me. 543. j-12 Mass. 300; 20 Pick. 405; 22 N. H. 196; 2 N. Y. 403; 7 Hill, 497. k-5 Bing. (N. C.) 136; 11 Eng. L. & Eq. 584; 3 Whart. 531; 5 Humph. 308; 32 Me. 211; 1 Sanf. 248. l-2 Wheat. 390; 15 Wend. 218. m-2 Str. 1178; 6 M. & S. 1; 3 Bingh. 139, 163; 2 B & B. 639; 4 B. & C. 5; 1 M'Cord, 1; 6 Met. (Mass.) 68; 20 Johns. 421; 4 H. & M. 432; 18 Mo. 147, 191; 11 How. 209, 226. n-7 B. & C. 517; 6 M. & W. 572; 2 M. & R. 22; 3 Denio, 472; 4 Id. 323; 2 Sanf. 68. o-7 East. 224; 6 T. R. 258; 2 Ves. Ch. 372; 6 Id. 226; 7 Port. (Ala.) 466; 15 Mass. 389; 2 Leigh. 493; 14 Barb. 536; see 2 Bell Comm. 22

LOSS OF PLEDGE. A pledgee is not responsible for theft or robbery, unless he refuses to return the goods after the bailment expires.[o] Loss by theft is *prima facie* evidence of a want of ordinary care, and the bailee must rebut the presumption; the facts in each case regulate the liability. Theft is only evidence, in short, and not absolute presumption of negligence. Perhaps the only safe rule is, that where the pledgee pleads loss by theft as a ground for not performing his duty, to excuse himself, he must show that the theft could not have been prevented by ordinary care on his part. If the bailor should assert in his complaint that the pledge was lost by the bailee's fault, he would be compelled to prove the charge as laid.

PROPERTY IN THE PLEDGE. A pledgee has at common law a special property in the pledge, and is entitled to the exclusive possession of it during the time and for the objects for which it is pledged. If a wrong-doer take the pledge from him, he is not thereby ousted from his right. His special property is enough for him to support replevin or trover against the wrong-doer. He has, moreover, a right to action because he is responsible to his pledgor for proper custody of the bailment. The pledgor, also, may have his action against the wrong-doer, resting it on the ground of his general property. A judgment for either pledgor or pledgee is a bar against a similar action by the other.[p]

The bailee, having a special property, recovers only the value of his special property as against the owner, but the value of the whole property as against a stranger, and the balance beyond the special property he holds for the owner.[q] So, if the owner begins the action and recovers the whole damages, including those for deprivation of possession, it must be with the consent of the pledgee.

A pledgee may bring replevin or trover against the pledgor if the latter remove his pledge before paying the debt, and thus injure the pledgee's rights, on the ground that the owner has parted with his absolute right of disposing of the chattel until he has redeemed it from its state of pledge.[r]

REDEMPTION. Where no definite day is appointed the pledge may be redeemed at any time, in the absence of a statute to the contrary; hence, if the pledgee himself do not give notice to the pledgor to redeem, the latter has his whole lifetime in which to do so; and his right of redemption survives and goes to his representatives.[s]

SALE OF PLEDGE. If the pledgor fail to pay the debt, the pledgee may sell the pledge. A demand of payment, however, must be made before the sale; and if the pledgee mentions no time of sale, he may demand at once, and may sell in a reasonable time after demand.[t] The pledge must be sold at public auction, and, if it be divisible, only enough must be sold to pay the debt. In general, also, the pledgee must not buy the pledge when put up at auction. He must not bid *bona fide* and bring up the pawn. Still, the purchase of the pledgee is not in itself void, but voidable at the election of the pledgor, and the latter may ratify the purchase by receiving the surplus over the debt, or avoid it by refusing to do so; the pledgee may charge the pledge with expenses rightfully incurred, as costs of sale, etc. If the pledge when sold *bona fide* does not bring enough to pay the debt, the pledgee has still left a good claim against the pledgor for the balance.[u]

TRANSFER OF PLEDGOR'S INTEREST. The pledgor may sell or transfer his right to a third party, who can bring trover against the pledgee if the latter, after tender of the amount of his debt, refuse to deliver the pawn.[v] A creditor of the pledgor can take only his interest, and must pay the debt before getting the pawn. The pledgor's general property in the pawn may be sold at any time on execution, and the purchaser or assignee of the pledgor succeeds to the pledgee's, and may himself redeem. A pledgee may dispose of the pledge in payment of the debt at maturity.[w] A pledgee may assign a debt and pledge together.[x]

USE OF PLEDGE. The reasonable use of a pledge is allowed, provided it be of no injury or peril to the bailment. The reason is, that where use of the pledge is beneficial to it, or cannot depreciate it, the consent of the pledgor may fairly be presumed, but not otherwise. If the pawn be in its nature a charge upon the pawnee—as a horse or cow—he may use it moderately, by way of recompense. For any unusual care he may get compensation from the owner, if it were not contemplated by the parties or implied in the nature of the bailment.[y] The pawnee is answerable in damages for an injury happening while he is using the pawn. Still, though he use it tortuously, he is only answerable by action. His pledgee's lien is not thereby forfeited.[z] A pledgee can exercise a horse, but not loan it for hire; the rule is that if he derive any profits from the pledge they must be applied to the debt.[a] Hence, if a slave be pledged as security for a debt, the creditor must account for the profits of the slave and apply them to extinguish the debt.[b]

RECEIPTOR. A receiptor is a person who, when goods are attached, becomes surety to the officer to have them forthcoming on demand, or in time to respond to the judgment, when the execution (or order of sale) shall be

o-B. N. P. 720; 4 Co. 83; Yelv. 178; 2 Exch. 479; 5 Vt. 532; 5 Johns. 261; 2 Pick. 267; 8 Johns. 96; 4 Cow. 481; 2 Ves. Jr. 372, 378; Story Eq. Jur. §§ 1030, 1033. p-2 Bl. Comm. 395; 6 Bligh. N. S. 27; 1 B. & Ald. 59; 5 Binn. 457; 16 Wend. 335; 9 Gill. 7; 13 Me. 436; 13 Vt. 504. q-15 Conn. 302. r-2 Taunt. 268; 1 Sandf. 208; 22 N. H. 196; 11 N. Y. 150; 2 M'Cord, 126. Yet in trover the damages recovered cannot be greater than the amount of the debt, if the defendant derives no title under the pledgor. 4 Barb. 491; 13 Ill. 465. s-3 Mo. 316 1 Call. 290. t-Glanville lib. x. c. 6; 5 Bligh. (N. S.) 136; 9 Mod. 275; 2 Johns. Ch. 100; 1 Sandf. 351; 8 Ill. 423; 4 Denio, 227; 3 Texas, 119; 1 Browne, 176; 22 Pick. 40; 2 N. Y. 443. u-See below, Transfer of Pledgor's interest. v-9 Cow. 52; 13 M. & W. 480. w-2 Ld. Raym. 909; Jones Bailm. 74 *et seq.* x-2 Vt. 309; 14 Pick. 197; 13 Id. 216; 9 Wend. 345. y-Ld. Raym. 909; 2 Salk. 522; Parsons' Contr. 593. z-4 Watts, 414. a-2 Murphy, 111. b-Wythe, 55; 1 Ala. (N. S.) 558.

issued, upon which, the goods are bailed to him.[c]

The practice of delivering property attached to a bailee, for safe-keeping, must have been coeval with the practice of making attachments. It is, in its nature, a simple deposit, a delivery of the property, to be kept by the depositary, without compensation, until called for by the attaching officer;[d] a practice which is not only lawful, but, in a high degree, useful and convenient.[e] It is not necessary, but is better, to take from the bailee a writing acknowledging the receipt and promising to re-deliver the property to the officer on demand.[f]

Receipt for Attached Property.

A. B., plaintiff, *vs.* C. D., defendant. } In the —— Court.

Place ——, Date ——. Received of C. C., constable, of ——, in said county, the following property, by him attached in the above entitled action, to wit: (*here particularly describe the property, so it can be identified*),[g] promising to redeliver such property to said officer on demand. B. E.

Usually, a friend of the defendant, though the plaintiff, may become bailee.[h] The bailee has no power to sell the goods,[i] but must return the identical articles delivered to him, or pay the debt[j] upon demand;[k] and he is liable to the officer for the property,[l] or its full value,[m] or the extent of the officer's liability,[n] or for damages.[o] He is the servant or agent of the officer.[p]

If the bailee abandon possession and custody of the property, and it is attached by another officer,[q] or come into possession of an adverse claimant,[r] the lien of the first attachment is lost.

An officer, by the levy of an attachment, acquires a special property in the goods seized, which is not lost by the bailment,[s] and he becomes liable for them, at the termination of the suit, either to the plaintiff[t] or defendant;[u] but not to the plaintiff where the bailee, nominated and approved by such plaintiff, is in default.[v]

Property may be returned to the person in whose possession it was found or to the defendant upon the execution of an undertaking for its return to the officer as required by law. This undertaking, like the bailment of attached property, does not discharge the lien of the attachment.[w] Property thus bonded cannot be seized under another attachment, or under a junior execution.[x]

TELEGRAPH COMPANIES. The electro-magnetic telegraph is an instrument or apparatus which, by means of iron wires conducting the electric fluid, conveys intelligence to any given distance with the velocity of lightning.[y]

A telegraph is a message sent by telegraph,[z] a telegraphic message, dispatch, or communication.

The telegraph is a machine for communicating intelligence from a distance by various signals or movements previously agreed on; which signals represent letters, words, or ideas, which can be translated from one station to another, as far as the signals can be seen. This machine was invented by the French about the year 1793–94. The electro-magnetic telegraph is an apparatus for communicating words or language to a distance by the use of electricity as above stated.

Telegraphic communications must be proved in the same manner as other writings, such as letters and contracts, are—that is, by the original. If that is lost, it may be proved by copy, or, in default of that being obtainable, by oral testimony.[a] Sometimes the person to whom it is addressed is in the office when it is received; in such case, if it is not reduced to writing, it can only be proved, like other matters resting in parol, by the recollection of the witnesses in whose hearing it was repeated.[b]

Where both parties agree to communicate by telegraph, each assumes the risk of his own messages.[c] If one employ a special operator, he assumes the risk of transmission;[d] it is his own act by his agent.[d] Notice that the company will not be responsible for mistakes in unrepeated messages is binding.[e] But they are always responsible for ordinary neglect.[e] Companies can only be regarded as insurers of the accuracy of repeated messages,[e] and responsible where specially cautioned;[f] but, generally, are not responsible for errors in unrepeated messages, except on proof of negligence or want of skill.[g] They are not responsible as common carriers, and may limit responsibility to their own lines and to repeated messages, if not guilty of negligence.[h] It is the duty of the company to transmit the messages promptly and fairly. The company must make good the loss resulting directly from any default on their part.[i] So, also, in cases of failure to send messages by telegraph companies, according to their duty and undertaking.[j]

Where a merchant in San Francisco receives a telegraphic message from New York, which leads him into a purchase involving inevitable pecuniary loss, such as would not have occurred but for an error in the transmission of the message, he is not compelled to seek through an

c-Story Bailm. § 124. d-8 Foster, 266. e-5 N. H. 433. f-1 Vt. 9; 31 Maine, 152; 40 Miss. 472; 23 Ark. 61. g-12 N. H. 341. h-20 Conn. 364. i-8 Vt. 15. j-1 R. I. 454. k-8 Foster, 266; 16 Mass. 453; 14 Vt. 491. l-1 R. I. 454; 11 Vt. 230; 13 Id. 235; 11 N. H. 256; 13 Conn. 507. m-2 N. H. 142; 10 Id. 9; 19 Maine, 49; 1 D. Chip. 396. n-15 Maine, 79; 31 Id. 287; 41 N. H. 283; 3 Id. 299; 11 Id. 256; 13 Id. 507; 13 Vt. 235. o-14 Maine, 429; 28 Id. 505; 15 Id. 79. p-9 Mass. 104; Id. 265; 13 Id. 394; 14 Id. 217; 1 Pick. 232; 19 Maine, 255; 23 Id. 248; 6 Johns. 195; 9 Id. 361; 7 Cowen, 274; 8 Wend. 667; 34 Vt. 188. q-16 Pick. 144. r-8 Pick. 419. s-1 D. Chip. 51; Id. 280; 4 Vt. 605; 5 Id. 263; 8 Id. 15; 15 Id. 310; 31 Id. 433; 2 N. H. 66; 10 Id. 9; 13 Mass. 394; 20 Conn. 364; 2 Pick. 318; 1 Vt. 9. t-Cases above cited. u-2 N. H. 142. v-19 Pick. 520; 20 Maine, 183; 21 Id. 558; 24 Id. 250. w-20 Miss. 622; 12 Ala. 138; 6 Ala. (N. S.) 45; 7 Mo. 411; 7 Ill. 468; 10 Pet. 400; 10 Humph. (Tenn.) 434. x-6 Ala. (N. S.) 45; 7 B. Mon. 651; 4 La. 304. y-S. F. B. Morse. z-Webster Dict. a-29 Vt. 127; 21 Ill. 591; 37 N. Y. 457; 37 Mass. 682. b-29 Vt. 127. c-41 Barb. 255; 1 Kernan, 441; 9 How. 390. d-35 Barb. 463. e-33 Eng. L. & Eq. 180; S. C. 17 C. B. 3. f-55 Penn. St. 262. g-13 Allen, 226; 1 Met. (Ky.) 164; 5 Am. Law Reg. (N. S.) 407; S. C. 1 Daly C. P. 547; 45 Barb. 274. h-15 Mich. 525; 37 Mo. 472. i-16 N. Y. 489. j-32 Barb. 530.

extensive chain of telegraphic communication to ascertain where the error was made, but the company to which the message was originally delivered, and to which the whole compensation for its price was paid, is liable. Having peculiar facilities, the obligation is then upon this company to ascertain where and how the error occurred, and to fix the ultimate responsibility where it belongs.[k] The party entitled to recover penalty is the contracting party.[l] It is the duty of the company to serve all without discrimination or preference.[m] Statutory prohibition against disclosing the secrets of the office, or communicating messages, does not extend to a disclosure as a witness in a court of justice.[n]

Placing poles in the highway, without legislative authority, creates a nuisance,[o] but telegraph poles once legally established in the highway cannot afterward be removed or treated as a public nuisance.[p] Their right to "pass directly across a railway" does not justify their boring under it.[q] Erecting posts in a highway without legislative authority is a nuisance, even if sufficient space remain for the passage of travel.[r]

TELEGRAPH FORMS.

Telegraph Message—General Form.

As delivered by sender to the Company's Agent.

THE —— TELEGRAPH COMPANY.

All messages taken by this Company subject to the following terms:

To guard against mistakes or delays, the sender of a message should order it repeated; that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company, that said company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured; nor in any case for delays arising from unavoidable interruption in the working of their lines, or for errors in cipher or obscure messages. And this Company is hereby made the agents of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of messages to any point on the lines of this Company can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz.: one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance. No employee of the Company is authorized to vary the foregoing.

The Company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

S. Y., *Secretary*. **P. P.**, *President*.

Place ——, Date ——.

Send the following message subject to the above terms which are agreed to.

To R. R., at ——, in ——.

(*Here write message.*)

(*Signed*) **S. R.**

Telegraph Message—General Form.

As delivered by sender to Company's Agent.

THE —— TELEGRAPH COMPANY.

All messages taken by this Company subject to the following terms:

(*Terms same as above form.*)

P. P., *President*. **S. Y.**, *Secretary*.

No.	Sent by	Time.	Rec'd by	Check.
79.	A. B.	11.10.	C. D.	6 wds. pd. (or col.) 75 c.

Place ——, Date ——.

Send the following message subject to the above terms which are agreed to.

To R. R., at ——, in ——.

(*Here write the message.*)

(*Signed*) **S. R.**

Telegraph Message—General Form.

As delivered by the Company to the person to whom sent.

THE —— TELEGRAPH COMPANY.

The rules of this Company require that all messages received for transmission shall be written on the message blanks of this Company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message.

P. P., *President*. **S. Y.**, *Secretary*.

No.	Sent by	Time.	Rec'd by	Check.

Dated, ——. **Rec'd at ——. Day ——,**

To R. R., at ——. **Year ——, Hour ——.**

(*Here follows the message sent.*)

(*Signed*) **S. R.**

Telegraph Message—General Form.

As delivered by the Company to the person to whom sent.

THE —— TELEGRAPH COMPANY

Notice.

This Company transmits and delivers messages only on conditions, limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages.

This message is an unrepeated message and is delivered by request of the sender under the conditions named above.

S. Y., *Secretary*. **P. P.**, *President*.

Dated at ——, day ——, year ——, hour ——.

Received at ——, day ——, year ——, hour ——.

To ——, at ——.

(*Here follows the message.*)

(*Signed*) **S. R.**

Read the notice at the top.

Telegraph Message—By Cable.

As delivered by sender to the Company's Agent.

THE —— TELEGRAPH COMPANIES.

Terms and Conditions.

All messages destined for points beyond the United States, via the Direct United States Cable Company, which are received by these Companies for transmission, will be so received and sent forward over their lines to the terminus thereof, and there delivered to the Direct United States Cable Company, on the following terms and conditions only:

To guard against mistakes on the lines of these Companies, the sender of any such message should order it repeated; that is, telegraphed back from the terminus of said lines to the originating office. For such repeating, the sender will be charged in addition one-half the usual tolls of these Companies on that portion of their lines over which such message passes.

These Companies will not assume any responsibility in respect to any message beyond the terminus of their own lines; and it is agreed between the sender of the following message and these Companies, that said Companies shall not be liable for mistakes or delays in transmission or delivery, or for non-delivery to the Cable Company of any unrepeated message, beyond the amount of that portion of the charge which may or shall accrue to these Companies out of the amount received from the sender for this and the other Companies by whose lines such message may pass to reach its destination; and that these Companies shall not be liable for mistakes in the transmission or delivery, or for non-delivery to the Cable Company, of any repeated message beyond fifty times the extra sum received by these Companies from the

k-1 Daly (C. P.) 547. **l**-15 Cal. 472. **m**-6 El. & Bl. 341. **n**-2 Parsons, 274. **o**-9 Cox C. C. 174; S. C. 6 L. T. (N. S.) 378; 30 Beav. 287; S. C. 8 Jur. (N. S.) 583. **p**-97 Mass. 555. **q**-9 Exch. 363; S. C. 24 Eng. L. & Eq. 513; Redf. R'ys, §§ 130, 143, 164. **r**-9 Cox C. C. 174; 3 F. & F. 73; 8 Jur. (N. S.) 1153.

sender for repeating such message over their own lines: and that these Companies shall not be liable in any case for delays arising from interruption in the working of their lines, nor for errors in cipher or obscure messages. And these Companies are hereby made the agent of the sender, without liability, to forward any message over the lines to any other company to reach its destination.

These Companies will not be liable for damages in any case where the claim is not presented in writing within sixty days after the sending of the message.

P. P., *President.* S. Y., *Secretary.*

No.	Sent by	Time.	Rec'd by	Check.
93.	A. B.	3 P. M.	X. Y.	3 wds. pd. (or col.) $3.00.

Place ——, Date ——.

Send the following message subject to the above terms which are agreed to.

To R. R., at ——, in ——.

(*Here follows message.*)

(*Signed*) S. R.

Telegraph Message—By Cable.

As delivered by sender to the Company.

The —— Telegraph Company.

All messages destined for points beyond the United States, via the Atlantic cables and the cables to Cuba, which are received by this Company for transmission, will be so received and sent forward over its lines to the terminus thereof, and there delivered to the next connecting telegraph company, only on the terms and conditions printed on the back hereof.

P. P., *President.* S. Y., *Secretary.*

Place ——, Date ——.

Send the following message subject to terms and conditions, printed on the back hereof, which are agreed to:

Terms and Conditions.

(*Same as in preceding form.*)

To S. R., at ——, in ——.

(*Here write out the message.*)

(*Signed*) S. R.

Telegraph Message—By Cable.

As delivered by the Company to the person to whom sent.

The —— Telegraph Company.

All cable messages received for transmission must be written on the message blanks provided by this Company for that purpose, under and subject to the conditions printed thereon, and on the back hereof, which conditions have been agreed to by the sender of the following message.

S. Y., *Secretary.* P. P., *President.*

Conditions.

To guard against mistakes on the lines of this Company, the sender of every message should order it repeated; that is, telegraphed back from the terminus of said lines to the originating office. For such repeating, the sender will be charged in addition, one-half the usual tolls of this Company, on that portion of its lines over which such message passes.

This Company will not assume any responsibility in respect to any message beyond the terminus of its own lines; and it is agreed between the sender of the following message and this Company, that said Company shall not be liable for mistakes or delays in transmission or delivery, or for non-delivery to the next connecting Telegraph Company, of any unrepeated message, beyond the amount of that portion of the charge which may or shall accrue to this Company out of the amount received from the sender for this, and the other companies, by whose lines such message may pass to reach its destination; and that this Company shall not be liable for mistakes in the transmission or delivery, or for non-delivery to the next connecting Telegraph Company, of any repeated message, beyond fifty times the extra sum received by this Company from the sender for repeating such message over its own lines: and that this Company shall not be liable in any case for delays arising from interruptions in the workings of its lines, nor for errors in cipher or obscure messages. And this Company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company to reach its destination.

This Company is not to be liable for damages in any case, where the claim is not presented in writing, within thirty days after the sending of the message.

Received at ——.

To R. R., at ——.

Day ——, Year ——, Hour ——.

(*Here follows the message as sent.*)

(*Signed*) S. R.

Telegraph Message—Cable.

As delivered by the Company to the person to whom sent.

The —— and —— Telegraph Companies.

The rules of these Companies require that all messages received for transmission shall be written on the message blanks of these Companies, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message.

P. P., *President.* S. Y., *Secretary.*

No.	Sent by.	Time.	Rec'd by.	Check.

Dated ——.

To R. R., at ——, in ——.

Received at ——. Day ——, Year ——, Hour —.

(*Here follows the message as sent.*)

(*Signed*) S. R.

Telegraph Message—Half-Rate.

As delivered to Company's Agent by sender.

The —— Telegraph Company will receive messages for the principal stations in the United States east of the Mississippi river, to be sent during the night, at one-half the usual rates, on condition that the Company shall not be liable for errors or delay in the transmission or delivery, or for non-delivery of such messages, from whatever cause occurring, and shall only be bound in such case to return the amount paid by the sender.

No claim for refunding will be allowed, unless presented in writing within twenty days.

P. P., *President.* S. Y., *Secretary.*

No.	Sent by.	Time.	Rec'd by.	Check.

Send the following message subject to the above terms which are agreed to.

Place ——, Date ——.

To R. R., at ——, in ——.

(*Here write the message.*) (*Signed*) S. R.

Telegraph Message—Half-Rate.

As delivered by sender to Company's Agent.

The —— Telegraph Company.

Terms and Conditions.

The business of telegraphing is liable to errors and delays, arising from causes which cannot at all times be guarded against, including sometimes negligence of servants and agents whom it is necessary to employ. Most errors and delays may be prevented by repetition, for which, during the day, half price extra is charged in addition to the full tariff rates.

The —— Telegraph Company will receive messages for transmission between stations in the United States east of the Mississippi river, to be sent without repetition during the night, at one-half the usual rates, on condition that the sender will agree that he will not claim damages from it for errors or delays, or for non-delivery of such messages, happening from any cause other than the acts of its corporate officers, beyond a sum equal to ten times the amount paid for transmission; and that no claim for damages shall be valid unless presented in writing within twenty days from sending the message.

The Company will be responsible to the limit of its lines only, for messages destined beyond, but will act as the sender's agent to deliver the message to connecting companies or carriers, if desired, without charge and without liability.

S. Y., *Secretary.* P. P., *President.*

Place ——, Date ——.

Send the following half-rate message subject to the above terms, which are agreed to.

To R. R., at ——, in ——.

(*Here write message.*) (*Signed*) S. R.

Telegraph Message—Half-Rate.

As delivered by the Company to the person to whom sent.

The —— Telegraph Company require that all messages received for transmission shall be written on the blanks of the Company, under and subject to the conditions printed thereon, which

conditions have been agreed to by the sender of the following half-rate message.
P. P., *President*. S. Y., *Secretary*.

No.	Sent by	Time.	Rec'd by	Check.
3	C. D.	11.10 a.m.	E. F.	6 (wds.) paid (*or* coll'ct) 75c.

Dated ——. To R. R. | Received at ——. ——.
(*Here follows the message received.*)
(*Signed*) S. R.

Telegraph Message—Half-Rate.
As delivered by the Company to the person to whom sent

The —— Telegraph Company require that all messages received for transmission shall be written on the blanks of the Company, under and subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following half-rate message.
S. Y., *Secretary*. P. P., *President*.
Dated, Day ——, Year ——, Hour ——.
Received at ——.
To ——.
(*Here follows the message as sent.*)
(*Signed*) S. R.

VALUATION is the act of ascertaining the worth of a thing. The estimated worth or value of a thing. It differs from price, which does not always afford a true criterion of value, for a thing may be purchased at a sacrifice, or at an extravagant price. In the case of bailments the thing bailed is sometimes valued at the time of making the contract, so that if lost, no dispute may arise as to the amount of the loss.[s]

WAREHOUSEMEN are persons who receive goods and merchandise to be stored in their warehouses for hire. They are bound to use ordinary care in preserving such goods and merchandise, and their neglect to do so will render them liable to the owner.[t] The warehouseman's liability commences as soon as the goods arrive and the crane of the warehouse is applied to raise them into the warehouse.[u] See WHARFINGERS, below.

WHARFINGERS are persons who own and keep a wharf for the purpose of receiving and shipping merchandise to and from it for hire. A wharfinger stands in the situation of a bailee for hire, and, therefore, like a warehouseman, he is responsible for ordinary neglect, and is required to take ordinary care of the goods intrusted to him as such.[v] He is not, like an innkeeper or carrier, to be considered as an insurer, unless he superadd the character of a carrier to that of wharfinger.[w] The responsibility of a wharfinger begins when he acquires, and ends when he ceases, to have the custody of the goods in that capacity.

WHARFAGE is the money paid for landing goods upon or loading them from a wharf.[x] Owing to the interest which the public have in the matter, rates of wharfage may be regulated by statute.[y]

Warehousemen, wharfingers, and forwarding merchants are bound to have proper accommodations for the amount and kind of business they profess to do, and which will be likely to arise at the particular point; to employ competent and trustworthy agents; exercise a constant and judicious supervision of the business, so as to secure its accomplishment in due time, with the proper exemption from loss or damage; and if there is a defect in any of these particulars, or any other, they are liable. The master should be held responsible for the larceny of his own servants while holding the goods as his servants.[z]

When a wharfinger begins and ceases to have custody of goods and merchandise depends, generally, upon the usages of trade and of the business. When goods are delivered at a wharf, and the wharfinger has agreed, expressly or by implication, to take the custody of them, his responsibility commences; but a mere delivery at the wharf without such assent does not make him liable.[a] When goods are in the wharfinger's possession, to be sent on board a vessel for a voyage, as soon as he delivers the possession and the care of them to the proper officers of the vessel, although they are not actually removed, he is, by the usages of trade, deemed exonerated from all further responsibility.[b] The wharfinger does not, however, discharge his duty by delivering them to one of the crew, but should deliver them to the captain of the vessel, or some other person in authority on board of if.[c]

A wharfinger or warehouseman has a lien upon the particular goods for the freight and charges already incurred, and may detain them until paid.[d] A wharfinger has equally a lien on a vessel for wharfage.[e] He may insure for the full value and recover for the benefit of the general owner.[f]

A warehouseman is bound to look after the goods, and see that they do not suffer from dampness or exposure.[g] But he is only responsible for such neglect as a prudent man would not be expected to suffer in regard to his own property of equal value.[h]

Factors, bailiffs, and commission merchants are bound to that degree of knowledge, skill, and diligence, which will enable them to transact the matters intrusted to them in such a manner as to secure safety and reasonable benefit and profit to the owner.[i]

They have a lien upon the goods and papers

s-Story Bailm. §§ 253, 254. t-1 Peake, 114; 1 Esp. 315; Story Bailm. § 444; Jones Bailm. 49, 96, 97; 7 Cow. 497; 12 Johns. 232; 2 Wend. 593; 9 Id. 268; 2 Ala. 284. u-4 Esp. 262. v-2 Barb. 328; 4 Ind. 368; 10 Vt. 56; Peake, 119; 4 T. R. 581; 2 Stark, 400. w-1 Stark, 72; 4 Campb. 225; 5 Burr, 28, 25; 12 Johns. 232; 7 Cow. 497; 5 Mo. 97. x-Dane Abr. Index; 4 Cal. 41, 45. y-11 Ala. (N. S.) 586; see 5 Hill (N. Y.); 7 Id. 429; 21 Wend. 110; 1 E. D. Smith, 80, 294; 2 Rich. 390; 8 B. & C. 42; 2 Mann. & R. 107. z-2 Stark, 40; 10 Vt. 56; 7 Cow. 497; 3 Taunt. 264; 11 Cush. 70; 26 Vt. 316; 13 Barb. 481. a-3 Campb. 414; 4 Id. 72; 6 Cow. 757; 10 Vt. 56; 2 Stark, 400; 14 M. & W. 28. b-5 Esp 41; Story Bailm. § 453; Abb. Shipping, 226; Malloy *b.* 2, *c.* 2, *s.* 2; Roccus, Nat. 88; Dig. 9, 4, 3; 1 M. & W. 174; 16 Id. 119; 1 Gale, 420. c-1 C. & P. 638; and see 10 Bingh. 246; 2 C. & M. 531; 7 Scott, 876; 4 Q. B. 511. d-7 Watts & S. 466; 18 Ill. 286; 9 Wend. 268; 1 Esp. 109; 3 Id. 81; 6 East. 519; 7 Id 224; 4 B. & Ald. 50; 12 Ad. & E. 639; 7 B. & C. 212. e-Ware. Dist. Ct. 354; Gilp. Dist. Ct. 101; 1 Newb. Adm. 553. f-34 Eng. L. & Eq. 116. g-28 Vt. 452; 4 Ind. 368. h-8 Jones Law, 482; 17 La. An. 89; 18 Wis 471. i-1 Bing. 34.

in their hands for their charges in regard to the particular business.[y]

If a bailee delivers the goods to a wrong person, he is guilty of conversion.[z] See title "LIENS."

Bailor. See BAILMENTS.
Balance. See BOOKKEEPING; MERCANTILE LAW.
Balance-Sheet. See BOOKKEEPING.
Banishment. See CRIMINAL LAW.
Bankable. See MERCANTILE LAW.
Banking. See MERCANTILE LAW.
Bank Account. See BOOKKEEPING; MERCANTILE LAW.
Bank-Note. See BILLS OF EXCHANGE AND PROMISSORY NOTES, ETC.
Banker's Note. See MERCANTILE LAW.
Bankruptcy. See MERCANTILE LAW; PERSONAL RELATIONS; PRACTICE.
Bans of Matrimony. See MARRIAGE.
Bar. See ACTIONS; CONTRACTS; PRACTICE.
Bargain and Sale. See CONTRACTS.
Barratry. See CRIMINAL LAW; INSURANCE; MARITIME LAW.
Barren Money. See MONEY.
Barrenness. See MEDICAL LAW.
Barter. See CONTRACTS.
Bastard. See PERSONAL RELATIONS.
Battery. See CRIMINAL LAW.
Bawdy-House. See CRIMINAL LAW.
Bay. See REAL PROPERTY; WATER.
Bayou. See REAL PROPERTY; WATER.
Beaconage. See MARITIME LAW; MONEY.
Bearer. See MERCANTILE LAW.
Beasts. See ANIMALS.
Bed. See REAL PROPERTY; WATER.
Bees. See ANIMALS.
Beggar. See PAUPER; PERSONAL RELATIONS.
Behoof. See CONVEYANCES.
Belief. See EVIDENCE.
Bench. See COURT.
Bench-Warrant. See PRACTICE; PROCESS; WARRANT.
Beneficial Interest. See CONTRACTS; INTEREST; PROPERTY, ETC.
Beneficiary. See PERSONAL RELATIONS.
Bequest. See GIFTS.
Best Evidence. See EVIDENCE.
Betrothment. See MARRIAGE.
Better Equity. See PRACTICE.
Betterments. See REAL PROPERTY.
Beyond the Sea. See DOMICIL.
Bias. See PRACTICE.
Bid. See AUCTION SALES.
Bidder. See AUCTION SALES.
Bigamy. See CRIMINAL LAW.
Bill. See LEGISLATION; MERCANTILE LAW; PRACTICE.
Bill of Adventure. See MERCANTILE LAW.
Bill of Costs. See PRACTICE.
Bill of Credit. See MERCANTILE LAW; MONEY.
Bill of Debt. See PRACTICE.
Bill of Discovery. See PRACTICE.
Bill of Exceptions. See PRACTICE.

BILLS OF EXCHANGE, NEGOTIABLE BONDS, AND PROMISSORY NOTES, ETC.

See BOOKKEEPING, MERCANTILE LAW.

BILLS OF EXCHANGE, BANK NOTES, BONDS, CHECKS, CERTIFICATES OF DEPOSIT, AND PROMISSORY NOTES, are commercial substitutes for money, evidences of indebtedness, and the general mediums of business and mercantile exchange. They are negotiable and non-negotiable.

Negotiable is a term applied to a contract, the right of action of which is capable of being transferred by indorsement (of which delivery is an essential part) in case the undertaking is to A., or his order, A., or his agent, or the like, or, by delivery alone, in case the undertaking is to A., or bearer, the assignee in either case having a right to sue in his own name with all the rights of the assignor.

Bills of exchange, promissory notes, government, State, county, township, district, municipal and corporate bonds, and bank notes, to order or bearer, are universally negotiable; and bills of lading,[a] and notes not to order or bearer, are *quasi negotiable;* that is, an indorsement will give a right of action in the name of the assignee. In general, any chose in action can be assigned so that the assignee can bring an action in his own name, and with all the rights of the assignor. There are, however, some exceptions to this rule; as, in some States; this quality of negotiability is restricted by statute; for example, in some States, in addition to being payable to order or bearer, they must also be payable in a bank incorporated under some law of that commonwealth, or some bank organized therein under some law of the United States; and in others all promissory notes are by statute negotiable, but not as inland bills of exchange unless they are payable in a bank in the State[b] having an actual existence at the time the note is executed,[c] and the note must, on its face, designate the particular bank,[d] as this cannot be ascertained or shown by extrinsic evidence.[e]

Non-Negotiable. Notes payable in specific articles are not negotiable,[f] but are assignable. When given for value received, and it is so expressed on the face of the instrument, it is not necessary in the first instance to prove the consideration for the promise.[g] But when such note does not purport to have been given for value received, it is a special contract; and if no consideration appear upon the face of it, and none be alleged, it cannot be given in evidence under a count for money; nor can the real consideration be proved.[h] Notes payable in chattels, goods, or choses in action, not being promissory notes, are to be construed and enforced as other parol contracts. So, also, an order for a given sum, payable in goods or the proceeds thereof, is not a bill of exchange, and therefore, when the drawee has accepted such bill, the payee cannot recover on it, unless he avers and proves that the acceptor has in his hands either goods or the proceeds of them, such as are described in the order, sufficient for the payment. But if the order is so drawn as to imply that the drawee has a fund in his hands sufficient to meet the draft, the acceptance of it, though it be not a bill of exchange, is deemed an admission which will support an action for money had and received.[i] So, the acceptance of a draft drawn on a present fund in the hands of the drawee is *prima facie* evidence of the sufficiency of that

y-Yelv. 679, and Met.'s note; 2 W. Black. 1154; Cowp. 251; 3 T. R. 119. z-1 Stark. 104; 4 Barb. (S. C.) 361. a-4 M. & W. 403; 12 Pick. 314; 16 Id. 474. b-13 Ind. 521; 46 Id. 62; 43 Id. 35. c-45 Id. 122. d-46 Id. 62; 43 Id. 35. e-43 Id. 35. f-7 Johns. 461; 23 Wend. 70. g-For the acknowledgment of value received, it is sufficient to cast upon the promisor the burden of proving that there was no consideration, 1 Johns. 484; 7 Id. 321; 1 Bosw. 402 S. C. 120 N. Y. 472. h-10 Johns. 418. i-2 Bl. R. 1072; 15 Barb. 274.

fund.[j] The possession of a promissory note not negotiable is not *prima facie* evidence of a transfer to the plaintiff before maturity of the note, or before the commencement of the action. An indorsee must aver and prove the consideration of the transfer to him.[k] Non-negotiability, like overdue paper, is notice to all that the note or instrument is subject all the time to such just defences as the maker may have; and whoever takes such non-negotiable paper, even before due, takes it subject to all such equities.[l]

A BANK NOTE is a promissory note,[m] payable on demand to the bearer, made and issued by a person or persons acting as bankers, and authorized by law to issue such notes.

For many purposes they are not looked upon as common promissory notes, and as such mere evidences of debt, or security for money. In ordinary transactions of business, they are recognized, by general consent, as cash. The business of issuing them being regulated by law, a certain credit attaches to them that renders them a convenient substitute for money.[n] The practice is, therefore, to use them as money; and they are good tender unless objected to.[o] They pass under the word "money" in a will, and, generally speaking, they are treated as cash.[p] When a payment is made in bank notes they are treated as cash, and receipts are given as for cash.[q] A payment of a debt in bank notes discharges the debt;[r] but it is the duty of the persons receiving them to ascertain, as soon as possible, their value, by presenting them for payment.[s] Payment in forged bank notes is a nullity.[t] But where the bank itself receives notes purporting to be its own, and they are forged, it is otherwise.[u] If a note be cut in two for transmission by mail, and one-half be lost, the *bona fide* holder of the other half can recover the whole amount of the note.[v]

Bank notes are governed by the rules applicable to other negotiable paper. They are assignable by delivery.[w] The holder of a note is entitled to payment, and cannot be affected by the fraud of a former holder, unless he is proved privy to the fraud.[x] The *bona fide* holder who has received them for value is protected in their possession, even against the real owner from whom they have been stolen.

Bank notes may be taken on execution; but they are not to be sold.[y]

BANK NOTE FORMS.

Bank Note—National.

\$——.

B No. ——.

The First National Bank of —— will pay —— dollars to bearer on demand.

C. R., *Cashier.* P. P., *President.*

No. ——.

Bank Note—United States.

A No. ——. \$——.

The United States will pay to bearer —— dollars.

Washington, D. C.

R. R., *Register of the Treasury.* T. R., *Treasurer of the United States.*

No. ——.

BONDS issued by States or corporations under authority of law, and drawn in negotiable form, are another species of negotiable paper. The title to these instruments, which are generally made payable to bearer, passes by mere delivery. The form, design, and nature of the instrument show that it is intended for negotiation and sale, like a negotiable note or bill of exchange. It is itself an absolute contract for the payment of a certain sum of money to the bearer; and the common usage is to sell such bonds in the market, and transfer them by delivery.

BOND FORMS.[z]

Private Corporation Bond—General Form.

Amount of Loan \$150,000.

First Mortgage —— per cent. Loan of the —— Railway Company of ——.

United States of America, State of ——.

\$500. No. ——.

Know all men by these presents:

That the —— Railway Company of —— acknowledges itself indebted to —— of ——, or the bearer hereof, in accordance with the condition as to registration hereinafter mentioned, in the sum of five hundred dollars, lawful money of the United States of America, payable at the financial agency of said Company, in the city of ——, the first day of ——, with interest thereon at the rate of —— per cent. per annum, payable semi-annually, from the date hereof, on the first days of April and October, on the presentation and surrender of the proper interest coupon hereto attached.

This bond is one of a series of five hundred of like tenor and date, two hundred and fifty of which are for the sum of one hundred dollars each, amounting in the aggregate to one hundred and fifty thousand dollars, the payment of which, with the interest as aforesaid, is secured by a mortgage bearing even date herewith, upon the railway rolling stock and corporate franchises of said Company, duly executed and delivered to the —— Company aforesaid, in trust for the holders of said bonds and interest coupons, duly recorded in the office of the——, of ——, in the State of ——.

The principal of this bond and the interest thereon are payable at the financial agency of the Company, in the city of ——, without deduction for any taxes which said Company are now or may at any time hereafter be required, by any law of the United States, or the State of ——, or either, to retain therefrom, for national or State purposes, when and as the same respectively become due and payable, the said Company hereby agreeing to pay the same.

This bond is accepted subject to the condition as to registration that it shall be transferable by delivery, except when registered on the books of the Company in the name of the owner, and such registry indorsed thereon. Such registered owner may at any time make the same transferable by delivery by having it registered as aforesaid, payable to bearer.

This bond shall not become obligatory until it

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j-3 Marsh, 184; 2 Greenl. 123; 11 Mass. 145; 4 Tyr. 290; 2 C. & M. 530 S. C.; 3 Pick. 38. k-21 Barb. 241; 1 Bosw. 402; 18 How. Pr. R. 265; 3 Iowa, 334. l-6 Kas. 489. m-14 Gray, 59. n-2 Hill, 241; 1 Id. 13. o-9 Pick. 542; 7 Johns. 476; 8 Ohio, 169; 11 Me. 475; 5 Yerg. 199; 6 Ala. (N. S.) 226; see 3 Halst. 172; 4 N. H. 296; 4 Dev. & B. 435. p-19 Johns. 115; 7 Id. 476; 6 Hill, 340. q-1 Ohio, 189, 524; 15 Pick. 177; 5 Gill. & J. 158; 3 Hawks. 328; 5 J. J. Marsh. 643; 12 Johns. 200; 9 Id. 120; 19 Id. 144; 1 Johns. Ch. 231; 1 Sch. & L. 318, 319; 11 Ves. Ch. 662; 1 Rop. Leg. 3. r-1 W. & S. 92; 11 Ala. 280; see 13 Wend. 101; 11 Vt. 516; 9 H. H. 365; 2 Hill (S. C.) 509. s-11 Wend. 9; 13 Id. 101; 11 Vt. 516; 9 N. H. 365; 10 Wheat. 333; 6 Mass. 182; 18 Barb. 545. t-2 Hawks. 326; 3 Id. 568; 3 Penn. St. 330; 5 Conn. 71. u-10 Wheat. 333; see 6 B. & C. 373. v-6 Wend 378; 6 Munf. 166; 4 Rand. 186. w-Rep. *temp.* Hardw. 53; 9 East. 48; 4 Id. 510; Dougl. 236. x-1 Burr. 452; 4 Rawle, 185; 11 East. 135; Dane Abr. Index; Powell, Mort. Index; U. S. Dig. Bouv. Inst. y-10 Barb. 157, 596. z-Lehman & Bolton, Phila.

shall have become authenticated by a certificate annexed to it, duly executed by the trustee.

In witness whereof, the —— Railway Company of —— have caused these presents to be sealed with their corporate seal, duly attested by their secretary and signed by their president, this —— day of ——. (*Signed*) P. P., *President*.

[*Seal.*] (*Attest*) S. Y., *Secretary*.

Authentication by Trustee.

The —— Company hereby certifies that the within bond is one of the same secured by the mortgage herein named. P. P., *President*.

Registration.

Date of registry.	In whose name registered.	Transfer agent.

Interest Coupon.

The —— Railway Company of ——

Will pay, on the first day of ——, at its financial agency, in ——, on surrender of this coupon, to bearer if registered to bearer, or to the registered owner or order, —— dollars, being six months' interest due that day on bond No. ——.

(*Signed*) T. R., *Treasurer*.

Private Corporation Bond—General Form.

United States of America, State of ——.

$1,000. The —— Railroad Company. $1,000.

For value received, and without defalcation, the —— Railroad Company promise to pay to the —— Trust Company, of the city of ——, or bearer, one thousand dollars in gold coin of the coinage of the United States of America, on the first day of November, in the year ——, with interest in coin, at the rate of —— per centum per annum, payable on the first days of the months of May and November, in each year hereafter, on presentation of the respective coupons hereto attached.

The principal and interest of this bond are payable at the office of the trustee herein named, or of its successor in the trust, in the city of ——.

This bond is one of the series of nine hundred first mortgage bonds, five hundred of which are numbered from one to five hundred inclusive, and are for one thousand dollars each, and four hundred of which are numbered from five hundred, and one to nine hundred inclusive, and are for five hundred dollars each, of which said nine hundred bonds there is no priority of lien or payment by one over the other, amounting in the aggregate to seven hundred thousand dollars and secured by an indenture of mortgage or deed of trust, bearing even date herewith and executed by this Company, conveying to the said —— Trust Company, of the city of ——, the railroad, its branches and appendages, rolling stock and equipments, and the franchises, rights, lands, real estate, and property of the said Railroad Company, now existing or hereafter to be acquired.

This bond is valid only when authenticated by a certificate indorsed thereon, duly signed by said trustee.

In witness whereof, the —— Railroad Company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and countersigned by its treasurer, this —— day of ——. (*Signed*) P. P., *President*.

[*Seal.*] (*Countersigned*) T. R., *Treasurer*.

Authentication Certificate.

The —— Trust Company, of the city of ——, trustee, certifies that the above bond is one of the series of nine hundred, of which five hundred are for one thousand dollars each, and four hundred are for five hundred dollars each, all of which are secured by a mortgage, dated the first day of November, ——, on the railroad property and franchises of the —— Railroad Company, executed aforesaid and duly recorded in the proper offices for recording the same, in the State of ——.

(*Signed*) P. P., *President*
of the —— Trust Company of the city of ——.

Interest Coupon.

$——. The —— Railroad Company will pay the bearer hereof —— dollars in gold coin of the United States of America, free of all taxes, at the office of the —— Trust Company, or its successor in trust, in the city of ——, on the first day of ——, in the year ——, being six months' interest due on that day on their bond No. ——.

(*Signed*) T. R., *Treasurer*.

County Bond—General Form.

$100. State of ——, County of ——. $100.

It is hereby certified that the county of —— is indebted to ——, or —— assigns, in the sum of one hundred dollars, payable on the —— day of ——, or before, at the discretion of the county commissioners of said county, with interest, until called in for payment at the office of said county commissioners, from the first day of ——, payable semi-annually, on the first days of April and October, in each and every year, at —— per cent. per annum, on presentation of the proper coupon hereunto annexed to the treasurer of said county, at his office, in the city (*or* town) of ——, in the county aforesaid.

This loan is authorized by an act of the General Assembly (*or* Legislature) of the State of ——, entitled "An Act to regulate the manner of increasing the indebtedness of municipalities, to provide for the redemption of the same, and to impose penalties for the illegal increase thereof." Approved (*or* passed) the —— day of ——, and is issued to pay outstanding indebtedness.

This certificate of indebtedness is transferable only on the books of the commissioners, in person or by attorney.

Witness the seal of said county and the signatures of the commissioners, at ——, this —— day of ——. (*Signed*) C. C., M. R., N. S., *Commissioners*.

(*Attest*) C. C., *Clerk*.

Interest Coupon.

$——. The county of —— will pay to the bearer, at the treasury of the county, in ——, on the first day of ——, —— dollars, for six months' interest on bond No. ——.

(*Signed*) ——, *Clerk*.

Municipal Bond——General Form.

$1,000. Consolidated Loan, —— Series. $1,000.

United States of America, State of ——.

The City of ——.

Know all men by these presents:

That the city of —— is indebted and is hereby held and firmly bound unto ——, or bearer, in the sum of one thousand dollars, lawful money of the United States, payable twenty years from the date hereof, at the First National Bank of ——, in the city of ——, with interest thereon at the rate of —— per cent. per annum, from the first day of ——, payable semi-annually, at said bank, on the first day of April and October of each year, on presentation of the proper coupons hereunto annexed.

By act of Assembly (*or* Legislature), approved (*or* passed) the —— day of ——, this bond is made a legal investment for all moneys held by executors, administrators, guardians, or trustees in trust, and is issued in pursuance of an act of the General Assembly (*or* Legislature) of the State of ——, approved (*or* passed) the —— day of ——, and an ordinance of the councils of the city of ——, approved (*or* passed) the —— day of ——, to provide for funding the indebtedness of said city.

In witness whereof, and in pursuance of said ordinance, the president of the commissioners of said city has signed this bond and caused the seal of said city, duly attested by the clerk of said commissioners, to be hereunto affixed, this —— day of ——. (*Signed*) P. P., *President*.

[*Seal.*] (*Attest*) C. C., *Clerk*.

Interest Coupon or Warrant.

No. ——. The city of —— will pay the holder hereof, on the —— day of ——, at the —— bank, in ——, —— dollars, for interest due on bond No. ——.

$——. C. C., *Clerk*.

Municipal Bond—General Form.

United States of America.

Water Loan, $100,000.

$500. City of ——. No. ——.

Know all men by these presents:

That the inhabitants of the city of —— acknowledge themselves indebted to ——, or bearer, in the sum of five hundred dollars, to be paid at the office of the City Treasurer, in said city, on the

first day of September, in the year ——, with interest thereon, to be computed from the date hereof, at the rate of —— per cent. per annum, payable semi-annually, at the office aforesaid, on the first days of March and September in each year, on the presentation and delivery of the annual warrants as they severally become due.

This bond is a part of "The Water Loan," created by virtue of an ordinance of the common council of said city, entitled "An ordinance to authorize the issuing of bonds for the purpose of making the necessary repairs and improvements in the mains, machinery, and other works of the '—— Water Works,' passed ——."

In witness whereof, the inhabitants of the city of —— have caused this bond to be sealed with their common seal, and signed by the mayor and attested by the treasurer this —— day of ——.

[*Seal.*] (*Signed*) M. R., *Mayor.*
(*Attest*) T. R., *Treasurer.*

Interest Coupon or Warrant.

City of ——, Water Loan.

—— interest warrant for —— dollars, payable to the bearer at the treasurer's office, the —— day of ——, for six months' interest on bond No. ——.

(*Signed*) T. R., *Treasurer.*

State Bond—General Form.

United States of America, State of ——.

$100. No. ——.

This certifies that the State of —— is indebted unto ——, or bearer, in the sum of —— hundred dollars, payable on the —— day of ——, with —— per cent. interest, payable semi-annually on the first days of January and July in each year at the —— Bank, in the city of ——, on the presentation of the proper coupon hereunto annexed.

This bond is issued in pursuance of an act of the General Assembly (*or* Legislature) of said State of ——, entitled "An Act," etc. (*reciting the title*), approved (*or* passed) the —— day of ——.

In testimony whereof, the Governor of said State has executed these presents, duly attested by the seal of said State, and countersigned by the secretary and auditor (*or* controller), the —— day of ——.

Dated at ——, this —— day of ——.

(*Signed*) G. R., *Governor.*
(*Countersigned*) S. Y., *Secretary,*
A. R., *Auditor* (*or Controller*).

Interest Coupon.

$——. No. ——.

The State of —— will pay to the bearer, at the —— Bank, in the city of ——, —— dollars, for six months' interest due the —— day of ——, on —— bond, No. ——, for —— dollars.

A. R., *Auditor* (*or Controller*).

Township Bond—General Form.

United States of America.

No. ——. The Township of ——. $100.

Know all men by these presents:

That the township of —— is indebted to ——, or bearer, in the sum of —— dollars, lawful money of the United States of America, payable on the first day of November, in the year of our Lord ——, with interest at the rate of —— per cent. per annum, payable semi-annually on the first day of May and November in every year hereafter until said principal sum shall be due, on presentation of the annexed interest warrants or coupons at the —— Bank, in ——.

This bond is one of a series of bonds issued by said township in pursuance of authority vested in it by an act of the General Assembly (*or* Legislature) of the State of ——, entitled "An Act to authorize the township of —— to (*state what*), approved (*or* passed) the —— day of ——."

And the faith of said township, and also the net income of said ——, and the proceeds of an annual tax of not less than five mills on the dollar on the taxable property of said township are pledged for the payment of the principal and interest of said bond.

In witness whereof, the ——, —— and —— of said township, have hereunto set their hands and affixed the seal of said township, at ——, in ——, this —— day of ——.

[*Seal.*] (*Signed*) —— —— ——.

Interest Coupon or Warrant.

No. ——.

The township of —— will pay the bearer, at the —— Bank, —— dollars, for six months' interest due the —— day of ——.

$——. (*Signed*) T. R., *Treasurer.*

A BILL OF EXCHANGE is a written order from A. to B., directing B. to pay to C. a sum of money therein named.

A. is called the drawer, B. the drawee, and C. the payee. Sometimes A., the drawer, is himself the payee. And usually the bill is made payable, not to the payee alone, but to his order or to the bearer. When B., the drawee, has undertaken to pay the bill, he is called the acceptor.

If the bill is made payable to C., *or bearer*, C. may transfer the bill to D., by merely delivering it into his hands; then D. stands in the same situation with regard to B., the acceptor, as C., the original payee, did.

If the bill be payable to C., *or order*, then C. cannot transfer, except by a written order, usually on the back of the bill, called an indorsement, after which C. is called the indorser, and D., to whom it may be so transferred, the indorsee.

A foreign bill of exchange is one of which the drawer and drawee are residents of countries foreign to each other. In this respect the States of the United States are held foreign to each other.[a]

An inland bill of exchange is one of which the drawer and drawee are residents of the same State or county.[a] The distinction between inland and foreign bills becomes important with reference to the question whether protest and notice are to be given in case of non-acceptance.[b]

A holder of a bill of exchange is the person who is legally in the possession of it, either by indorsement or delivery, or both, and entitled to receive payment either from the drawer or acceptor, and is considered as an assignee.[c]

The bill must be written.[c] It must be properly dated both as to place and time of making.[d] The subscription of the sum for which the bill is payable will aid an omission in the bill, but it is not indispensable.[e] The time of payment should be expressed; but if no time is mentioned it is considered as payable on demand.[f] The place of payment may be prescribed by the drawer,[g] or by the acceptor on his acceptance,[h] but is not, as a general practice; in which last case the bill is considered as payable, and to be presented at the usual place of business of the

[a]-2 Pet. 589; 10 Id. 572; 12 Pick. 483; 15 Wend. 527; 3 A. K. Marsh. 488; 1 Const. 400; 1 Hill (S. C.) 44; 4 Leigh. 37; 15 Me. 136; 18 Id. 292; 20 Id. 139; 8 Dana, 133; 9 N. H. 558; 4 Wash. C. C. 148; but see 5 Johns. 384; 17 Ala. 247; see next note. [a]-25 Miss. 143. As to whether a bill is considered as foreign or inland when made partly in one place and partly in another, see 5 Taunt. 529; 8 Id. 679; Gow. 56; 1 M. & S. 87. [b]-See 3 Kent Comm. 95. [c]-4 Dall. 53. [c]-1 Pardessus, 344; 3 Str. 955. [d]-Beawes. Lex. Merc. pl. 3; 2 Pardess. n. 333; 1 B. & C. 398; see 30 Vt. 11. [e]-2 East. Pl. Cr. 951; 1 R. I. 308. [f]-7 T. R. 427; 2 B. & C. 157. [g]-Beawes. Lex. Merc. pl. 3; 8 C. B. 433. [h]-Chitty Bills, 172; 3 Jur. 34; 7 Barb. 652.

drawee,[l] at his residence, where it was made, or to him personally anywhere.[j] Such an order or request to pay must be made as demanding a right and not as asking a favor;[k] and it must be absolute and not contingent.[l] Mere civility in the terms does not alter the legal effect of the instrument.

It should be addressed to the drawer by the Christian name and surname, or by the full style of the firm.[m]

It should be subscribed by the drawer, though it is sufficient if his name appear in the body of the instrument.[n]

The parties to a bill of exchange are the drawer, the drawee, the acceptor, and the payee. Other parties connected with a bill in case of a transfer, as parties to the transfer, are, the indorser, indorsee, and holder. It sometimes happens that one or more of the apparent parties to a bill are fictitious persons. The rights of a *bona fide* holder are not thereby prejudiced where the payee and indorser are fictitious,[o] or even where the drawer and payee are both fictitious;[p] and all the different parties need not be different persons.[q] The qualifications of parties who are to be made liable by the making or transfer of bills are the same as in case of other contracts.

The sum for which the bill is drawn should be written in full in the body of the instrument, as the words in the body govern in case of doubt.[r] The amount must be fixed and certain, and not contingent.[s] It must be payable in money and not in merchandise,[t] and it is not negotiable if payable in bank bills or in currency, or other substitutes for legal money of similar denominations.[u]

Words requiring payment. The word pay is not necessary; deliver is equally operative,[v] as well as other words,[w] but they must be words requiring payment.[x] A bill should designate the payee;[y] but where no payee is designated, the holder by indorsement may fill the blank with his own name,[z] and if payable to bearer it is sufficient.[a] To make it negotiable it must be payable to the order of the payee, or to the bearer, or must contain other equivalent and operative words of transfer.[b] But negotiability is not necessary to the validity of a bill in England and the United States.[c]

Value received is often inserted, but is not of any use in a negotiable bill.[d]

Various provisions may be made by the drawer and inserted as a part of the bill, as for applying to another person; for a return without protest; for limiting the damages for re-exchange, expense, etc., in case of the failure or refusal of the drawee to accept or to pay.[e]

As per advice, inserted in a bill, deprives the drawee of authority to pay the bill until advised.

A direction to place to the account of some one, drawer, drawee, or third person, is often added, but is unnecessary.[f]

Bill of Exchange—General Form.

$——. Place ——, Date ——.

—— days (*or* months) after sight (*or* date) pay to C., or order, —— dollars, value received (on account of ——, *or*, and charge to the account of).

To B. (at) ——. A.

Another.

$——. Place ——, Date ——.

Sixty days after date (*or* sight) pay to P. E., or order, Five Hundred Dollars. D. R.

To D. E. (at) ——.

Bill of Exchange—At or After Sight.

No. ——. Place ——, Date ——.

At sight (*or* —— days after sight) pay to the order of P. E., —— dollars, and charge the same to the account of D. R.

To D. E., at ——.

Bill of Exchange—After Date, etc.

$——. Place ——, Date ——.

—— days after date (*or* on the —— day of ——), pay to the order of P. E., —— dollars.

Value received. D. R.

To D. E., at ——.

Bill of Exchange—As per Letter of Advice.

As per letter of advice, pay to P. E., or order, —— dollars, and charge to the account of

To D. E., at ——. D. R.

Bills of Exchange—Set of Foreign.

1.

Place ——, Date ——.

Exchange for £—— Sterling.

—— after —— of this FIRST of exchange (second and third unpaid) pay to the order of P. E.

Value received and charge the same to account of D. R.

To D. E., at ——.

No. ——.

2.

Place ——, Date ——.

Exchange for £—— Sterling.

—— after —— of this SECOND of exchange (first and third unpaid) pay to the order of ——.

Value received and charge the same to account of D R.

To D. E., at ——.

No. ——.

3.

Place ——, Date ——.

Exchange for £—— Sterling.

—— after —— of this THIRD of exchange (first and second unpaid) pay to the order of ——.

Value received and charge the same to account of D. R.

To D. E., at ——.

No. ——.

l-11 Penn. St. 456. j-10 B. & C. 4; M. & W. 381; 4 C. & P. 35. k-M. & M. 171. l-8 Mod. 363; 4 Ves. Ch. 372; 1 Russ. & R. Cr. Cas. 193; 2 B. & Ald. 417; 5 T. R. 482; 4 Wend. 275; 11 Mass. 14; 13 Ala. 205; 3 Halst. 262; 6 J. J. Marsh. 170; 1 Ohio, 272; 9 Miss. 393; 5 Ark. 401; 1 La. An. 48; 10 Texas, 155. m-2 Pardessus *n.* 335; Beawes Lex. Merc. pl. 3; Chitty Bills, 186. n-2 Ld. Raym. 1376; 1 Str. 609; 1 Iowa, 231; 27 Ala. N. S. 515; see 12 Barb. 57. o-2 H. Bl. 78; 3 T. R. 174, 481; 1 Campb. 130; 19 Ves. Ch. 311. p-10 B. & Ald. 468. q-18 Ala. 76; 1 Story C. C. 72. r-5 Bingh. (N. C.) 425; 8 Blackf. 144; 1 R. I. 398. s-2 Salk. 375; 2 Miles, 442. t-7 Johns. 321, 461; 4 Cow. 452; 11 Me. 398; 6 N. H. 159; 7 Conn. 110; 1 Nott. & M'C. 254; 3 Ark. 72; 8 B. Mon. 168; see 7 Miss. 52. u-2 McLean, C. C. 10; 3 Id. 106; 3 Wend. 71; 7 Hill, 269; 11 Vt. 268; 3 Humph. 171; 6 Id. 303; 7 Mo. 595; 5 Ark. 481; 13 Id. 12; Contra 15 Ohio, 118; 16 Id. 5; 17 Miss. 457; 9 Mo. 697; 6 Ark. 255; 1 Texas, 13, 246, 503; 4 Ala. (N. S.) 88. v-2 Ld. Raym. 1397; 8 Mod. 364. w-9 C. B. 570. x-10 Ad. & E. 98, "*il vous* plaira *de payer*" is, in France, the proper language of a bill. Pailliet. Man. 841. y-26 Eng. L. & Eq. 404; 36 Id. 165; 11 Barb. 241; 13 Ga. 55; 30 Miss. 122; 16 Ill. 169, and see 1 E. D. Smith, 1; 8 Ind. 18. z-2 M. & S. 90; 4 Campb. 97; see 6 Ala. (A. S.) 86. a-3 Burr. 1526. b-1 Salk. 132; Ld. Raym. 1545; 6 T. R. 123; 9 B. & C. 409; 1 Deac. & C. 275; 1 Dall. 194; 3 Caines, 137; 2 Gill, 348; 1 Harring. (Del.) 32; 3 Humph. 612; 1 Ga. 236; 1 Ohio, 272. c-3 Kent Comm. 78; 6 T. R. 123; 6 Taunt. 328; 9 Johns. 217; 10 Gill. & J. 299; 31 Penn. St. 506. d-2 McLean C. C. 213; 3 Met. (Mass.) 363; 15 Me. 131; 3 Rich. 413; 5 Wheat. 277; 4 Fla. 47; 31 Penn. St. 506. e-Chitty Bills, 188. f-Com Dig. *Merch.* F. 5; 1 B. & C. 398.

CHECKS.

A certified check is a check which has been recognized by the proper officer as a valid appropriation of the amount of money therein specified to the person therein named, and which bears upon itself the evidence of such recognition. Certification of a check is usually accomplished by writing the name of the officer authorized to bind the bank in that manner across the face of the check.[g] There is a practice of marking checks "good" by the banker, which fixes his responsibility to pay that particular check when presented, and amounts, in fact, to an acceptance. Such a marking is called certifying; and checks so marked are called certified checks.

A Check is a written order or request, addressed to a bank, or persons carrying on the business of banking, by a party having money in their hands, desiring them to pay, on presentment to the person therein named, or bearer, or to such person, or order, a specified sum of money. The chief differences between checks and bills of exchange are: 1st. A check is not due until presented, and, consequently, it can be negotiated at any time before presentment, and yet not subject the holder to any of the equities existing between the previous parties.[h] 2d. The drawer of a check is not discharged for want of immediate presentment with due diligence, while the drawer of a bill of exchange is. The drawer of a check is only discharged by such neglect when he sustains actual damage by it, and then only *pro tanto*.[i] 3d. The death of the drawer of a check rescinds the authority of the banker to pay it; while the death of the drawer of a bill of exchange does not alter the relations of the parties.[j] 4th. Checks, unlike bills of exchange, are always payable without grace.[k] A bank check is substantially the same as an inland bill of exchange; it passes by delivery when payable to bearer, and the rules, as to presentment, diligence, of the holder, etc., which are applicable to one, are generally applicable to the other.[l]

Checks are in use only between banks and bankers and their customers, and are designed to facilitate banking operations. It is of their very essence to be payable on demand, because the contract between the banker and customer is that the money is payable on demand.[m] A check on a banker is, in legal effect, an inland bill of exchange, drawn on a banker, payable to bearer, on demand, and subject, in general, to the rules which regulate the rights and liabilities of parties to bills of exchange.[n] It is generally made payable to bearer, but its character is not changed by the fact that it is made payable to the order of the person to whom it is given.[o] Being indorsed, the holder, if he would preserve his right to resort to the drawers and indorsers, must use the same diligence in presenting it for payment and in giving notice of the drawer's default, as that would be required of him as the holder of an inland bill.[p] A check ought to be drawn within the State where the bank is situated, because if not so drawn they become foreign bills of exchange, subject to the law merchant. This law requires that they be protested, and that due diligence be used in presenting them, in order to hold the drawer and indorsers. It is not necessary to use diligence in presenting an ordinary check in order to charge the drawer, unless he has received damage by the delay.[q] It must be presented for payment within a reasonable time; and it is asserted that the holder is required to use even greater diligence in presenting it for payment than is necessary in presenting common inland bills of exchange.[r] The maker's or drawer's undertaking is not that he will pay the amount, but that the bank will pay it on presentment. The drawer of a check is not discharged by the holder's failure to present it in due time, unless he have sustained actual prejudice, as by the failure of the banker.[s]

In common with other kinds of negotiable paper, they must contain an order to pay money, and words of negotiability. This enables a *bona fide* holder, for value, to collect the money without regard to the previous history of the paper.[t] They must be properly signed by the person or firm keeping the account at the banker's; and it is part of the implied contract of the banker that only checks so signed shall be paid.

Checks being payable on demand are not to be accepted, but presented at once for payment.

Giving a check is no payment unless the check is paid.[u] But a tender was held good when made by a check contained in a letter, requesting a receipt in return, which the plaintiff sent back, demanding a larger sum without objecting to the nature of the tender.[v]

A check cannot be the subject of a gift in prospect of death, unless it is presented and paid during the life of the donor; because his death revokes the banker's authority to pay.[w] Though in such a case a check has been considered as of a testamentary character.[x]

Checks written across with the word "memorandum" or "mem." are given thus, not as

g-Sewall, Bank. See CHECKS. h-3 Johns. Cas. 5, 9; 9 B. & C. 388; Chitty Bills (8 Ed.) 546. i-6 Cow. 484; Kent Comm. Lect. 44, 5th Ed. p 104, *n*; 3 Johns. Cas. 5, 259; 10 Wend. 306; 2 Hill, 425. j-3 Man. & G. 571, 573. k-25 Wend. 672; 6 Hill, 174. l-4 Har. & J. 276; 3 Johns. Cas. 5; Id. 259; 6 Wend. 445; 20 Id. 192; 6 Cowen, 484; 1 Blackf. 104; 4 Seld. 190. m-21 Wend. 372; 7 T. R. 419, 426; 6 Wend. 443; 6 Cow. 484; 2 Selden, 412. n-10 Wend. 304. o-6 Wend. 445. The party receiving a check has till the following day to present it, where there are ordinary means of doing so. 4 Bingh. (N. C.) 268; Eng. C. L. R. Vol. 33; 5 Scott, 694, S. C. And the holder has the whole of banking hours of the next day within which to present it, Chitty, 385; 2 Taunt. 388; 2 Camp. 537. p-21 Wend. 372; 20 Id. 205; 10 Id. 306; 12 Story C. C. 502, 512. q-2 Pet. 586; 2 N. Y. 425; 5 Johns. Cas. 2; 1 Ga. 304; 2 Mood. & Rob. 401; 3 Scott (N. R.) 555; 3 Kent Comm. (5th Ed.) 104, *n*. Story Prom. Notes, § 492. r-13 Wend. 549; 10 Id 304; 4 Due , 122. s-2 Wood & Rob. 401; 3 Scott (N. R.) 555; 7 M. & G. 10, 67; Eng. C. L. R. vol. 49; 9 Q. B. 52; Eng C. L. R. vol. 58 t-16 Pet. 1; 5 Johns. Ch. 54; 20 Johns. 437; 3 Ken Comm. 81. u-1 Hall, 56, 78; 4 Johns. 296; 7 S. & R. 116; 2 Pick. 204. v-3 Bouv. Inst. *n*, 2436. w-4 Brown Ch. 286. x-3 Curt. Eccl. 650.

an ordinary check, but as a memorandum of indebtedness; and between parties this seems to be their only effect. But in the hands of a third party, for value, they have all the force of checks without such word of restriction.[y]

CHECK FORMS.

$——. Place ——, Date ——.
A. B. pay to P. E., or bearer (*or order*), —— dollars. D. R.

$——. Place ——, Date ——.
First National Bank, pay to the order of P. E. —— dollars. D. R.

A CERTIFICATE OF DEPOSIT is on the same footing as a promissory note.[z] It changes the character of a custodian of the funds to that of a debtor.[a]

CERTIFICATE OF DEPOSIT FORMS.

B. R. S. & Co., Bankers.
$——. Place ——, Date ——.
D. R. has deposited with us —— dollars, payable to P. E. (*or himself*) or order (on return of this certificate). B. R. S. & Co.

A PROMISSORY NOTE is a written promise to pay a certain sum of money at a future time unconditionally.[b]

A holder of a promissory note is one to whom a promissory note is indorsed for collection as an agent, for the purpose of transmitting notices.[c]

A promissory note differs from a mere acknowledgment of debt without any promise to pay, as when the debtor gives his creditor an I. O. U.[d] In its form it usually contains a promise to pay, at a time therein expressed, a sum of money to a person therein named, or to his order, for value received. It is dated and signed by the maker. It is never under seal.

A note by two or more makers may be either joint or joint and several. A note signed by more than one person, and beginning, "We promise," etc., is a joint note only. A joint and several note usually expresses that the makers jointly and severally promise. But a note signed by more than one person, and beginning, "I promise," etc., is several as well as joint.[e] So, a note beginning, "I promise," and signed by one partner for his copartners, is a joint note of all.[f] A note in the form "I promise," etc., subscribed by two persons, is a joint and several note.[g] Persons who sign their names to a note will be presumed to be joint makers in the absence of anything to the contrary on the face of the note.[h] But one of the signers of a note, joint in form, is not estopped by its terms from showing that he is surety; such showing does not contravene the stipulations of the note.[i]

No precise words of contract are essential in a promissory note, provided they amount in a legal effect to a promise to pay.[j] A promise to deliver the money, or to be accountable for it, or that the payee shall have it, is sufficient.[k]

Although a promissory note, in its original shape, bears no resemblance to a bill of exchange, yet when indorsed it is exactly similar to one; for then it is an order by the indorser of the note upon the maker to pay the indorsee. The indorser is, as it were, the drawer; the maker, the acceptor; and the indorsee, the payee.[l] Most of the rules applicable to bills of exchange equally affect promissory notes.

There are two principal qualities essential to the validity of a note: 1. That it be payable at all events, and not dependent on any contingency.[m] 2. It is required that it be for the payment of money only,[n] not in bank notes.[o]

A promissory note payable to order, or bearer, passes by indorsement, and the holder may bring suit on it in his own name. And though a simple contract a sufficient consideration is implied from its nature.[p]

Married Woman's Note in N. Y.

$——. Place ——, Date ——.
For value received, I promise to pay A. B., or order, —— dollars, one year from date with interest. And I hereby charge my individual property and estate with the payment of this note. M. W.

Indiana Form.

$——. Place ——, Date ——.
—— Days after date, for value received, I promise to pay to P E , or bearer (*or* order), —— dollars without defalcation for value received. M. R.

Pennsylvania Form.

$——. Place ——, Date ——.
—— days after date I promise to pay P. E. (*or* order), —— dollars, without defalcation. Value received. M. R.

Missouri Form.

Same as above, except it concludes — for value received; negotiable and payable, without defalcation or discount.

General Form.

$——. Place —— Date, ——.
Ninety days after date I promise to pay P. E., or bearer (*or* order), five hundred dollars, at ——, with interest thereon, at the rate of —— per cent. per annum, from date (*or* maturity) until paid. Value received. M. R.

Promissory Note—For Chattels Sold, etc.

$——. Place ——, Date ——.
On the —— day of ——, I, M. R., of ——, in —— county, State of ——, promise to pay P. E. (*or* order), at the —— Bank, in ——, —— dollars, with interest at the rate of —— per cent. per annum, from date (*or* maturity), until paid, and costs and expenses of collection, if not paid when due; in (part *or* full) payment for (*state what*), the title of which shall remain in said P. E. until this note is fully paid. M. R.

Promissory Note—On Demand.

$——. Place ——, Date ——.
On demand I promise to pay P. E., or order (*or* bearer), —— dollars, for value received. M. R.

y-Story Prom. Notes, § 499. z-4 Cal. 37: 29 Id. 503. a-7 Id. 543. b-7 W. & S. 264; 2 Humph. 143; 10 Wend. 675; 1 Ala. 263; 7 Mo. 42; 2 Cow. 536; 6 N. H. 364; 7 Vern. 22. c-20 Johns. 372; 2 Hall, 112; 6 How. 248. d-See 2 Yerg. 50; 15 M. & W. 23; but see 2 Humph. 143; 6 Ala. (N. S.) 373 e-Peake, 130; Holt N. P. C. 474; so a bond in the singular number, executed by several, is several as well as joint; 1 Lutw. 695; 1 Camp. 403; 10 East. 264 S. C. f-11 Johns. 543. g-7 Mass. 58; 2 Bailey, 88; 19 Barb. S. C. 248; 6 Foster, 76. h-20 Ala. 270; 1 Carter (Ind.) 391. i-5 Kas. 483. j-And where for an executed consideration, a note was given, expressed to be "for £20, borrowed and received," but at the end were the words, "which I promise *never* to pay," the word *never* was rejected, 2 Atk. 32; 4 Camp. 115; Bayley, 5 Ed. 5; 6 B. & C. 433; 13 Eng. C. L. 227. k-Chitty Bills, 53, 54. l-4 Burr. 669; 4 T. R. 148; 3 Burr. 1224. m-20 Pick. 132; 22 Id. 132. n-3 J. J. Marsh. 170, 542; 5 Ark. 441; 2 Blackf. 48: 1 Bibb. 503; 9 Miss. 393; 3 Pick. 541; 4 Hawks. 102; 5 How. 382. o-10 S. & R. 94; 4 Watts, 400; 11 Vt. 268; Contra 9 Johns. 120; 19 Id. 144. p-See 5 Com. Dig. 133, *n*, 151, 472: Smith Merc. L. *6*, 3 e. l.; 4 B. & C. 235; 1 Carr. & M. 16.

Promissory Note—Guaranty.

To be Indorsed on Note.

For value received I guarantee the payment (*or* collection, *or* collectibility) of the within note.

Dated ——. G. R.

Promissory Note—Joint.

$——. Place ——, Date ——.

—— days after date "We promise," etc. (*as above*).

Promissory Note—Joint and Several.

$——. Place ——, Date ——.

—— days after date "We, or either of us" (*or* we, jointly and severally), etc. (*as above*).

Promissory Note—Payable at a Particular Place.

$——. Place ——, Date ——.

—— days after date I (*or* we, *or* either of us, *or* we, jointly and severally), promise to pay to the order of P. E., at the —— Bank, in —— (*or other place, designating it*), —— dollars, with interest, etc. Value received. M. R.

Promissory Note—Judgment Note.

A judgment note is a promissory note given in the usual form, and containing, in addition, a power of attorney to appear and confess judgment for the sum therein named. It usually contains a great number of stipulations as to the time of confessing the judgment,[n] against appeal and other remedies for setting the judgment aside,[o] and other conditions.[p]

Common Form—With Waiver.

$——. Place ——, Date ——.

—— after date —— promise to pay ——, or bearer, —— dollars, with interest at the rate of —— per cent. per annum, from maturity until paid, and without defalcation. And —— do hereby confess judgment for the above sum, with interest and costs of suit, a release of all errors and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

(*Signed*) A. B. [*Seal.*]

Promissory Note—Judgment Note.

With Waiver and Power of Attorney.

See AGENCY, ATTORNEYS, above.

$——. Place ——, Date ——.

—— after date I (*or* we), the undersigned (of ——), promise to pay —— dollars to the —— Bank of ——, or order at their office in ——, for value received, with interest at the rate of —— per cent. per annum, from maturity until paid.

(*Signed*) A. B.

Know all men by these presents:

That I, the undersigned, am justly indebted to the —— Bank of ——, upon a certain promissory note of even date herewith, for —— dollars, value received, with interest at the rate of —— per cent. per annum, from maturity until paid, and maturing ——.

Now, therefore, in consideration of the premises I do hereby make, constitute and appoint ——, or any attorney of any court of record, to be my true and lawful attorney, irrevocably for and in my name, place, and stead, to appear in any court of record, in term time or in vacation, in any State or Territory of the United States, at any time after the said note becomes due, to waive the service of process, and confess judgment in favor of the said bank, or their assigns, upon said note, for the amount thereof and interest thereon, together with costs and —— dollars, attorneys' fees; and also to file a cognovit for the amount thereof, with an agreement therein, that no proceeding in error or appeal shall be prosecuted, or bill of equity filed to interfere in any manner with the operation of said judgment, and also to release all errors that may intervene in the entering up of said judgment or issuing execution thereon: to waive all benefits which I may be entitled to by virtue of any homestead, exemption, appraisement, or valuation law, now, or hereafter in force, wherever such judgment may be entered or enforced, hereby ratifying and confirming all that my said attorney shall or may do, by virtue hereof.

Witness my hand this —— day of ——, A. D. ——.

(*Witness*) (*Signed*) A. B. [*Seal.*]

CONSIDERATION. Negotiable notes and bills of exchange are presumed to have been made for a valid and adequate consideration, and whether they purport to have been given for value received or not, it is unnecessary for the plaintiff in the first instance to allege or prove a consideration.[q] In this respect they differ from other parol contracts.

Between the original parties the consideration may be inquired into,[r] but the burden of proof lies on the defendant to rebut the presumption raised by implication of law.[s] The consideration may also be inquired into when the plaintiff takes the note after it becomes due,[t] or has been dishonored;[t] for in such cases the purchaser takes it subject to every defence which existed against it before it was negotiated;[u] but it lies with the defendant to show that the plaintiff received it after it was due.[v] The consideration may also be inquired into where the plaintiff purchased the note or bill, knowing it to be void in the hands of the party from whom he received it, either on account of fraud,[w] failure,[x] want,[y] or illegality of consideration.[z] When a purchaser takes a bill or note with notice of the facts impeaching its validity, or with sufficient information on the subject to put him upon his inquiry, he cannot recover upon it as a *bona fide* holder.[a] But though he has such notice, yet if he derives his title from a *bona fide* holder for value, he may recover thereon.[b]

The law presumes in favor of negotiable paper a good consideration, until the contrary appears;[c] it presumes that the holder is the owner until circumstances of suspicion are shown;[d] it presumes in relation to indorsed paper that the indorsement was made before it became due;[e] that the party in possession took the same in the usual course of business for value;[f] that the maker of a note is the primary debtor;[g] and that the acceptor of a bill of exchange is primarily liable thereon.[h]

Parol or verbal evidence is not admissible to contradict or vary an absolute engagement to pay money on the face of a bill or note, but it is admissible to establish a defence on the ground of want, failure, or illegality of consid-

n-11 Ill. 623. o-See 9 Johns. 80; 20 Id. 296; 2 Cow. 465; 2 Penn. St. 501; 15 Ill. 356. p-See GENERAL STATUTES. q-Byles, 92; 8 Cowen, 88; 31 Penn. St. 506. A promissory note imports a consideration, and none need be proved unless it be impeached. 6 Vt. 165; 17 Johns. 301; 7 Id. 321; 2 Bailey, 451; 6 N. H. 511; 9 Johns. 217; 9 Conn. 545; Minor, 362; 5 Wheat. 277; 5 Porter, 154; 5 Ala. 383. r-7 Cowen, 322; 7 Johns. 26; 14 Pick. 198; 7 Watts. 130; 3 Watts & Serg 266. s-5 Barn. & Cress. 203; 3 Johns. Cas. 5. 259; 4 Hill, 442. t-1 Johns. Cas. 51; 3 Id. 29; 8 Johns. 454; 5 Wend. 600. u-3 Cowen, 252. The indorsee who takes the note after it is due takes it subject to all the equities between the original parties to the note, including want or failure of consideration. 15 Pick. 92; 6 Id. 259; 14 Id. 293; 4 Mass. 370; 5 Id. 543; 7 Watts, 130. v-8 Wend. 600. w-2 Adol. & Ellis (N. S.) 196, 211; 19 Me. 102; 14 Id. 449. x-12 Pick. 545; 5 Wend. 20; 8 Conn. 336. y-15 Johns. 270. z-9 Shepley, 488. a-1 Denio, 583. b-19 Me. 102; 14 Id. 449; 2 Adol. & Ellis (N. S.) 196, 211. c-9 Johns. 217; 12 Wend. 484; 13 Id. 557; 8 Cowen, 77; 16 N. Y. 129. d-3 Johns. Cas. 5.259; 18 Barb. 344; 2 Camp. 5; 4 Sand. 97. e-8 Wend. 600; 7 Paige Ch. 615. f-6 Hill, 336; Chitty Bills, 69. Story Notes, §§ 7, 81. g-1 Denio, 116. h-4 Dana, 352; 2 Burr, 674; Dougl. 294; 8 Esp. 47.

eration,[i] or fraud.[j] A verbal agreement made at the same time, and inconsistent with the note, cannot be proved to vary its terms,[k] either in respect to time of payment,[l] period of collection,[m] or the condition on which it is to be enforced.[n]

FAILURE OF. An entire failure of consideration has the same effect as the original and total absence.[o] The failure of consideration, either in whole or in part, may be set up as a defence between the original parties, or any other than a *bona fide* holder without notice.[p] But in order to constitute a perfect defence or bar to a recovery in such an action, a total failure of the consideration must be shown.[q] Where a note is given on a sale of goods for the purchase money, the rule is, that if the chattel be of no value to any one, it cannot be the basis of a bargain. If it be beneficial to the purchaser, he certainly ought to pay for it; if it be a loss to the seller, he is certainly entitled to remuneration for his loss.[r] Though the thing sold possess only a speculating value, still if there be no deception practised, and the purchaser does not exact a warranty, but gives his note for the price, there is not what the law regards as a failure of consideration.[s] There is a plain distinction between mere inadequacy and a total or partial failure of consideration.[t] Inadequacy of consideration is not in itself any defence to an action on a bill or note.[u] But a total failure or want of consideration is a perfect defence, and a partial failure is, to that extent, a good defence.

GOOD FAITH. No one can be considered a *bona fide* holder of a negotiable note or bill of exchange unless he receives the same in good faith, or, as it is sometimes expressed, without notice of the facts and circumstances going to impeach its validity or diminish the amount recoverable thereon. Though he takes the note before due, he cannot recover on it if he takes it with the knowledge that it has been paid.[v] A person cannot be deemed a *bona fide* holder who takes partnership paper for the debt of an individual partner.[w]

ILLEGALITY OF. It is a fundamental principle that contracts which have for their object anything repugnant to the general policy of the law, or are contrary to the provisions of a statute, are void;[x] and when a note or bill is founded upon or given to secure the performance of such a contract, neither of the parties to the transaction can enforce it against the other.[y] If part of the consideration of a bill or note be fraudulent or illegal, the instrument is vitiated altogether.[z] Where parties have woven a web of fraud or wrong, it is no part of the duty of courts of justice to unravel the thread[a] as between the immediate parties to the instrument.[b] If a bill originally given upon an illegal consideration be renewed, the renewed bill is also void,[c] unless the amount be reduced by excluding so much of the consideration for the original bill as was illegal.[d]

Contracts made in furtherance of immorality, or designed to facilitate and continue an immoral course of life, are illegal and void; as, where rooms are let for the purpose of prostitution,[e] or notes and bonds are given to secure the continuance of illicit intercourse.[f] But past illicit intercourse is not an illegal consideration for a bond or other specialty to indemnify the injured party where executed for that purpose alone.[g] So, contracts for sale of libelous or immoral and obscene works,[h] or for the commission of an unlawful act;[i] and contracts of indemnity against the consequences of an unlawful act,[j] are illegal and void, and, consequently, no action can be sustained upon a promise based thereon.

Agreements for the general restraint of trade are illegal and void,[k] on the ground of public policy; but a partial restraint, not injurious to the public, founded on a fair and beneficial consideration, is valid.[l]

It is a general rule of commercial law that the illegality of the consideration of a bill or note will not invalidate it in the hands of a *bona fide* holder if taken in the usual course of trade, unless made void by statute.[m] In general, no person is entitled to be considered the *bona fide* holder of negotiable paper unless he acquires the same *before it becomes due* in good faith and for value.[n]

VALUE. On a question of title, where negotiable notes or bills have been misappropriated, lost, or stolen, if a subsequent holder takes them innocently for a full or valuable consideration by giving money, or money and goods for them, in the usual course of trade, he is entitled to recover on them.[o] As between him and the real owner the equities are equal,

i-Chitty Bills, 142; 1 Tyrw. 84; 5 Denio, 514. j-5 Denio, 514. k-5 Vt. 114, 152; 5 Denio, 516; 1 Hill, 116. l-1 B. & Ald. 223. m-10 B. & C. 729. n-1 Cromp. & Jer. 234; 1 Tyrw. 84. o-2 C. & M. 516; 6 C. & P. 316; 5 M. & W. 7. p-4 N. H. 444; 6 Id. 447; 1 Bailey, 517; 1 Conn. 432; 10 Johns. 198; 6 Pick. 497; 13 Wend. 605; 2 Root, 53; 2 Wend. 431; 3 Id. 236; 4 J. J. Marsh, 154; 2 Hill, 606; 17 Wend. 188; 2 McLean, 464; 3 Dev. 390; 6 How. (Miss.) 106; 24 Me. 289; 22 Pick. 166; 8 S. & Marsh. 332. q-25 Wend. 107; 11 Conn. 432; 11 Shepley, 284; 14 Pick. 293; 5 Humph. 496; 4 Conn. 428. Nothing less than a total failure of the consideration can be shown *in bar* of a recovery of a note or bill, 10 Barn. & Cress. 877; 19 Johns. 113; 24 Wend. 97. r-23 Pick. 283. s-2 Hill, 606; 8 Conn. 469. t-1 Hill, 606. u-1 Stark. 51; 21 Wend. 503. v-11 Johns. 128. w-4 Johns. 251; 7 Wend. 158; 6 Duer, 309. x-2 Johns. 399. This is a rule as well in law as equity, *ex turpi contractu actio non oritur*, 19 N. Y. 37; 4 N. H. 385; 6 Bing. 321. y-2 Johns. Cas. 58; 5 Johns. 327. z-2 Burr. 1077; 3 Taunt. 226; 5 C. & P. 19; 1 M. & R. 100; S. C. Story Notes, § 190. a-7 Foster, 230. b-14 Johns. 465; 9 Shepley, 488; 5 Cowen, 547; 13 Barb. 533; 3 Eng. L. & Eq. 416; 10 Foster, 540; 2 Gray, 258. c-2 B. & Ald. 588; 1 Russ. 293; 2 Stark. 237. d-2 B. & Ald. 588; 1 Russ. 293; 2 Stark. 237; Bayley (6th Ed.) 527. e-1 Esp. 13. f-5 Ves. 291; 5 Cow. 253; 4 Denio, 439. g-13 S. & R. 29; Chitty Con. 660-661; 1 Johns. Ch. 329; 8 Ohio St. 265. h-4 Esp. 97; 13 Barb. 533. i-10 Wend. 384. j-4 N. H. 385; 5 Johns. 327; 6 Binn. 321. k-3 B. 322; 21 Wend. 157; see CONTRACTS. l-4 East. 190; 1 P. Wms. 181; 6 A. & E. 438; Id. 959; 33 Eng. C. L. R. 98, 254; 7 Cow. 307; 9 Mass. 522; 5 T. R. 118; 6 Seld. 241. m-2 Hill, 449. n-1 Camp. 10; 4 Greenl. 415; 13 Peters, 56; 1 Johns. Cas. 55; 4 Mass. 370; 8 Id. 418; 5 Johns. 118. o-20 Johns. 637; 15 Id. 231; 15 Id. 270; 5 Wend. 566; 6 Id. 615; 9 Id. 172; Id. 170; 21 Id. 499; 24 Id. 115; 2 Hill, 30[a]; 1 Denio, 583.

and therefore the law, in order to facilitate the negotiation of commercial paper, allows the holder who has acquired it fairly, in the usual course of business, and parted with value for it, to hold it even as against the real owner.[p] If the holder has acquired the instrument without having parted with value for it, there is no good ground for excluding a defence interposed by the parties to the bill or note.[q] And hence the law does not protect the innocent holder of negotiable paper against an equitable defence, unless he has received it in the usual course of business for a valuable consideration; it is not enough that it be a *valid* consideration, as between the parties to the transfer; it must also be valuable.[r]

WANT OF CONSIDERATION. A valid and sufficient consideration is the very essence of every contract not under seal; and promissory notes and bills of exchange are no exception to the general rule.[s] Where a note is made for the accommodation of the payee, it is self-evident that no action can be sustained thereon in the name of the payee against the maker.[t] No more can the drawer of a bill maintain an action thereon against the drawee who has accepted the same for his accommodation.[u] Between the parties to the transaction the making of such a note or the accepting of such a bill is a mere loan of credit, designed to enable the borrower to raise money, either generally in the market or in a particular manner; and, until the bill or note is negotiated, no obligation attaches to the instrument. A note made for the accommodation of the payee has no legal inception until it is transferred for value.[v] The maker of a note,[w] the drawer of a check,[x] an indorser,[y] and the acceptor of a bill,[z] for the accommodation of another party, without restriction in respect to the use which is to be made of the paper, authorizes the accommodated party to make any use of it of which the paper is capable; to deliver it for future advances,[a] as collateral to[b] or in payment of an antecedent debt,[c] or he may get it discounted and appropriate the proceeds. But in order to recover on such paper, which has been misappropriated, the plaintiff must have received it in good faith. Evidence that he gave value for it is *prima facie* proof of good faith, and whatever shows him to have acquired the paper in bad faith, or with notice of facts impeaching its validity, will defeat his right of recovery.[d] So, if a bill or note be lost or stolen, and afterward negotiated to one having no knowledge of these facts, for a valuable consideration, in the usual course of business, his title is good, and he shall recover the amount.[e] Where a note or bill has been diverted from its original destination, in violation of the agreement upon which it was made or indorsed, the holder cannot recover upon it against the accommodation maker or indorser, without showing that he received it in the *ordinary course of trade*, giving for it a valuable consideration.[f] And, in general, where the holder takes a note or bill after it is due, he takes it subject to every defence existing against it in the hands of the person from whom he receives it,[g] because he acquires it out of the ordinary course of business, and after it has been dishonored.[h]

An exchange of notes for the same amount made by two firms of the same tenor is, in legal effect, a sale.[i] So, when a person gives his own note in exchange for another note, he is a purchaser for value.[j] So, cross acceptances for mutual accommodation are, respectively, considerations for each other.[k] A fluctuating balance may form a consideration for a bill.[l] The same general rules as apply to the nature of the consideration for other simple contracts, are also applicable to the various contracts on a bill or note. Consideration is, in general, either some detriment to the plaintiff, sustained for the sake or at the instance of the defendant, or some benefit to the defendant moving from the plaintiff. It is not necessary that the consideration should move to the defendant personally; if it moves to a third person by his desire or acquiescence, that is sufficient. Therefore, the debt of a third person is a good consideration to support a contract on a bill payable at a future day.[m] Thus a note cannot be supported as a gift, for a gift is not consummate and perfect until the delivery of the thing promised, and until then the party may revoke his promise.[n]

From whatever cause arising, the want of consideration will defeat a recovery on a note, bill, or check, as between the original parties. Want of consideration destroys the validity of a note without any regard to the *bona fides* of the transaction.[o] Fraud destroys the contract. But if the party defrauded would disaffirm the contract, he must do so at the earliest practicable moment after the discovery of the cheat, and must return whatever he has received upon it. But if the thing received be entirely valueless, or a different thing from that contracted

p-3 Burr. 1516; 1 Burr R. 452. q-7 C. & P. 633. r-See authorities reviewed in 6 Hill, 93. s-Chitty Con. 17, 28; 25 Eng. L. & Eq. 371. t-7 T. R. 121; 5 Bing. 432; 3 Burr, 1568; 23 Wend. 311. u-9 B. & B. 241; 1 Mees. & Wels. 212; 9 B. & C. 241. v-3 Sand. Ch. 77; 11 Ohio, 62; 18 N. Y. 327. w-1 Bosw. 335; 5 Paige, 509; 2 Bosw. 248. x-6 Duer, 587. y-2 Paige, 509; 5 Duer, 87; 20 Conn. 475. z-5 Sand. 7; 2 Id. 105. a-18 N. Y. 502. b-1 Bosw. 335; 2 Id. 248; 2 Paige, 509; 34 Penn. St. 138. c-6 Duer, 587; 5 Sand. 7; 29 Conn. 475 d-5 Wend. 600; 11 Johns. 128; 12 Id. 300; 15 Id. 270; 2 Id. 50; 8 Wend. 478; 1 Denio, 583; 5 B. & Ad. 909; 10 A. & E. 784; 5 Duer. 462; 1 Id. 309. e-1 Burr. 452; 2 Doug. 633; 3 Burr. 1516. f-10 Johns. 231; 15 Id. 270; 5 Wend. 266; 6 Id. 615; 9 Id. 172; 37 Penn. St. 367; 5 Duer, 260; 27 Conn. 381; 18 Mees & Welsby, 494; 13 Gray, 7. g-3 Barb. Ch. 403; 5 Paige, 650; 1 Johns. Cas. 51; 8 Johns. 454; 24 Wend. 97. h-1 Taunt. 224; Chitty Bills, 217, 219; 7 Johns. 363; 36 Penn. St. 285; 38 Id. 307. i-3 Denio, 187, and cases there cited. j-4 Barb. 304; 1 Hill, 513; 4 Duer, 331. k-7 T. R. 565; 3 East. 72; 1 B. & Ad. 521; 2 Denio, 621; 3 Hill, 504; 1 Cush. 168; 6 Ga. 472; 13 Ala. 346. 1 Doug. 188; 4 Harring. 311. l-1 B. & C. 122; 5 M. & Ry 89, S. C.; 1 C. M. & R. 849; 5 Tyr. 255, S. C. m-2 C. & M. 368; 5 Tyr. 320, S. C.; 4 Johns. 296; 6 N. H. 386. n-7 Johns. 25; 5 B. & C. 501; 8 D. & R. 163; 23 Barb. 565. o-17 Johns. 301; 8 Id. 120; 9 Wend. 273; 5 Eng. L. & Eq. 408.

for, he may rescind without returning or offering to return it.[p]

CONSTRUCTION.[q] Contracts are to be construed so as to carry into effect the intention of the contracting parties.[r] Where the language is plain and unambiguous, there is no room and no occasion for interpretation.[s] On the other hand, where the words used admit of two interpretations, the rule is to adopt that which will give effect to the contract according to the understanding of the parties.[t] It is an established principle that the construction of personal contracts is to be regarded by, and their validity depends upon, the laws of the place where they were made, except when made with a view to performance in some other State or country, and then the law of such country is to prevail.[u] The *remedy* on contracts is regulated according to the law of the place where a judicial enforcement is sought.[v]

DRAWING AND MAKING. Bills of exchange and promissory notes are usually written on paper. They may be written on parchment, cloth, leather, or any other substitute for paper, capable of being transferred from hand to hand. They may be written in any language, and in any form of words; and, like any other contract, may be written in pencil as well as in ink.[w] It is enough if the words employed import an absolute engagement to pay a certain sum of money. There are no precise words requisite to make a promissory note.[x] The signature or indorsement of negotiable paper may be by a mark.[y]

A date in general is not essential to the validity of a bill or note; and, if there be no date, it will be considered as dated at the time when it was made.[z] The date expressed in the instrument is *prima facie* evidence of the time when the instrument was made.[a] And this rule applies to written instruments in general.[b] In general a bill or note may be post dated[c] or ante dated.

The time of payment is regularly and usually stated at the beginning of the note or bill; but if no time be expressed the instrument will be payable on demand.[d] The expression "after sight," on a bill of exchange, means after acceptance, or protest for non-acceptance, and not after a mere private exhibition to the drawee; for the sight must appear in a legal way.[e] A bill payable so many days after sight means legal sight, and the bill begins to run from the presentment and acceptance, and not from the time of mere presentment.[f] A bill or note must be certain as to the time of payment.[g] So, also, the amount to be paid.[h] The order to pay need be in no particular form; any expression amounting to an order,[i] or direction, is sufficient.[j]

The payee should be described so that he cannot be confounded with another person of the same name.[k] A promise to pay a given sum on demand, for value received, without saying to whom, is mere waste paper.

The signature of a drawer or maker of a bill or note is usually subscribed in the right hand corner; but it is sufficient if written in any other part.[m] "I, J. S., promise to pay," has been held a sufficient signature of a promissory note.[l] A man who cannot write may sign a bill by his mark.[n] If a bill be not made payable either to any payee in particular, or to the drawer's order, or to the bearer in general, it is mere waste paper.[o]

Unless a bill or note be payable to *order*, or to *bearer*, it is not negotiable, though still a valid security as between the original parties.[p] A bond, note, or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to any *order*, *bearer*, or *assigns*, is not negotiable.[q] A bill or note may be payable to A. B., or order, or to A. B., or bearer, or to the drawer's own order.[r] If made payable to order, it is assignable by indorsement; if made payable to bearer, it is assignable by mere delivery.[s]

It is not necessary to make notes and bills payable at any particular place, unless required by statute. It is very convenient to name the place of payment in the body of the instrument; and when this is done it should be presented at that place for payment.[s]

The words "*value received*" are not necessary to a bill of exchange or other negotiable instrument,[t] for it is implied,[u] and need not be alleged or proved.[v]

p-1 Denio, 69; 2 Denio, 139; 2 Sand. 421. **q**-1 M. & G. 795; 10 B. & C. 729; 2 Scott (N. R.) 183, S. C.; 1 C. & J. 231; 1 Tyr. 84, S. C.; 2 M. & W. 414; 5 Dowl. 585; 7 C. & P. 633; 1 Dans. & Lloyd, 159; 1 M. & M. 226. **r**-2 Kent's Comm. 553, 555. **s**-See title CONTRACTS. **t**-Id. 2 Atk. 32; 3 Cowen, 284. **u**-6 Paige Ch. 627; 2 Burr, 1077; 12 Pet. 410, 436; 1 How. 169, 182; 8 Paige, 261; 13 Mass. 23; 12 Barb. 631; 9 La. An. 185; 8 Johns. 189; 6 Pet. 172; 13 Id. 65; 17 Johns. 511; 7 De. G. M. & G. 78; 31 Eng. L. & Eq. 443; 4 N. J. 319; 23 Penn. St. 137; 6 McLean, 622; 1 Wms. 8. **v**-2 Mass. 84; 6 Id. 358; 13 Id. 20; 16 Id. 157; 1 Pick. 506; 1 Johns. Cas. 139; 1 Johns. 235; 3 Id. 263; 4 Id. 285; 8 Id. 189; 2 Wash. 282; 1 Gallison, 375; 3 Conn. 253; 2 Johns. Cas. 355; 1 H. & J. 453. **w**-5 B. & C. 234; Dow. & R. 653, S. C.; 1 Stark, 267; 1 Phil. 122; Id. 53; 2 Id. 73. **x**-1 Stra. 629; 2 Ld. Raym. 1396; 8 Mod. 362. **y**-1 M. & M. 516. **z**-2 Show. 422; 3 B. & P. 173; 6 M. & S. 73; 2 Chitty, 300, S. C.; 32 Maine, 524; 17 Ala. 45; 2 Har. & Johns. 328; 8 S. & R. 425; 3 Vt. 82; 2 Johns. 300. **a**-6 Bing. 296; 8 Scott, 853, S. C.; 1 Stark. 175; 1 M. & M. 486; 1 M. & R. 341; 4 M. & P. 472, S. C. **b**-4 M. & W. 312; 7 Scott (N. R.) 213; 2 Exch. 195; 17 L. J. 233. **c**-13 East. 517; 8 Wend. 478. **d**-1 D. & R. 356; 2 B. & C. 257; 2 C. & P. 11, S. C.; Bayley, 5th Ed. 109; 1 C. B. 491. **e**-Marius, 19; 6 T. R. 212. **f**-1 Mason, 176. **g**-Chitty Bills, 134; Ld. Raym. 1396; 8 Mod. 363; 1 Burr. 323; 4 Ves. 372; 15 Mass. 387; 4 Mod. 242; 7 Id. 417; Stra. 1151; 2 Bing. 185; 9 Yeager, 24; 1 Cow. 692; 6 Id. 51; 5 Pick. 401; Willes, 396. **h**-2 Stark. 375; 20 Pick. 132; 10 Serg. & R. 94. **i**-18 L. J. 393, Exch.; 4 Exch. 200, S. C. **j**-Beawes. 3; Marius, 11. **k**-4 T. R. 28; 2 Stark. 29; 1 Id. 106; 13 Dyer, 5; 2 B. & Ald. 417; 1 Stra. 706; 4 B. & C. 235; 6 D. & R. 306, S. C.; Tyr. 96; 2 N. H. 446; 5 Blackf. 593; 8 Eng. 43; 13 Ga. 55. **l**-1 Stra. 399; 2 Bos. & Pul. 238. **m**-1 Moody & Malkin, 516. **n**-6 Wend. 637. **o**-1 H. Bl. 608; Russ. C. C. 185; R. & R. C. C. 195. **p**-6 T. R. 123; 1 Esp. S. C. 231; 6 Taunt. 325; R. & R. 300; G. S. 1868, Ch. 14, § 1. **q**-1 Harring, 32; 3 Humph. 61; 21 Kelly, 236. **r**-Drawn payable to the drawer's order, it is payable to himself; 5 East. 476; 2 Smith, 443, S. C. **s**-3 Johns. Cas. 17. **t**-2 McLean, 213; 3 Met. 363; 3 Rich. 413; 2 E. D. Smith, 395; 31 Penn. St. 506. **u**-2 McLean, 213; 3 Met. 363; 15 Maine, 131; 1 Denio, 116; 9 Wend. 273; 13 Id. 557. **v**-4 Hill, 442.

It is common to insert in bills of exchange words of advice, specifying to what account the amount directed to be paid is to be charged. The drawer sometimes gives the drawee a general direction in words like these, "and charge the same to my account," and sometimes makes it specific by directing the payee to "put it to the account of A. B.," or "to the B. road assessment," or to the cargo of a certain ship, etc.[w] But such words of advice are not essential in bills of exchange.[x]

A bill of exchange being an open letter of request for the payment of money, must be regularly addressed to the person on whom it is drawn; and this is usually done at the bottom on the left hand of the bill. For no one can be liable as acceptor but the person to whom the bill is addressed, unless he be an acceptor for honor.[y]

AMBIGUOUS, CONDITIONAL, AND IRREGULAR INSTRUMENTS. A note cannot be made by a man to himself, without more. Neither can it be made to himself and another man.[z] But a note made payable to the maker's order becomes, in legal effect, when indorsed in blank, a note made payable to bearer;[a] and when specially indorsed a note payable to the indorsee's order.[b]

If an instrument be made in terms so ambiguous that it is doubtful whether it be a bill of exchange or promissory note, the holder may treat it as either at his election.[c]

A man may draw a bill on himself.[d]

Bills and notes must be for the payment of money only, and not for the payment of money and the performance of some other act.[e] Therefore a note to deliver up horses and a wharf and pay money at a particular day is no promissory note.[f] Nor must a bill or note be in the alternative.[g] And it must be for the payment of money *in specie*.[h] And for the *payment of* money.[i] The order or promise must be to pay absolutely, and at all events;[j] the payment must not depend upon a contingency.[k] It is not material that the time when the event may happen is uncertain, provided it must happen at some time or other; thus, a note payable on the death of A. B., or of the maker, is good.[l] The bill or note must not be made payable out of a particular fund,[m] for the fund may prove insufficient.

If a bill be defective as a bill or note it may still be evidence of an agreement.

Any material alteration made in a note after its execution or indorsement, such as inserting words of negotiability or altering the time or place of payment, discharges the previous parties to it.[n] But where a blank is left in it, there is an implied authority to the holder to fill up the instrument, and make it in fact what it was designed to be.[o] If made payable to blank, the person to whom it is negotiated may fill it up by inserting his own name;[p] if made payable to the person who shall thereafter indorse it, it is negotiable without any alteration, and may be transferred by indorsement.[q] Also, if a person sign his name upon a blank piece of paper, and deliver it to another to draw above his signature, he by that act authorizes it to be filled up for any amount.[r]

AGREEMENTS INTENDED TO CONTROL THE OPERATION OF BILLS OR NOTES. Such agreements are either written or verbal. Such written agreement is either on the instrument itself or on a distinct paper; and is either contemporaneous with the completion of the bill or note, or it is a subsequent agreement. A memorandum on a bill or note, made before it is complete, is sometimes considered as a part of the instrument so as to control its operation, and sometimes not. If a memorandum make the payment contingent, it will be incorporated in the note.[s] But, where it is merely directory, as if it points out the place of payment,[t] or be merely the expression of an intended courtesy,[u] or import that a collateral security has been given,[v] or be intended to identify the instrument,[w] it does not affect its operation.

A written agreement, on a distinct paper, to renew, or in other respects, to qualify the liability of the maker or acceptor, is good as between original parties.[x] But a written agreement, though contemporaneous, will not restrain the operation of the bill or note, if it be collateral, that is, if other persons besides the parties to the bill or note be parties to it.[y]

No *verbal* agreement can take effect, if con-

w-Chitty Bills, 162; Story Bills, § 65; 4 Hill, 262. x-1 Barn. & Cress. 392; 1 Wend. 522. y-3 Barn. & Adol. 114. z-2 B. & P. 14 n.; Id. 120; 8 B. & C. 345. a-17 L. J. 280, C. P.; 6 C. B. 336. b-17 L. J. 287, C. P.; 6 C. B. 336. c-1 Bay. 66; 1 Wend. 522; Minor, 295; 14 Conn. 362; 7 Watts & S. 264; 9 Watts, 353; 13 Penn. St. 173. d-Carthe, 508; 1 Shaw. 163; 2 Burr. 1077. e-16 Barb. 643. f-2 Stra. 1271; B. N. P. 272; 19 L. J. 6 Exch.; 4 Exch. 410, S. C.; 9 Q. B. 312. g-Gilb. Cas. L. E. 93; Ld. Raym. 1396. h-A note payable in current funds, or New York funds, is not negotiable, 2 McLean, 10; 3 Humph. 171; 11 Vt. 268; 23 Wend. 71; 6 Humph. 303; 3 McLean, 106; 15 Ohio, 118; 9 Sm. & Marsh. 457; 9 Mo. 697; 16 Ohio, 5; 1 Erg. 255; 1 Texas, 13; Id. 246; Id. 503. A bill payable in "currency" is not a bill of exchange, 7 Miss. 595; so, a draft payable in "Arkansas money," 5 Pike, 481. i-Where the instrument contains a stipulation that the money or a portion of it shall be paid by a set off, it is no promissory note, 10 Ad. & Ellis, 92; 2 P. & D. 256, S. C. j-35 Me. 364. k-5 T. R. 482; 4 Mod. 242; 1 Burr, 323; 2 Camp. 205; 4 M. & W. 168; 2 Stra. 1251; Comb. 227, S. C.; Bayley 16, 6 Ed.; 2 B. & P. 413; 2 Camp. 417; 2 & Ad. 660; 5 Q. B. 599; 1 N. & W. 146; 2 Bing. 185; 9 Mo. 358; 2 Ld. Raym. 1563; 11 A. & E. 214. l-2 Stra. 1217; 2 Per. & Dav. 365; 10 Ad. & El. 272; m-2 Ld. Raym. 1361; 8 Mod. 265; 1 Stra. 591, S. C.; 2 Ld. Raym. 1563; 2 Bla. R. 782; 3 Wils. 207, S. C.; 1 Ves. Jun. 280; 5 T. R. 482. *It is essential to a bill or note that it be payable in money only and not out of a particular fund*, 1 Cowen, 691, 6 Id. 108; 4 Porter, 205; 11 Mass. 143; 3 Hals. 262; 2 Blackf. 47; 6 J. J. Marsh. 170; 1 S. & Marsh. 393; 3 Pike, 541; 1 Harr. 440; 1 Spears, 127; 8 B. Mon. 168; 4 Denio, 159; 8 Eng. 12. n-19 Johns. 391; 17 Wend. 238; 24 Id. 374; 3 Barb. 374; 35 Penn. St. 80; 9 Ohio St. 443; 85 Eng. C. L. 238. o-17 Wend. 238; 7 Cowen, 336; 10 Wend. 93; 21 New York, 531. p-3 Maule & S. 90; 31 Barb. 100. q-2 Hill, 59. r-1 H. Bl. 313; 21 Ill. 223. s-2 Camp. 205; 4 M. & Sel. 25; 4 Camp. 127, S. C.; 14 M. & W. 344. t-4 M. & Sel. 505. u-4 Camp. 217; 1 Stark. 53. v-4 Ad. & E. 786; 6 Nev. & M. 364, 8 Har. & W. 49, S. C. w-1 M. & W. 232. x-4 Taunt. 244; 9 B. & C. 758; 4 Man. & Ryl. 591, S. C. y-19 L. J. 34 Q. B.

temporaneous with the making of the instrument; for that would be to allow verbal evidence to vary a written contract.[y] Evidence is admissible to deny the receipt of value, but not to vary the engagement.[z]

GUARANTY. The engagement of a surety is accessory to the agreement of the principal, and it is a general rule of law that whatever discharged the contract of the principal discharges also that of the surety. It results from the definition of a surety's engagement, as being accessory to a principal obligation, that the extinction of the principal obligation necessarily extinguishes that of the surety, it being of the nature of an accessory obligation that cannot exist without its principal; therefore, whenever the *principal* is discharged, in whatever manner it may be, not only by actual payment or a compensation, but also by a release, the surety is discharged likewise; for the essence of the obligation being that the surety is only obliged on behalf of the principal debtor, he therefore is no longer obliged when there is no longer any principal debtor for whom he was obliged. In like manner the surety is discharged by the novation of the debt.[a] A person who guarantees a note is no party to the note.[b] His contract is special, and must be specially declared on.[c] An absolute guaranty of payment made on a good consideration, indorsed on the back of a note, is an engagement that the maker shall pay it at maturity, and that if it is not so paid the guarantor will himself pay it.[d] A guaranty for collection is a very different contract from a guaranty of payment; the latter being a contract that the money shall be paid at maturity, while the former is in substance a warranty that it is collectable.[e] A guaranty that a note is collectable is a conditional promise, binding upon the guarantor only in case of diligence. In order to perfect the obligation so as to render him liable thereon, the guarantee must use diligence in the endeavor to collect the note, for this is a condition precedent.[f] The terms of the guaranty must be complied with before the guarantors can be rendered liable on the contract. Notice of non-payment is not necessary in order to charge the guarantor, but it is advisable to give him notice, inasmuch as it frequently becomes important to prove notice as a means of rebutting the presumption of laches in the party guaranteed.[g] A general guaranty of the note, or a guaranty of its collection, implies a right on the guarantor's part, that the party guaranteed shall use diligence in collecting the debt of the principal debtor, and give to him (the guarantor) every opportunity to protect himself against his principal.[h] The terms of the contract of guaranty are construed strictly.[i]

INDORSEMENT AND TRANSFER. To indorse is to write on the back. Bills of exchange and promissory notes are indorsed by a party's writing his name on the back.

An indorser is the person who makes an indorsement.

An indorsee is the person to whom the indorsement is made.

The indorsement is that which is written on the back of an instrument in writing, and which has relation to it; writing any name on the back of a promissory note or other negotiable instrument.[j]

A blank indorsement is one in which the name of the indorser only is written upon the instrument. Though generally made by writing the indorser's name on the back,[k] still a writing across the face may answer the same purpose.[l]

A conditional indorsement is one made subject to some condition without the performance of which the instrument will not be or remain valid.[m]

An indorsement in full is one in which mention is made of the name of the indorsee.[n]

A qualified indorsement is one which restrains, or limits, or qualifies, or enlarges the liability of the indorser, in any manner different from what the law generally imports as his true liability, deducible from the nature of the instrument.[o] The words generally used are "*sans recours*" ("without recourse").[p]

An indorsement is generally made primarily for the purpose of transferring the rights of the holder of the instrument to some other person. It has, however, various results, such as rendering the indorser liable in certain events; and hence an indorsement is sometimes made merely for the purpose of additional security. This is called accommodation indorsement when done without consideration other than an exchange of indorsements.

A restrictive indorsement is one which restrains the negotiability of the instrument to a particular person or for a particular person or purpose.[q]

THE EFFECT OF THE INDORSEMENT on a negotiable promissory note or bill of exchange is to transfer the property in the note or bill to the person mentioned in the indorsement when it is made in full, or to any person to whose possession it may lawfully come thereafter even by mere delivery, when it is made in blank, so that the possessor may sue upon it in his own name, as well as if he had been named as the payee.[r] And any person who has possession of the instrument is presumed to be the legal

y-The cases are too numerous to begin to cite. z-1 M. & G. 795; 10 B. & C. 729; 2 Scott (N. R.) 183, S. C.; 1 C. & J. 231; 1 Tyr. 84, S. C.; 2 M. & W. 414; 5 Dowl. 585; 7 C. & P. 633; 1 Dans. & Lloyd, 159; 1 M. & M. 226. a-Post, NOVATION, Poth.; Ob. p. 2 ch. 6, § 1; Chitty Con. 528; 3 J. J. Marsh. 527; 7 Monr. 398; 4 Id. 494; 9 Wheat. 680; 8 Wend. 512. b-6 Barb. S. C. 282; 5 Wend. 307; 2 Hill, 190. c-1 Chitty Pl. 339; 11 How. Pr. 218. d-20 Johns. 365. e-19 Johns. 69; 20 Id. 365; 6 Cowen, 624; 4 Id. 173; 1 Wend. 457; 13 Id. 543; 14 Id. 231; 21 Id. 255; 2 Hill, 139; 5 Barb. 501; 6 Id. 547. f-2 Hill, 139; 13 Wend. 543; 24 Id. 231; 19 Johns. 69; 6 Barb. 547; 11 A. & E. 438; 3 B. & P. 249. g-Story Bills, 305. h-12 Peters, 497; 9 S. & R. 198; 12 Pick. 133, 416; 2 How. 457; 4 Humph. 303; 9 Ship. 164; 12 S. & M. 595. i-14 Barb. 123. j-20 Vt. 499. k-13 S. & R. 315. l-18 Pick. 63; 16 East. 12. m-4 Taunt. 30. n-Chitty Bills, 170. o-Id. (8th Ed.) 261. p-3 Mass. 225; 12 Id. 14. q-1 Rob. 122. r-11 Pet. 80; 2 Hill, 80.

bona fide holder and owner for value, until the contrary is shown. When the indorsement is made before the note becomes due, the indorsee and all subsequent holders are entitled to recover the face of the note against the maker, without any right on his part to offset claims which he may have against the payee; or, as it is frequently stated, the indorsee takes it free from all equities between the antecedent parties of which he had no notice.[s]

Indorsers, also, unless the indorsement be qualified, become liable to pay the amount demanded by the instrument by the failure of the principal (the *maker* of a note, or *acceptor* of a bill), upon due notification of such failure, to any subsequent indorsee who can legally claim to hold through the particular indorser.[t]

Where a person, not the payee of a note on demand or on time, puts his name on the back at the time of its inception, he is liable as an original promissor or surety, but not as indorser.[u]

Notes and bills payable to order, or to bearer, or containing any words to make them assignable, may be transferred so as to give the indorsee a right of action against all antecedent parties; and bills or notes containing no express words to make them assignable, may, in general, be assigned so as to give the assignee a right of action upon them against the assignor.[v]

A bill or note, if payable to order, is not transferable except by indorsement; if payable to bearer, it is transferable by mere delivery.[w] If a bill be made payable to A., or order, for the use of B., B. has but an equitable title, and the right of transfer is in A. alone.[x] No one but the payee or person legally interested in the instrument can convey the title by indorsement.[y] Indorsements are of two kinds: an indorsement *in blank*, or, as it is sometimes termed, a *blank* indorsement, and an indorsement *in full*, or a *special* indorsement. No particular form of words is essential to any indorsement. The mark of a person who cannot write is a sufficient indorsement.[z] A *blank* indorsement is made by the mere signature of the indorser on the back of the bill; its effect is to make the instrument thereafter payable to the bearer.[a] An indorsement *in full*, besides the signature of the indorser, expresses in whose favor the indorsement is made. Thus, an indorsement in full by A. B. is in this form: "Pay C. D., or order; A. B.," the signature of the indorser being subscribed to the direction; its effect is to make the instrument payable to C. D., or his order only, and accordingly, C. D. cannot transfer it otherwise than by indorsement. The omission of the words "or order" is not material in a special indorsement, for the indorsee takes it with all its incidents, and, among the rest, with its negotiable quality, if it were originally made payable to order.[b] The indorsee may convert a blank indorsement into a special one in his own favor by superscribing the necessary words.[c] The indorsee may also convert the blank indorsement into a special one in favor of a stranger, by superscribing above the indorsement the words "pay A. B., or order;" and if he transfer the bill in that way instead of indorsing, he is not liable as an indorser.[d] Where there are several blank indorsements, the holder may fill up the first one of them to himself, or may deduce his title through all of them.[e] The holder of a promissory note indorsed in blank may fill it up with any contract consistent with the character of an indorsement.[f] It is not essential to the validity of these written transfers that they be on the back; they may be on the face of the bill.[g] All payees of a bill or note must join in the indorsement.[h] There is no legal limit to the number of indorsements. A misspelling will not necessarily avoid an indorsement.[i] Neither indorsement nor acceptance[j] are complete before delivery of the bill.[k]

LIABILITY OF AN INDORSER. Every indorser of a bill is in the nature of a new drawer,[l] and is liable to every succeeding holder in default of acceptance or payment by the drawee. But a man may indorse a bill without personal responsibility, by expressing on his indorsement that it is made with this qualification, that he shall not be liable on default of acceptance or payment by the drawee. An indorsement "without recourse," or at the indorsee's "own risk," will not expose the indorser to any liability.[m] While these words, or any words which convey the same meaning, protect the indorser from any demand on him, they convey to the indorsee the paper itself, with all the negotiable qualities, in the same way as an indorsement with no words of restriction or exception would do;[n] but without these the indorser is liable for the whole amount.[o] A party transferring a bill may also decline personal responsibility, by converting an existing blank indorsement into a special one in favor

s-3 T. R. 80, 83; 7 Id. 423; 8 M. & W. 504; 8 Conn. 505; 13 Mart. 150; 16 Pet. 1. t-Story Bills, § 224; Parsons Bills. u-8 Pick. 122; 4 Id. 311; 24 Id. 64; 9 Mass. 314; 36 Me. 147; 4 Pick. 385; 7 Mass. 233; 14 Id. 279; 11 Id. 436; 5 Rich. 305; 18 Mo. 17; Id. 140; 1 G. Greene, 331; 2 Duer. 33. v-Bayley Bills, 65; Byles Bills, 113. w-Ante. x-Carthe, 5; 2 Vent. 207; Skin. 264; 4 Esp. 187; 2 B. & C. 293. y-4 Esp. 187; 2 Barn. & Cress. 293; 15 N. Y. 575; 7 Gray, 217; 1 Hill, 287; 20 N. Y. 138; 1 Comst. 116; 1 H. Bla. 607; 4 T. R 28; 17 N. Y. 605; 6 Mass. 388. By the law merchant, bills and notes payable to order can be transferred only by indorsement, 2 Bibb. 83; 2 Brock. 20; 7 Mass.; 6 Id. 386; 16 Id. 314. z-1 M. & M. 516. a-Doug. 611, 612. b-Com. Rep. 311; 1 Stra. 557; 2 Burr. 1216; 1 Bla. 295, S. C.; 3 Bing. N. C. 829; 5 Scott. 3; 6 Dowl. 63; 6 C. B. 336. c-12 Mod. 193; 1 Salk. 126. d-2 Camp. 442. e-8 Pick. 48; 11 Id. 316; 12 Mass. 78. f-7 Cowen, 336; 2 Penn. St. 911; 6 Harr. & Johns. 282; 11 Johns. 52; 1 Mo. 67; 11 Mass. 436; 14 Pick. 385; 15 Mass. 436; 4 Watts, 448; 2 South. 821; 1 Denio, 367; 2 Humph. 346; 4 Ired. 266. g-16 East. 6. h-3 McLean, 94; 2 Doug. 653; 5 Monroe, 172. But see for a disregard of this rule in reference to a payee whose name was left in the note by mistake, 6 How. 190. i-2 C. & M. 589; 1 Tyr. 415, S. C. j-5 B. & Ald. 474; 1 D. & Ry. 38, S. C. k-5 Price, 428; 3 P. & D. 174; 12 Ad. & El. 455; 1 M. & W. 369; Bayley Bills (6 Ed.) 137. l-2 C. M. & R. 441; 5 Tyrw. 107, S. C.; 2 M. & W 317; 5 Dowl. 460; 1 M. & H. 44, S. C. m 3 Mass. 225; 12 Id. 14; 5 Met. 201; 33 Me. 424. n-8 Barr. 468; 5 Met. 201. o-7 Taunt. 159.

of his transferree.[p] A bill may be indorsed *conditionally*, so as to impose on the drawee, who afterward accepts, a liability to pay the bill to the indorser or his transferrees in a particular event only. An indorsement admits the signature and capacity of every prior party.[q] The striking out of an indorsement by mistake will not discharge the indorser.[r] Nor the striking out by mistake of the acceptance.[s] But the striking it out by design will. In an action by the holder of a note against an indorser, the plaintiff cannot be permitted to strike out the name of any indorser prior to the defendant.[t] When a bill is returned to the first indorser after protest, he may strike out his indorsement, though it be in full, and maintain an action in his own name.[u] A holder of a bill, with several indorsements in blank, may strike out all the indorsers' names after the first, and write over the first indorser's name an assignment to himself.[v]

—— OF A PERSON TRANSFERRING BY DELIVERY. A transfer by mere delivery, without indorsement, of a bill of exchange or promissory note made or become payable to bearer, does not render the transferrer liable on the instrument to the transferree. It is a general rule that the transferrer is not even liable on the consideration, if the bill or note so transferred by delivery, without indorsement, turn out to be of no value by reason of the failure of the other parties to it. For the sending to market a bill or note payable to bearer without indorsing it, is *prima facie* a sale of the bill; and there is no implied guaranty of the solvency of the maker, or any other party.[w] Such seems to be the general rule governing the transfer by delivery, not only of ordinary bills of exchange and promissory notes, but also of bank notes. Nor is there any hardship in such a rule, for the remedy against the transferrer may always be preserved by indorsement or by special contract. The rule, however, is not without exceptions. If instead of cash the creditor consents to take notes, this is a favor to the debtor, and it will thence be inferred, in absence of evidence to the contrary, that the notes were not to be in payment, if they turn out to be of no value without the fault of the creditor. A bill of exchange or promissory note, either of a debtor or any other person, is not payment of a precedent debt, unless it be so expressly agreed.[x] Giving a creditor a bank check is not payment.[y] But if the bill or note, made or become payable to bearer, be delivered without indorsement, not in payment of a pre-existing debt, but by way of exchange for goods or other bills or notes, or for money transferred to the party delivering the bill, at the same time, such a transaction is a sale of the bill by the party transferring it, and a purchase of the instrument with all risks by the transferree. It is extremely clear, that if the holder of a bill send it to market without indorsing his name upon it, neither morality nor the laws of the country will compel him to refund the money for which he sold it, if he did not know at the time that it was not a good bill.[z] A transferrer by delivery, though he does not in general warrant the solvency of the maker of a promissory note or bill of exchange, does warrant that the bill or note is not forged or fictitious.[a] A transferrer by delivery cannot be liable in any case to a subsequent transferree, either on the instrument or the consideration.[b] But, in all cases, if notes or bills are transferred as valid, when the transferrer knows they are good for nothing, the suppression of the truth is a fraud, and he is liable. If A. could show fraud or knowledge of the maker's insolvency in the payer, then it would be wholly immaterial whether the notes were taken at the time of the sale or afterward.[c] The doctrine of implied warranty in sales applies to the sale of a note, so that one who sells an indorsed note gives an implied warranty that the indorsement is genuine.[d]

RIGHTS OF THE INDORSEE. A transfer by indorsement vests in the indorsee a right of action against all the parties whose names are on the bill, in case of default of acceptance or payment; and against an innocent indorsee for value, no prior party can set up the defence of fraud, duress, or absence of consideration.[e] If a bill be reindorsed to a previous indorser, he has, in general, no remedy against the intermediate parties, for they would have their remedy over against him, and the result of the actions would be to place the parties in precisely the same situation as before any action at all.[f] But where the holder has previously indorsed, and the subsequent intermediate indorser has no right of action or remedy on that previous indorsement against the holder, there are cases in which the holder may sue the intermediate indorser.[g] It is competent for an indorser of a note, on again coming into possession of the note, to maintain an action thereon, without producing extrinsic proof of ownership.[h] If any person who indorses a bill of exchange to another, whether for value or for the purpose of collection, comes into the possession thereof again, he is regarded, unless the contrary ap-

p-See ante. q-1 Ld. Raym. 443; 12 Mod. 244; 1 Salk. 127; 2 Barnard, 82; 2 Camp. 182; Holt. N. P. R. 550; 3 B. & C. 280; 5 D. & R. 214, S. C. r-3 B. & C. 428; 5 D. & R. 403, S. C. s-15 East. 17; 2 B. & Ad. 757. t-8 Porter (Ala.) 360. u-3 Wheat. 183; Paine, 156; 1 Sumn. 480. v-5 Munford, 388; Pet. C. C. 171; 3 Marsh, 158. w-6 B. C. 373; 1 C. & M. 637. x-5 Johns. 68; 2 Watts, 121; 9 Id. 280; 9 Johns. 310; 2 Hall, 547; Coxe, 85; 9 Conn. 23; 6 Cranch. 253; 2 Bailey, 574; 1 Cowen, 359; 2 Southard, 765; 2 A. K. Marsh, 277; 8 Conn. 472; 1 Doug. 507; 3 McL. 265; 7 Hill, 128; 2 Rich. 241; 9 Mo. 59; 5 Barb. S. C. 398. y-2 Pick. 204; 4 Johns. 296; 7 S. & R. 116; 1 Hall, 56; Id. 78; 20 Wend. 602. z-Per LORD KENYON, 3 T. R. 759, and see 5 Bing. 485; 3 M. & P. 130 S. C.; 3 Ves. 368; 1 Esp. 447; 1 L. R. 442; 12 Mod. 241; Com. 57; 15 East. 7; 10 Ves. 204; 5 Taunt. 488; 1 Marsh, 157, S. C.; 7 T. R. 64; 6 B. & C. 373; 1 C. & M. 637. a-5 Taunt. 489; 1 Marsh. 157, S. C.; 1 Marsh. 155; 5 Taunt. 495; Ry. & M. 49; 6 Mass. 321; Id. 182; 2 Johns. 445; Story Notes, p. 123. b-2 Sch. & L. 112. c-6 B. & C. 373; 9 D. & R. 391, S. C.; 3 T. R. 759. d-2 Bailey, 385; 11 G[illegible] 142. e-Ante, *Consideration*. f-4 T. R. 470; 2 B. & C. 483; 3 D. & R. 650. g-15 L. J. 108 Exch.; 15 M. & W. 208, S. C.; 16 M. & W. 834; 18 L. J.; 65 C. P.; 19 L. J.; Q. B. 400. And to reply to the facts is no departure, Id. Story notes, s 476. h-9 Porter, 366; 7 Cranch. 159; 3 Wheat. 172.

pear in evidence, as the *bona fide* holder and proprietor of such bill, and is entitled to recover, notwithstanding there may be on it one or more indorsements in full subsequent to the one to him, without producing any receipt or indorsement back from either of such indorsers, whose names he may strike from the bill or not, as he may think proper."[l]

Where a bill or note is merely indorsed to another and deposited with him as a trustee, he can only use it in conformity with the stipulations on which he became the depositary of it. The trust may be indorsed on the bill itself by a restrictive indorsement, or a restrictive direction appended to the payee's name, so that into whose hands soever the bill may travel, it will carry a trust on the face of it.[j] The following have been held restrictive directions or indorsements: "The within must be credited to A. B."[k] "Pay to A. B., or order, for my use." "Pay to A. B. for my account." "Pay to A. B. only."

The omission of the words "*or order*" in a special indorsement will not restrain the negotiability of a bill.[l]

——OF TRANSFERREE BY DELIVERY. The indorsee of a bill payable to order and not made payable to bearer by a blank indorsement, has no right to the bill, either so as to retain it against the real owner, or to sue any party upon it unless the indorser had a right to indorse.[m] Whereas, if a check, bill, or note be made, or have become, payable to bearer, the title of the holder, both as against the former holder, on the one hand, and the maker, acceptor, or indorser, on the other, is not affected by any infirmity in the title of the transferrer, provided the holder took it *bona fide*. A note payable to A., or bearer, may be negotiated by delivery only, even if it be indorsed by A.[n] If a man takes *honestly* an instrument made or become payable to bearer, he has a good title to it, with whatever degree of negligence he may have acted, unless his gross negligence induced a finding of fraud.[o] Gross negligence may be evidence of bad faith, but it is not the same thing.[o]

TRANSFER UNDER PECULIAR CIRCUMSTANCES. An indorsement may be made either before or after acceptance. If any bond, note, or bill of exchange is indorsed or delivered after the day on which it is made payable, and the indorsee may institute an action thereon, against the maker, drawer, or obligor; the defendant will be allowed to set up the same defence that he might have done had the same action been instituted in the name and for the use of the person to whom the bond, note, or bill was originally made payable.

After a bill or note is due, it comes disgraced to the indorsee, and it is his duty to make inquiries concerning it. If he takes it, though he give a full consideration for it, he takes it on the credit of an indorser, and subject to all the equities with which it may be incumbered.[p] An indorsee of an overdue bill or note is liable to such equities only as attach on the bill or note itself, and not to claims arising out of collateral matters.[q] The same rule applies to checks transferred a long time after they are issued, for a check is payable immediately, and the holder keeps it at his peril, and a person taking it after it is due takes it also at his peril.[r] A promissory negotiable note, payable on demand, unless transferred within a reasonable time, will be considered overdue and dishonored.[s] The law, in the absence of any evidence on the subject, presumes a transfer to have been made before the bill was due.[t] In the absence of all proof as to the time when a note was indorsed, the court will presume that it was indorsed while current.[u]

If any such bond, note, or bill of exchange is indorsed on or before the day on which the same is made payable, and the indorsee institutes an action thereon, the defendant may give in evidence on the trial any money actually paid on such bond, note, or bill of exchange, before the same was indorsed or assigned to the plaintiff, on proving that the plaintiff had notice of the said payment before such indorsement was made and accepted.

After the death of the holder, his personal representatives should transfer.

PARTIES.

AGENTS. Whatever a man may do by himself—except by virtue of a delegated authority—he may do by his agent.[v] Disqualifications for contracting on one's own account are not disqualifications for contracting as an agent for another; for an agent is a mere instrument. Therefore, infants, and other persons laboring under disabilities, may be agents.[w]

No particular form of appointment is necessary to enable an agent to draw, accept, or indorse bills, so as to charge his principal. He may be specially appointed for this purpose, or may derive his power from some general or implied authority. The authority of an agent to transfer a note by indorsement may be created verbally, whether the principal be an individual or a corporation, and such authority may be inferred from facts and circumstances

l-Id. Per. LIVINGSTON, J. See 13 Conn. 412. j-1 Atk. 247; 2 Burr. 1227; 1 Bl. R. 295, S. C.; Doug. 615; Carthew, 5; 2 Vent. 307, S. C.; 7 Taunt. 100; 1 Moore, 543, S. C.; 8 Taunt. 100; 8 B. & C. 622; 5 Bing. 515; 3 Y. & J. 220, S. C.; 1 Raym. 160; 15 Wend. 362. k-Doug. 615; 2 Burr. 1227; Carth. 5; 2 Vent. 307, S. C.; 7 Taunt. 100; 1 Moore, 543, S. C. l-Com. Rep. 411; 1 Stra. 557; 2 Burr. 1216; 1 Bl. R. 295, S. C. m-4 T. R. 28. n-5 Pick. 526. o-4 Ad. & El. 870; 6 N. & M. 372, S. C.; 10 Ad. & El. 874; 2 P. D. 579, S. C.; 5 B. & Ad. 1098; 3 N. & M. 188; 5 B. & Ad. 909; 3 N. & M. 857, S. C.; 1 C. M. & R. 855; 5 Tyr. 255, S. C.; 4 Ad. & E. 21. o-Id. p-1 Camp. 19; 3 T. R. 80; 7 Id. 420; 1 Taunt. 224; 1 Stark. N. P. 483; Bayl. (6 Ed.) 161; Chitty (9 Ed.) 218; Rosc. 386; 10 B. & C. 558. q-1 B. & C. 558; 5 M. & R. 296, S. C.; 1 C. M. & R. 565; 8 Dowl. 252; 1 Gale, 98, S. C.; 4 Dowl. 76; 11 L. J. Exch. 168; 9 M. & W. 506, S. C.; 2 Barr. 103; 15 Mo 399. r-4 B. & C. 330; 6 D. & R. 445; 2 C. & P. 11, 9 B. & C. 388; 4 M. & R. 411; see ante, CHECK; 4 Whart. 252. s-2 Mich. 401. t-7 C. & P. 408; 4 Ad. & El. 838; 6 N. & M. 294; 2 Harr. & W. 46, S. C.; 12 M. & W. 165. u-17 Vt. 299; 8 N. H. 334; 14 Ill. 51; 25 Vt. 553; 19 Barb. S. C. 147. v-9 Co. 75. w-Co. Litt. 52, *a*; 14 Ala. 469.

connected with the transaction.[v] When a person has authority, as agent, to draw, accept, or indorse a bill for another, he should do it in such a manner as to show that it is the act of his principal: as by signing it "A. B., by C. D.," his agent.[w] Preceding his own name with words that express the fact that he signs for another.[x] Subsequent recognition of an agent's acts is equivalent to previous authority; provided the agent, when he acted, assumed to act as agent.[y] An authority is often implied from circumstances; as, if an agent has formerly been in the habit of drawing, accepting, or indorsing for his principal, and his principal has recognized his acts.[z]

CORPORATIONS carrying on business under no restraining act may make promissory notes and draw bills of exchange where these are the usual and proper means to accomplish the purposes of their organization; and such notes and bills are presumed legal and valid where they are not prohibited by law, and are received in good faith. But are invalid where given in violation of law, or for purposes wholly foreign to those for which the corporation was created.[a]

DRUNKENNESS when total, producing a complete, though temporary, suspension of reason, is of itself a defence to an action on a bill or note.[b] The person intoxicated has no agreeing mind.[c]

EXECUTORS. The executor of a deceased party to a bill or note has, in general, the same rights and liabilities as his testator.[d] Therefore, if a bill be indorsed to a man who is dead, by a person ignorant of his death, that will be an indorsement to the personal representative of the deceased.[e] On the death of the holder of a bill or note his executors or administrators may indorse;[f] and an indorsement by the executors or administrators is, for all purposes, as effectual as an indorsement of the deceased.[g] Presentment,[h] notice of dishonor, and payment, should be made by and to the executor, or administrator, in the same manner as by, or to, the deceased.[i]

INFANTS can make a binding contract for necessaries only. And an infant can never bind himself even for necessaries when he has a parent or guardian who supplies his wants.[j] What are considered necessaries[k] depends upon the rank and circumstances of the infant in the particular case. All his other contracts are considered *voidable* and *void*. A distinction usually of importance: 1st, because a *voidable* contract may be afterward affirmed, but a contract absolutely void is incapable of confirmation; and, 2d, because a void contract may be treated by all parties as a nullity; but contracts voidable can only be avoided by the contracting party himself. An infant's contract on a bill or note is voidable only, and his liability may be established by ratification after full age.[l] The confirmation or ratification must be distinct, and with a knowledge that he is not liable on the contract. A mere acknowledgment of a debt, or a payment of a part of it, will not support an action on such a contract.[m] When an infant indorses negotiable notes or bills, he does not pass any interest in them as against himself; his act is voidable, but neither the acceptor nor subsequent indorsers can allege his infancy to evade their liability;[n] nor can the drawer of a bill set up the infancy of a payee and indorser as a defence to an action thereon against himself.[o] An infant may sue on a bill,[p] but he sues by his guardian or next friend,[q] and payment should accordingly be made to him.

Parties contracting with an infant assume all the inconveniences incident to the protection which the law allows him.

MARRIED WOMEN are in general restricted by statute, and bargain, sell, and convey their real and personal property, and enter into contracts with reference to the same, subject to such restrictions.[r]

NON COMPOTES MENTIS. It is a general rule of universal law that the contracts of a lunatic, an idiot, or other persons non compos mentis from age or personal infirmity, are utterly void.[s] Sanity is to be presumed, and the burden of proof is on the party denying it. But after a general derangement has been shown, the burden is upon the other party to show the sanity at the time of doing the particular act.[t]

PARTNERS. The law presumes that each partner in trade is intrusted by his co-partners with a general authority in all partnership affairs. Each partner, therefore, by making, drawing, indorsing, or accepting negotiable instruments,[u] in the name of the firm, and in the course of the partnership transactions, binds the firm, whether he signs the name of the firm, or signs by procuration, or *accepts*, in his own

v-32 Me. 225. w-2 Stra. 55; 4 R. I. 30. x-Chitty Bills, 33. y-Viners Abr. Ratih. 5 B. & C. 909; Eng. C. L. R. vol. 11; 8 D. & R. 64; 10 B. & C. 288; Eng. C. L. R. vol. 21; 6 Man. & G. 236; Eng. C. L. R. vol. 46. z-3 Esp. 60; 13 M. & W. 598; Lloyd & Welley's Mer. Cas. 178. a-5 Blackf. 250; 7 Ohio, 31; 1 B. Mon. 14; 15 Johns. 44; 9 Paige, 470; 2 Hill, 265; 9 Ohio, 291; 10 Gill & Johns. 299; 3 Wend. 94; 19 N. Y. 37; 18 Id. 240. b-3 Camp. 33, 454; 13 M. & W. 623. At least by a person who had notice. 2 Exch. 287; 4 Exch. 17, S. C. c-13 M. & W. 623; 3 Camp. 33; Starkie, 126; 10 Ind. 109; 5 Cal. 412; 8 Ohio, 214; 2 Vt. 297; 6 Watts, 139; 3 Cowen, 445; 2 Paige Ch. 30; 2 Wend. 526. d-2 P. Wms. 196; 1 C. B. 402. e-5 B. & Ald. 204; Eng. C. L. R. vol. 7. f-3 Wils. 1; 2 Stra. 1260, S. C. g-2 Jac. & Walker, 243; 13 S. & Marsh, 273; 11 Vt. 604; 5 Gilman, 474; 1 Smith (Ind.) 170; 7 S. & Marsh, 497; 6 J. J. Marsh, 446. h-Malloy, 2, 10.

i-12 Ala. 193. k-13 M. & Wels. 252. j-4 Watts, 80; 16 Mass. 28; 2 Paige, 419; 10 Mo. 451. l-1 Exch. 122; 1 Met. 559; 17 Wend. 419; 3 B. Mon. 72; 3 Wend. 479; 4 Chand. 39; 2 N. H. 51; 8 Ala. 725; 2 Bailey, 114; 3 N. H. 314; 10 Id. 194; 1 Denio, 108; 7 Ired. 258; 1 Pick. 202; 2 Hill, 120; 1 B. Mon. 289. m-3 Barr, 428; 3 Rich. 164; 9 Mass. 62; 10 Id. 137; 14 Id. 457; 1 Pick. 221; 4 Id. 448; 12 Conn. 550; 11 S. & R. 305; 10 N. H. 194–220; 9 Id. 436; 2 Hill, 120; 2 Hawks, 535; 19 Wend. 301; 16 Ala. 186. n-4 Esp. 187; 38 Me. 450. o-4 Taunt. 458; Chitty Bills, 20, 200; 15 Mass. 272. p-2 Maule & S. 205; 4 East. 210; 6 Taunt. 118; 5 B. & C. 501; 8 D. & C. 163, S. C. q-Myer's Code, §§ 53–57 and notes. r-See MARRIED WOMEN, PERSONAL RELATIONS. s-Inst. Lib. 3, tit. 20, s. 8; Dig. Lib. 50, tit. 1, 5, 40, 124. t-5 Johns. 144; 8 Humph. 145. u-7 T. R. 207; 1 Salk. 126; 1 Ld. Raym. 175, S. C.; 2 Vern. 277; 2 Esp. 731; 7 East. 210; 3 Smith, 99, S. C.; 13 East. 175.

name, a bill drawn on the firm.[v] Partners are bound by a note given by one party in the partnership name, although in violation of private instructions from one partner to another.[w] A partner has no right to bind his co-partner by a note, except in a partnership transaction.[x] It is binding, nevertheless, in the hands of a *bona fide* holder, without notice.[y] But an action cannot be maintained against the firm where a partner has signed his name only to the instrument, though the proceeds were in reality applied to partnership purposes,[z] unless the name of the signing partner were also the name of the firm.[a] But a partner cannot bind his co-partner by a joint and several note.[b] The firm is not liable where the partner varies the style of the firm, unless there be some evidences of assent by the firm to the variance, or unless the name used though inaccurately yet substantially describe the firm.[c] Even if a partner exceed his authority, and pledge the partnership credit on a negotiable security for his own private advantage, his co-partners are liable. But if a party taking a bill or note of the firm knew, at the time, that it was given without the consent of the other partners, *he* cannot charge them.[d] And the taking of a joint security for a separate debt raises a presumption that the creditor knew it was given without the concurrence of the other partners.[e] If there existed fraud and collusion between the partner and his creditor, the bill is void in the hands of the fraudulent holder, not only against the partnership but against other parties to the bill.[f] But securities which may be unavailing against the firm when in the hands of the party privy to the transaction, will, nevertheless, bind them when in the hands of an innocent indorsee for value.[g]

A dormant partner, whose name does not appear, is bound by bills drawn, accepted, or indorsed by his co-partners *in the name of the firm*.[h]

Though a man really have no interest in a firm, yet if he suffer himself to be held out to the world as a member of it, he thereby authorizes those *to whom he has been held out* to treat him as a contracting party.[i] To make a man liable as a nominal partner he must have been held out as such to the plaintiff.[j]

After a dissolution, the ex-partners have no longer power to bind each other by bills or notes to persons aware of the dissolution.[k] But notwithstanding a valid dissolution of an ostensible partnership by an agreement between the partners, still the authority of ex-partners to bind each other by bills, notes, or other contracts, within the scope of the former partnership, continues till the dissolution be duly notified.[l] When dissolution is by death, notice is not necessary to protect the estate of the deceased.[m]

PRESENTMENT AND PAYMENT.

ACCEPTANCE. Acceptance is an engagement by the drawee to pay the bill when due[n] in money. Having funds in his hands belonging to the drawer, it is his duty, according to mercantile usage, to honor the bill by accepting it.[o] If he has been supplied with funds expressly to meet the bill, or have money on deposit under such circumstances as to imply a contract on his part to accept the draft, he owes it as a duty to the drawer, to accept the bill; just as a bank or banker is bound to honor and pay checks drawn by customers on a cash account.[p] Without acceptance a banker is liable to his customers, if, having sufficient funds, he neglects to pay his checks. A bill can only be accepted by the drawee,[q] except for honor.[r] If the drawee be incompetent to contract, as, for example, by reason of infancy, etc.,[s] the bill may be treated as dishonored. Acceptance by one partner binds the co-partner.[t] But a bill drawn on several persons not in partnership should be accepted by all, and, if not, may be treated as dishonored.[u] Acceptance will, however, be binding on such as do make it.[v] There cannot be two or more separate acceptors of the same bill not jointly responsible. There is no custom or usage of merchants, according to which, if a bill be drawn upon one man, it may be accepted by another. A bill must be accepted by the drawee, and failing him by some one for the honor of the drawer. There cannot be a series of acceptors.[w] Acceptance after the time of payment is binding.[x]

v-1 Camp. 384; 16 M. & W. 879. w-1 A. K. Marsh, 181; 7 Mo. 1; 14 Ohio, 592. x-1 A. K. Marsh, 257. y-1 Bailey, 146; 2 Penn. 160; 1 Chip. 438; 5 Pick. 412; 3 Id. 5; 15 Wend. 364; 10 Id. 461; 9 Vt. 252; 4 S. & R. 397; 3 N. H. 386; 2 Dev. & Bat. 535; 1 Stewart, 526; 5 Watts, 454; 4 Johns. 251; 5 Cowen, 688; 3 Wend. 415; 10 Id. 461; 3 Rich. 307; 22 Penn. St. 21. z-2 Camp. 308; 1 Rose, 61; 15 East. 7. a-8 B. & C. 427; Eng. C. L. R. vol. 15; 2 Man. & Ry. 459; S. C. 1 Buck. 100; 7 East. 210; 3 Smith, 192, S. C. b-4 Bing. 28; Eng. C. L. R. vol. 13; 12 Moore, 125; 2 C. & P. 401, S. C. c-1 B. & C. 146; Eng. C. L. R. vol. 8; 2 D. & R. 281; 11 Ad. & E. 339; Eng. C. L. R. vol. 39; 3 Per. & D. 187, S. C. d-1 Stark, 202; 2 Esp. 524; Peake, 61; 7 M. & W. 264; 9 B. & C. 532; 12 East. 317; 7 M. & G. 607. e-8 Ves. 540; 2 Esp. 731; 2 Stark. 347; 2 Gill & Johns. 118. f-13 East. 175. g-11 Johns. 514; 5 Blackf. 210; 7 Ala. 19; 12 B. Mon. 11; 6 Hill, 115; 2 Ala. 502; 3 Hill, 279; 2 Watts & Serg. 152; 4 How. 404; 11 N. H. 505; 14 Wend. 133; 11 Barb. S. C. 312; 16 Penn. St. 399; 11 Wend. 75; 6 Blackf. 387; 6 Hill, 114; 3 Ired. L. 238; 2 Rich. 587; 1 Penn. S. 417; 5 Conn. 574; 7 Wend. 158; 2 Cush. 309; 7 S. & Marsh. 192; 13 Id. 118; 31 Me. 454; 17 Ala. 145; 4 Hill, 259; 2 Ala. 502; 15 Wend. 364; S. C. 18 Wend. 411; 2 Wend. 251, S. C.; 22 Wend. 324; 14 Me. 271; 16 Id. 416; 2 Carter (Ind.) 488; 23 Wend. 311. h-10 B. & C. 288; 2 B. & Ad. 53; 7 East. 210; 3 Smith, 199, S. C. i-10 B. & C. 20. j-10 B. & C. 141; Eng. C. L. R. vol. 21; 1 M. & R. 126, S. C. k-4 B. & Ad. 172; 1 Nev. & M. 104, S. C.; 2 Johns. 300; 8 Md. 399; 6 Ind. 304; 4 Ohio St. 2; 33 N. H. 351. l-33 Me. 366; 6 Barb. S. C. 244; 16 B. Mon. 355; 6 Johns. 144; 8 Ind. 215; 33 Barb. 458. m-3 Mer. 619. n-4 East. 72 The drawee is therefore no party to the instrument until he accepts the bill, Chitty Bills, 281. o-But he is not legally bound to do so, any more than a debtor is bound to give his creditor a promissory note for the amount due, Story Bills, §§ 113, 117, 238. p-1 Barn. & Adol. 415; 20 Eng. C. L. 412. q-Unless he has recognized the acceptance as his, 5 C. B. 583. r-B. & Ad. 114; 1 L. J.: 92 K. B.; 13 L. J.; Q. B. 305; 18 L. J. 274. s-Chitty (9 Ed.) 283. t-5 Hill, 232; 2 Id. 635; Bailey Bills, Ch. 6, § 1; Byles Bills, 144; 5 Day, 511. u-Mar. 16; Holt, 297; Marius, 64. v-B. N. P. 270; Bailey, 58; C. P. M. T. 1850. w-2 Camp. 447. x-2 Green. 339; 1 Ld. Raym. 364; Id. 574; 1 Salk. 29, S. C.; 5 Tyr. 172; 1 C. M. & R. 565; 1 Gale, 98, S. C.

The following rules are, in general, observed in regard to the acceptance of bills of exchange:

No person should be charged as an acceptor of a bill of exchange, unless his acceptance is in writing, signed by himself or his lawful agent.

If such acceptance be written on paper other than the bill, it should not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, in faith thereof, shall have received the bill for a valuable consideration.

An unconditional promise in writing to accept a bill before a bill is drawn, is deemed an actual acceptance in favor of every person to whom such written promise shall have been shown, and who, upon the faith thereof, shall have received the bill for a valuable consideration. A letter written within a reasonable time before or after the date of a bill, intelligibly describing it, and promising to accept it, is, if shown to one who takes it on the credit of the letter, a mutual acceptance binding on the promisor.[y]

Every holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and a refusal to comply with such request should be deemed a refusal to accept, and that the bill may be protested for non-acceptance.

The preceding rules should not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

The design of these rules is to discourage the taking of such acceptances and engagements to accept; for where anything less than a written acceptance on the bill is taken, the instrument is left incumbered with conditions and qualifications greatly impairing its character as a negotiable instrument. The acceptance must be in writing, and must be signed by the acceptor or his agent.[z] The usual and regular mode of making an acceptance on the bill is writing the word "*accepted*," and subscribing the drawee's name. According to the law merchant, any words written by the drawee on a bill, not putting a direct negative upon its request, as "accepted," "presented," "seen," the day of the month, or a direction to a third person to pay it, is *prima facie* a complete acceptance.[a] The acceptance under the statute must be signed, but the signature of the drawee written across the face of the bill is a sufficient writing and signing.[b]

If any person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, destroys such bill, or fails or refuses, within twenty-four hours after such delivery, or within such period as the holder may allow, to return the bill accepted or non-accepted to the holder, is deemed to have accepted the same. The person on whom a bill of exchange is drawn, when it is presented to him for acceptance, ought to determine whether he will accept it or not; and if he determine not to accept it, he is bound to return it, for the party is entitled to the immediate use of the thing, and if the drawee deprive him of the use of the instrument by destroying it, he is liable as if he had written his name upon it.[c]

A bill drawn upon one by himself is considered as an accepted bill;[d] so, if it is not addressed to any one,[e] and so of a corporation.[f]

The holder is entitled to require from the drawer an absolute engagement to pay in money according to the tenor and effect of the bill, unincumbered with any condition or qualifications. A general acceptance, without any express words to restrain it, will be such an absolute acceptance.[g] An acceptance varying from the tenor of the bill, either in the time, the sum, the mode, or place of payment, is conditional.[h] In respect to the sum, acceptance for a part of the amount required to be paid, is good according to the custom of merchants and binds the acceptor.[i] So, an acceptance to pay at a different time or place, or in a different manner than that specified in the bill, binds the acceptor according to the terms of his engagement.[j] The conditional acceptance becomes absolute as soon as its condition is performed.[k] If the drawee offer a qualified acceptance, the holder may either refuse or accept the offer. If he mean to refuse it, he may note the bill, and should give notice to the antecedent parties. If he intend to acquiesce to it, he must give notice of the nature of the acceptance to the previous parties, and obtain their consent.

Qualified acceptances are of two kinds: *conditional* and *partial*, or *varying* from the tenor of the bill. Whether an acceptance be conditional or not is a question of law.[l] A verbal condition is inadmissible in evidence to qualify the absolute written engagement, even between the original parties.[l] A partial or varying acceptance varies from the tenor of the bill, as where it engages to pay part of the sum,[m] or to pay at a different time from that at which the bill is made payable by the drawer.[n]

The liability of the acceptor, though irrevocable when complete,[o] does not attach by merely writing his name, but on the subsequent delivery of the bill, or upon showing to some

y-2 Gallison, 233: S. C. 2 Wheaton, 66; 15 Johns. 613; 1 Pet. 265; 2 Id. 181; 3 Mass. 1; 9 Id. 55; 1 Hall's L. J. 486; 2 Wend. 545; 5 Id. 414; 4 Peters, 111; 5 Hill, 433; 2 Green, 339; 2 Story, 213; 2 McLean, 462; 8 Porter, 263; 3 Ala. 581. z-5 Hill, 413; S. C. 7 Hill, 577. a-Bayley Bills, Ch. 6, § 1; Story Bills, 243; 1 Atk. 611; B. N. P. 270; 1 M. & R. 190; Anon. Comb. 401; 10 Johns. 207; 15 Id. 6. b-2 Hill, 582. c-Per Ld. Ellenborough, 2 Stark. 289. d-13 Fairfield, 466. e-Edw. Bills, 416. f-1 Dougl. (Mich.) 193; see 13 Barb. 636. In legal effect, such a bill is a promissory note, 1 M. & Ry. 120; 15 Barb. 274. g-1 T. R. 182. h-Bayley Bills, Ch. 6, § 1; 3 Kent Comm. 84. i-Str. 214; 6 Wend. 642. j-11 Mod. 190. k-Cowp. 571; 4 Camp. 393; Str. 1211; Minor, 173; 7 Greenl. 126; 1 Miles, 294; 14 Barb. 186. l-3 Camp. 57; 1 M. & W. 374; 2 Gale, 29, S. C.; 7 S. & Marsh, 244. m-1 Stra. 214. n-Malloy, 283; 11 Mod. 190. o-4 Esp. 270; Bayley Bills, 204.

person interested in the bill, the acceptance thereof.[p] Hence, if the drawee has written his name on the bill, with the intention to accept, he is at liberty to cancel his acceptance at any time before the bill is delivered, or at least before the acceptance is shown.[q] Cancellation of the acceptance by mistake made by other parties does not destroy the bill.[r]

The acceptor is primarily liable to pay the bill; he is the principal debtor to the holder, and the drawer and indorser are parties liable on his default.[s] The acceptor of a bill stands, for most purposes, in the same situation as the maker of a note. The acceptor's liability can only be discharged by payment, or other satisfaction, by release or by waiver.[t] The liability of an acceptor, though complete, may be discharged by an express renunciation of his claim on the part of the holder.[u] Nothing short of an express discharge,[v] founded upon a good consideration,[w] will do. The cancellation of the acceptor's name by the holder is a waiver of the acceptance. Where a third person cancels, it is a question of fact whether that cancellation were with the assent of the holder.[x] The liability of the acceptor, as such, will be also waived or extinguished, by taking from him a co-extensive security by specialty. But if the new security recognize the bill or note as still existing, it is not extinguished.[y] An intentional alteration of a bill or note in any material particular, after it has become an available security, without the consent of the parties interested, cancels or destroys the instrument.[z] Thus, altering the amount, or the date by which the time of payment is postponed, or the place of payment, or the terms of the acceptance, avoids the bill or note.[a]

By acceptance the drawee admits the signature and capacity of the drawer, and cannot, after thus giving the bill currency, be admitted to prove that the drawer's signature was forged.[b] An acceptor is bound to know the drawer's handwriting, and cannot resist payment to a *bona fide* holder, though the bill be a forgery.[c] It, moreover, admits, and so does the maker of a promissory note, the then capacity of the payee, to whose order the bill or note is made payable, to indorse.[d] If the drawee has once admitted that the acceptance is in his own handwriting, and thereby given currency to the bill, he cannot afterward exonerate himself by showing that it was forged.[e]

PRESENTMENT FOR ACCEPTANCE. If a bill of exchange be drawn payable at sight, or a certain number of days or months after sight, or after demand, presentment is necessary in order to fix the time when it shall become payable; and the law, not deeming it wise or equitable to prescribe a fixed period within which such a bill is to be presented for acceptance, so as to charge the drawer and indorsers, declares briefly that it must be presented within a reasonable time, and leaves it to the court to determine what is a reasonable time under the circumstances of each particular case.[f] The law does not fix a time for the presentment of bills for acceptance where they are drawn payable on or after sight; the rule in such cases is, where there is no usage of trade, that the bill must be presented within a reasonable time, which is a mixed question of law and fact, to be determined by the jury with the assistance of the judge.[g] A bill payable on demand must be presented within a reasonable time, or the drawer will be discharged.[h] Until such presentment there is no right of action against any party; and unless it be made within a reasonable time, the holder loses his remedy against the antecedent parties.[i] When a bill is drawn payable a specified length of time after date, or on a day certain, the holder need not, for the purpose of charging the drawer and indorser, present it for acceptance before it becomes due and payable.[j]

It is in all cases advisable for the holder of an unaccepted bill to present it for acceptance without delay; for, in case of acceptance, the holder obtains the additional security of the acceptor, and, if acceptance be refused, the antecedent parties become liable immediately. If accepted the holder acquires thereby additional security of the acceptor. If the drawee refuses to accept, recourse may be had immediately to the drawer and indorsers for payment.[k] If the holder present the bill for acceptance, though not bound to do so, he must give notice of the non-acceptance to the drawer and indorser, without delay.[l] Presentment should be made during the usual hours of business.[m] Business hours, except in the case of banks, range during the whole day down to the hours of rest in the evening.[n] The holder may, however, put the bill in circulation without presenting it.[o] Presentment should be either to the drawee himself, or to his authorized agent,[p]

p-5 B. & Ald. 474; 1 Dowl. & Ry. 38. q-5 B. & Ald. 474; 1 D. & R. 78, S. C.; 6 East, 109; 2 Smith, 337, S. C.; Marius, 20. r-15 East. 17; 11 M. & W. 778. s-2 Burr. 674; Dougl. 249; 8 Esp. 47; 6 B. & C. 442; 4 Bing. 720. t-See infra. u-1 Camp. 35. v-Dougl. 235; 13 East. 430, n.; M. & W. 14; 2 Stark. 531; 2 C. & P. 497; Peake, 187; Story Bills, § 266. So, a right to sue the drawer may be waived, 1 Stark, 7; 2 Id. 340; Story Bills, § 252; 15 L. J.; 217 Ex.; 14 M. & W. 831, S. C.; 19 L. J.; Exch. 34; 3 D. & L. 506. w-2 Stark. 203; 1 Doug. 247; Story Bills, § 266. x-9 B. & C. 365; 4 M. & R. 287, S. C. y-3 B. & C. 208; 5 D. & R. 259. z-6 Mass. 519: 35 Penn. St. 80; 15 Mass. 136; 19 Johns. 391, and cases cited. a-3 Yeates, 391; 3 Cranch. 37: 4 N. H. 455: 19 Johns. 391; 1 M. & S. 735; 22 Eng. L. & Eq. 208; 25 Id. 123. b-3 Burr. 1354; 1 Bla. R. 390; 1 Camp. 82; 1 Bing. N. C. 436; 1 Scott. 342; 3 Dowl. 382, S. C.; 1 Stra. 648; 2 Id. 946; 1 M. & Sel. 13; 4 Camp. 78, S. C. c-10 Wheat. 339; 1 Binney, 27, S. C.; 4 Dallas, 234. d-2 R. & C. 293; 3 D. & Ry. 534, S. C.; 8 Q. B. 473; 4 Esp. 487; 4 Price, 300. e-4 Esp. 226; 3 Hill (S. C.) 227; 1 Ala. 104; Riley, 248; 19 Pick. 99; 7 Blackf. 56. f-7 Cowen, 705; 1 Id. 397; 20 Johns. 147; 13 Mass. 131; 28 Eng. L. & Eq. 86 g-2 H. Bl. 565; 7 Taunt. 395; 1 M. & M. 133; 3 C. & P. 80; 9 Bing. 416; 2 M. & Sc. 570, S. C.; 20 Johns. 146; 4 Mason, 336; S. C. 5 Mason, 118; 7 Cowen, 705; 12 Pick. 399. h-2 Hall, 459; 7 Blackf. 367. i-Byles Bills, 140. j-28 Wend. 321; S. C. 17 Id. 368; 4 How. (Miss.) 567; 12 Vt. 401; 8 Mo. 268. k-3 Johns. 202; 3 East. 481; Dougl. 54. l-2 Peters, 170; 1 T. R. 712; 4 How. (Miss.) 567; 12 Vt. 401; 8 Mo. 268. m-Mar. 112. n-2 Hill, 635; 7 Leigh. 179. o-2 H. Bl. 565; 9 Bing. 416; 2 M. & Sc. 570, S. C.; 7 Taunt. 160; 2 Marsh, 454. p-5 Esp. 175.

and should be made in such a manner as to give him an opportunity to act deliberately.[q] If the drawee desire it, the bill should be left with him twenty-four hours, unless in the interim he either accept or declares his resolution not to accept.[r] If more than twenty-four hours be given, the holder ought to inform the antecedent parties of it.[s]

NON-ACCEPTANCE. The proceedings necessary to be taken by the holder, on a refusal of a drawee to accept, are the same in most respects as are required to be taken by him in the case of non-payment of a bill of exchange or a promissory note. The principles applicable to the giving of notice to the drawer and indorsers, are, under the law merchant, the same in either case, and it will be considered together in a subsequent section. But the rules more immediately relating to the conduct that should be pursued by the holder, where the bill is dishonored by non-acceptance, will now be briefly considered.

Generally, a failure to give the drawer and indorsers notice of non-acceptance discharges them; the notice is required so that these parties may take prompt measures of self-protection, the drawer, by withdrawing, or withholding the further accumulation of, effects in the hands of the drawee, and the indorsers by obtaining or securing payment from the parties respectively liable to them.[t] The drawer and indorsers are liable to an action by the holder immediately after the bill is refused acceptance, and before it is payable, on giving due notice of non-acceptance.[u] The mere fact that the drawer has no funds or effects in the hands of the drawee, is not alone sufficient to excuse the want of notice, if it appears that the drawer had a reasonable expectation that his bill would be accepted and paid.[v] If the drawer has no funds, and knows that he has none in the hands of the drawee, and no right to expect that his bill will be honored, he is not entitled to notice of dishonor.[w] Drawing under such circumstances does not give the drawer a right to insist upon the rule requiring notice.[x] When a bill is drawn merely for discount, and without any expectation that it will be accepted and paid by the drawee (as where it is drawn and indorsed for the accommodation of the drawer), notice of non-acceptance is not necessary.[y] Fraud in other parties to the bill does not deprive the indorser of his right to notice where he is not privy to the fraud.[z] And the mere fact that the drawer has no funds in the hands of the drawee, though known to the indorser, does not deprive the latter of his right to insist on the usual notice.[a] The death of the drawee may render a presentment for acceptance fruitless and unnecessary, but does not dispense with the necessity of giving timely notice of the dishonor of the bill.[b] Neither does the death of the drawer or indorser discharge the holder from his duty to give the usual notice; but the notice must be sent to the representatives if the holder know, or can ascertain who they are, and their address.[c] If the holder does not know of the drawer's death, notice should be given in the usual way.[d] And when there are joint indorsers, not partners, it is incumbent upon the holder to give notice to the representatives of the deceased; if he fails to do so he loses his remedy against the survivor, for the latter is thereby deprived of his right of contribution from the estate of his co-indorser.[e] Bankruptcy, or known insolvency of the drawer or maker, does not excuse neglect to make presentment, or to give notice.[f] Where the drawee cannot be found, or has absconded, it is sufficient to use due diligence to present the bill for acceptance or for payment; provided the holder takes care to communicate the requisite notice to the indorser.[g] Where the drawer or indorser has absconded, or cannot be found, it is enough if the holder use due diligence in giving the required notice.[h] Services of notices of protest on parties residing in the town or city where such protest is made, may be by depositing such notice in the post-office in a sealed envelope, addressed to such person, with the postage prepaid.[i] Sudden illness, or death of the holder, or his agent, or other accident, may constitute an excuse for the want of regular notice to any of the parties, in case it be given as soon as possible after the impediment is removed.[j] And this is clearly in harmony with the general principles of the commercial law, which in no case requires the performance of an act that has been rendered impossible through no fault of the holder.[k] The breaking out of a war, blocking up the usual channels of communications;[l] the prevalence of a malignant fever, that puts a stop to all business,[m] and, in general, any such inevitable accident as prevents the giving of notice, and is not traceable to the neglect of the holder, will excuse delay so long as the preventing cause continues.[n] When it is said that the notice must be sent as early as on the next day after dishonor, the meaning is, that it must be forwarded on the next business day. If the protest be made on Saturday, notice is properly sent on Monday, by the first mail that closes after the commencement of the ordinary hours of business.[o] So, if the protest

q-5 Esp. 175: Chitty Bills, 279. r-Bayley, Ch. 7, § 1. s-2 Smith, 242. t-Chitty Bills, 326: 17 Wend. 94. u-4 Mason, 336; 3 Mass. 557: 8 Id. 460; 1 Day. 11; 1 Yeates, 204; 4 Johns. 144: 5 Id. 375; 3 Id. 202; 1 Wash. C. C.; 11 Peters, 80; 4 Porter, 348; 3 Mason, 505: Anthon, 35. v-4 Cranch, 141; 12 East. 171; 2 Camp. 503; 3 Id. 334: 15 East. 216; 16 Id. 43; 4 M. & S. 226; 7 Greenl. 126. w-7 Mass. 452; 7 Harr. & Johns. 381; 2 Nott. & M'Cord, 257, n.; 3 Johns. Cas.: 6 Cowen, 484; 28 Barb. 390, 392; 12 Abbt. 139; 1 Wash. C. C. 461; 33 Penn. St. 134. x-1 T. R. 405; 20 Johns. 146. y-4 Rand. 583; 16 M. & W. 743. z-4 Taunt. 731. a-8 B. & C. 610; 6 M. & W. 743; 6 Bing. N. C. 69; 5 M & W. 418. b-Chitty Bills. 330; Byles Bills, 40, 41. c-5 Hill, 236. d-17 Johns. 25. e-5 Hill, 213: 1 Conn. 367; 19 N. Y. 477, 481. f-Bayley Bills, 7, § 1; 16 East. 112: 5 Taunt. 30; 11 East. 114; 17 Wend. 94. g-2 Johns. 274; 2 Caines, 127; 13 Johns. 207; 2 Sneed, 425. 555; 1 M'Cord. 339: 4 Taunt. 731. h-2 Sand. 171; 3 Comst. 272. i-See NOTICE, below. j-Chitty Bills, 330. k-3 Wend. 488; 2 Smith, 222: 6 East. 16, 3 Johns. Cas. 1; Anthon N P. 35; 1 M'Cord, 339. l-2 Smith, 222 m-2 Johns. Cas. 1. n-3 Wend. 488; 6 East. 16. o-1 Hill, 263; 3 B. & P. 599; 2 B. & A. 501, n; 20 Eng. L. & Eq. 220.

be made on the third day of July, the notice will be sufficient if sent on the fifth. For the same reason, if the third day of grace be a holiday, the demand of payment must be upon the next preceding day of business, unless there be a provision of statute to the contrary.[p] Penna. notes due on Saturday may be paid the following Monday. A foreign bill dishonored should be protested,[q] and information of the protest sent with the notice.[r] A protest is, in form, a solemn declaration, written by the notary under a fair copy of the bill, stating that payment or acceptance has been demanded and refused, the reason, if any, assigned, and that the bill is, therefore, protested.

Ordinarily the bill is presented for acceptance in the first instance by the holder, or his agent; and, if refused, is then taken to a notary, who is to present it again to the drawee for acceptance; and if he then refuse, the officer thereupon makes a minute upon the bill, consisting of his initials, the month, the day and year, and the reason, if any be assigned, for non-acceptance, together with his charge. The making of this minute is usually called *noting* the bill, and is only a preliminary step—a memorandum for the use of the notary when he comes afterward to draw up the protest; it is unknown to the law, and is, in itself, of no legal effect.[t] If there be no notary in or near the place where the bill is dishonored, it may be protested by any substantial person of the place, in presence of two or more witnesses.[u] A notarial certificate of protest in a foreign country or State proves itself, and is sufficient evidence of the dishonor of a foreign bill.[v] The custom of merchants requires that there should be a protest in case of the non-acceptance of a foreign bill of exchange; and the proper officer to make this protest is a notary public.[w] Drawn up in the usual form, the certificate of the notary should be authenticated by his seal of office: so executed, it is received in all courts, without any auxiliary support, as evidence of the protest in a foreign State.[x]

PROTEST FORMS.

Protest—General Form.

United States of America, State of ——, —— County, ss.

(*Here copy the bill or note and indorsement.*)

Be it known:

That on the day of the date hereof, at the request of ——, the holder of the original ——, of which a true copy is above written, I, the undersigned, notary public for the ——, by lawful authority duly commissioned and sworn, residing in the ——, during business hours, for such purposes, did, etc. (*stating the facts concerning presentment, etc.*)

Whereupon, I, the said notary, at the request aforesaid, have protested, and do hereby solemnly protest, against all persons and every party concerned therein, whether as maker, drawer, drawee, or acceptor, payer, indorser, guarantee, surety, or otherwise howsoever, against whom it is proper to protest, for all exchange, re-exchange, costs, damages and interest accrued, suffered, or to accrue or be suffered for want of —— thereof. Of which demand and refusal I duly notified ——.

(*State name of party notified, post-office addressed, and time notice sent.*)

Done and protested at —— aforesaid, the —— day of ——. **N. P., *Notary Public.***

[*Seal.*]

Protest—General Form.

[*Copy of bill (or note) and indorsements, etc.*]

United States of America (*State, commonwealth, or territory, etc.*) **—— county, ss.**

On the —— day of ——, A. D. ——, at the request of A. B., the holder of the original bill of exchange (*or* promissory note), **of which the above is a true copy, I, N. P., a notary public in and for said county of ——, presented the same to D. E., the drawer** (*or* maker), **therein named** (*or, if payable at a particular place, say* at ——, in said State, commonwealth, *or* territory), **and demanded acceptance** (*or* payment) **thereof, which was refused.[s] Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do solemnly and publicly protest, as well against the drawer** (*or* maker) (and indorsers) **of the said bill** (*or* note) **as against all others whom it does or may concern, for exchange, re-exchange, and all costs, damages, and interest already accrued, and to be hereafter incurred for want of acceptance** (*or* payment) **of the same:**

And on the same day I served due notice of the protest aforesaid upon the following named persons by depositing such notice in the post-office at ——, in said (State, commonwealth, *or* territory), **in a sealed envelope, with the postage prepaid, addressed to said persons, as follows:**

A notice for ——, directed to ——.

A notice for ——, directed to ——.

[*Seal.*] **In testimony whereof I have hereunto set my hand and affixed my notarial seal, the day and year aforesaid.**

Protest fees, —— dollars. **N. P., *Notary Public.***

In common practice the notary not only protests the note or bill for non-acceptance or non-payment, but also sends or serves upon the drawer and indorsers due notice thereof.[y]

Protest Notice—General Form.

Place ——, Date ——.

To ——.

Sir: The bill of exchange (*or* promissory note) **dated ——, drawn** (*or* made) **by D. M., on** (*or* in favor of) **D. E., for —— dollars, payable ——** (indorsed by S. S. and R. R.), **has this day by me been duly protested for non-acceptance** (*or* non-payment.) **N. P., *Notary Public.***

—— ——, } *Holders.*
—— ——, }

Protest Notice—General Form.

To ——. **Place ——, Date ——.**

A bill of exchange (*or* promissory note), **drawn** (*or* made) **by ——, in favor of ——, for —— dollars, dated the —— day of ——, indorsed by ——, was delivered to me for protest by ——, the holder, being this day due, its acceptance** (*or* payment) **was demanded and refused. You will be held for its payment.** **N. P., *Notary Public.***

[*Seal.*]

Notice of the dishonor of a bill need not state that the holder looks to the party notified for the payment.[z] Nor need it state who the holder is.[a] Notice that a bill has been protested for non-payment is sufficient notice for a demand and refusal.[b] Where there is no dispute as to the facts, the sufficiency of the notice

p-1 Ld. Raym. 743; Edw. Bills, Parsons Bills. q-2 Bay. 376; 6 Wheat. 572; 1 Rep. Const. c. 100; 1 Monr. 91; 9 N. H. 558; 7 Leigh. 173. r-2 T. R. 713; 5 Id. 239; Ld. Raym. 993. s-The reason assigned for refusal should be inserted, when one is given. t-4 T. R. 170; 2 Id. 713; 7 East. 350. u-5 Duer, 462; Bayley Bills, 7, § 2; Chitty Bills, 333; Story Bills, 276; Byles Bills, 200. v-8 Wheat. 333; 2 Peters, 179; Id. 668; 2 Harr. & Johns. 399; 4 Id. 54; 5 Duer, 462. w-3 Wend. 173; 3 Johns. 311. x-2 Hill, 227, and authorities cited. y-20 Wend. 81; 8 Wheat. 326. z-3 Conn. 517; 1 Litt. 194; 2 Hawks, 560; 5 Shep. 360. a-26 Maine, 45. b-2 Doug. 425; 10 N. H. 526; 9 Metc. 174; 1 Doug. 296; 3 Md. 251; 4 Id. 290; Id. 409.

is a question of law for the court.[y] Any form of notice to an indorser is sufficient to fix his liability, if the instrument in question was intended to be described in such notice, and the party was not misled or deceived thereby as to the instrument intended.[z] It is not necessary that a copy of the protest should accompany the notice of the dishonor of a foreign bill,[a] but information of the protest should be sent.[b] When a bill or note is delivered to a bank for collection, there is an implied contract on the part of the bank to give notice in the manner required by the usage and custom of the business.[c] The agent to whom the bill is indorsed for collection is the holder for the purpose of giving and receiving notice, and it is perfectly immaterial through how many hands the notice may have to pass, so it be transmitted with reasonable diligence by each of the successive parties.[d] Notice of non-acceptance by a mere stranger is insufficient. Where a bill is drawn by one of several partners on the firm, in relation to partnership business,[e] or where the drawers and acceptors are the same persons, no notice of protest need be given. For in each of these cases the party to be charged has notice of the dishonor of the bill so drawn in the very act of dishonoring it.[f] After a bill of exchange has been dishonored for non-acceptance, it is not necessary to present the same for payment.[g]

PRESENTMENT FOR PAYMENT. Although a presentment for payment is not necessary for the purpose of perfecting or completing the liability of the acceptor of a bill or the maker of a note, it is a condition precedent to the liability of the drawer and indorser. As against the maker of a promissory note, or the acceptor of a bill of exchange, it is not necessary for the holder to aver or prove a demand of payment; a suit is a sufficient demand, as in other cases of a precedent debt or duty.[h] The drawee by accepting the bill, becomes the principal debtor, and thenceforth stands in the same relation to the holder as does the maker of a note.[i] The holder is required to perform two distinct acts in order to charge these parties, or, in other words, to convert the conditional contract made by them into an absolute undertaking. Hence, a waiver of non-payment by the indorser does not, according to the law merchant, dispense with the demand itself.[j] But a waiver of *protest*, where the term is evidently used in its popular acceptation, is a waiver of both demand and notice.[k] In actions upon bills of exchange by an indorsee against an indorser, the plaintiff must prove a demand of, or due diligence to get the money from the drawee (or acceptor); and in actions upon promissory notes, by an indorsee against an indorser, the plaintiff must prove a demand of, or due diligence to get the money from the maker of the note.[l] The same rule applies with equal force to foreign as well as inland bills,[m] and includes within itself an exception in favor of those cases in which the holder is unable to make a demand with the exercise of due diligence.[n] The drawer of a bill is only responsible after a default on the part of the acceptor.[o] When the maker has absconded;[p] when the maker is a seaman on a voyage, having no domicile in the State;[q] when he has no known place of residence or place of business at which the note can be presented for payment;[r] and when he makes the note here and remains from the State, and takes up a permanent residence elsewhere, before it becomes payable, the holder is not bound to follow and search him out, for the purpose of making the usual demand of payment.[s] Neither the bankruptcy, insolvency, nor death of the acceptor of a bill, or of the maker of a promissory note, is of itself sufficient to dispense with the necessity of a regular demand of payment.[t] But the insolvency of the maker or acceptor is often an important circumstance, with other evidence, tending to show a waiver of demand and notice;[u] just as the absence or death of the maker or acceptor may be shown by way of dispensing with the necessity of a formal or personal demand.[v] Presentment for payment is not necessary in order to charge a man who guarantees the payment of a bill or note.[w] Where the house of the maker or acceptor is closed, it is the duty of the holder to make diligent inquiry for him. Want of demand is excused when the drawee cannot be found.[x] The holder should inquire for the acceptor in the neighborhood in order to excuse presentment.[y] If the drawee be dead, presentment must be made to his personal representatives; and if he have none, then at his house.[z] The death of a maker of a note and the insolvency of his estate, do not dispense with the necessity of demand and notice in order to charge an indorser.[a] If the holder die, presentment should be made by his personal representatives. Inevitable accident, superior force, or a contagious disease that prevails so as to interrupt all busi-

y-21 Wend. 10; 23 Id. 620; 25 Id. 277; 3 Hill, S. C. 77; 6 How. (Miss.) 473; 4 Dev. 277; 1 Speers, 244; 5 Barb. S. C. 490. z-14 Penn. St. 483; 14 Conn. 362; 1 Branch. 301; 10 Shepl. 392; 1 Comst. 413; 17 Howard, 606; 18 Id. 187. a-4 A. & E. 870; 6 N. & M. 372, S. C. b-2 T. R. 713; 5 Id. 239; 2 Ld. Raym. 993; 2 Esp. 511; 3 Camp. 334; 1 M. & S. 288, S. C.; B. N. P. 271. c-2 Johns. 372; S. C. 3 Cowen, 662. d-2 Hill, 451; 20 Eng. L. & Eq. 220; 15 M. & W. 231. e-20 Johns. 176; 1 Camp. 82; 3 Gray, 334. f-1 Denio, 409; 6 Seld. 51; 2 Conn. 654. g-2 Hill, 227; 16 East. 105; 8 N. H. 66. h-4 Johns. 183; 17 Id. 248; 8 Cowen, 271; 3 Wend. 13; 7 Barb. 652; 11 Wheat. 171; 13 East. 459. i-4 Johns. 183; 17 Id. 248. j-6 Mass. 524 11 Wend. 629. k-1 Comst. 186. l-2 Burr. 669. m-1 Strange. n-2 Burr. 669. o-2 Johns. Cas. 75. p-1 Ld. Raym. 443, 742; 4 Mass. 53; 1 Watts. & S. 126; 2 Sneed, 425, 555. q-4 Leigh. 114. r-7 N. H. 299; 3 Greenl. 82; 4 Mass. 53; 4 S. & R. 480. s-9 Wheat. 588; 14 Johns. 114; 4 M'Cord, 503; 2 Watts & S. 401; 6 Met. 200; 3 Ohio, 307; 14 Martin, 511; 16 Maine, 41; 3 Denio, 151. t-3 M'Cord, 394; 1 S. & R. 334; 16 Id. 157; 2 Marsh. 255; 1 M'Cord, 339; 3 Id. 195; 1 Nott & M'Cord, 438; 23 Maine, 280; 13 N. H. 415; 26 Me. 271; 5 N. H. 378; 3 Bibb, 102; 6 B. & C. 373; 11 East. 114; 2 H Bl. 609; 3 C. & P. 244. u-10 Wend. 504; 5 N. H. 378; 1 Johns. Cas. 99. v-1 M'Cord, 339. w-5 M. & G. 559; 13 M. & W. 453; 1 Kas. 488. x-2 Caines, 121; 3 M'Cord, 394; 1 Gray, 175. y-7 How. (Miss.) 294. z-Chitty, 357. a-1 Bailey, 482; 16 S. & R. 159.

ness, will excuse a delay to present for payment so long as the preventing cause continues.[b]

—— MODE OF. The demand may be made upon the maker or acceptor personally, but must be made at a reasonable time and place. A demand in the street is not sufficient, unless the party on whom it is made declines wholly to pay, or offers something which is not a payment, and does not object to the place on the ground that he is not there ready to pay.[c] The presumption always is, that the maker or acceptor is prepared to pay at his residence or place of business.[d] And if the notary meets him in the street and presents the bill for payment, and he offers to pay at his place of business, or at his residence, the notary is bound to give him an opportunity to do so.[e] So, where the drawees of a bill of exchange absent themselves from their place of business and make no provision for its payment, a presentment there to a clerk or book-keeper is a sufficient presentment to charge the drawer and indorsers.[f] The bill or note should be actually presented for payment. It should be produced,[g] for the acceptor has a right to see the bill before he determines whether he will pay it or not, and if he pays it he has a right to have it delivered to him as a voucher in his settlement with the drawer.[h] And for the same reason the maker of a promissory note is entitled to have it surrendered on payment. A demand made by a person who has not the bill or note in his possession is insufficient.[i] So, a request by letter through the post-office.[j] A notary or agent for collection cannot safely surrender the note or draft on receiving a check for the amount; and if he does so, should ascertain promptly whether the check will be honored, so that in case it is not he may, nevertheless, protest the note or draft for non-payment, and give regular notice of its dishonor to the parties to be charged thereon. Receiving a check on a bank in payment of a draft or note would not extinguish the latter in the absence of any intention to give the maker or acceptor a further credit,[k] but the surrender of the note or bill would embarrass the holder in his attempt to recover the instrument,[l] and a delay to protest the same for non-payment on the day it became payable would discharge the drawer and indorsers.[m]

—— TIME OF. For the purpose of charging the drawer and indorser, bills and notes should be presented and payment thereof demanded on the very day they become payable, and that is rendered necessary by the terms of the instrument as modified by the law or custom of merchants. The time can neither be hastened nor delayed a single day.[o] To determine with accuracy the time when a bill or note becomes payable, it is necessary to ascertain the legal principles upon which time is computed. On checks, notes, and drafts payable on demand, ordinarily no question can arise; they are payable on demand, strictly according to the terms of the instrument.[p] But when a bank check is post dated on a Sunday, or a note or other contract not entitled to days of grace falls due on Sunday, that day is excluded from the calculation and considered as stricken from the calendar;[q] and the party bound must make his payment or perform his engagement on the Saturday preceding. The period of a year is a determinate space of time, consisting of three hundred and sixty-five days; the added day of bissextile or leap year and the day immediately preceding being counted together as one day. The word "month" means a calendar month, unless otherwise expressed.[r] In computing the time when bills and notes payable a certain number of days, months, or years after date, become due, the rule is to exclude the day of the date from the calculation, and include the day of payment, assuming that no days of grace are allowed;[s] and if entitled to days of grace, these are to be added in each case to the time the note was to run.[t] So, when a bill is drawn payable ten days after sight, the day on which it is accepted is excluded from the computation, and, adding the usual days of grace, payment thereof may be demanded on the thirteenth day *after* the acceptance.[u] Where a note is payable a certain number of days from the day of the date, the day of the date is to be excluded from the computation.[u] And when a bill is drawn payable so many months after date or sight, the computation is made by the calendar, and, without counting the days of grace, the bill will become due on the date of the month corresponding with the day of the date or acceptance; that is, if the bill be dated or accepted on the tenth of the month, it will mature or become due on the tenth. Thus, if dated or accepted on the 10th of February, payable two months thereafter, it will become due on the 10th of April, or on the 13th, adding days of grace.[v] But when a bill is drawn payable one month after date, the computation is not carried into the third month. Thus, a bill dated on the 30th or 31st of January, payable one month after date, expires on the last day of February, whether it has twenty-eight or twenty-nine days in it. So, if dated on the 29th, 30th, or 31st day of August, and payable six months after date, it will fall due on the last of February, and including the days of grace, on the 3d of March.[w] The computation of bills or notes drawn payable one or more months from date, is made according to the Gregorian calendar, that is to say, from the day of the month it bears date to the corresponding day of the month of its maturity,

b-1 Johns. Cas. 1; Story Bills, §§ 308, 309; 2 Wend. 488; 22 Conn. 213; 1 R. I. 401. c-11 Penn. St. 456. d-18 Ala. (N. S.) 42. e-11 Penn. St. 456; 9 Wheat. 598; 2 Martin N S 511; 4 Id. 186; 1 S. C. 367; 1 Pick. 413. f-18 Ala. (N. S.) 42; 12 Ind. 223. g-4 Miss. 52. h-7 Barb. 143. i-4 Howard, 262. j-3 Whart. 116; 9 Wheat. 598. k-4 Johns. 296; 5 Id. 68; 5 Wend. 490; 5 Seld. 463; 34 Barb. 323; 1 Kern. 203. l-2 Hill, 482; 7 Barb. 143. m-3 Seld. 459; 8 Barb. 496; 11 N. Y. 203. o-7 Gill and Johns. 78; 6 Met. 13. p-35 Wend. 673; 9 B & C. 409; 20 Wend. 205; 2 Conn. 69; 10 Ohio, 426; 1 Met. 47; 1 G. Greene, 552. q-2 Conn. 69; 20 Wend. 205. r-Id. s-Id. Raym. 280; 6 T. R. 212; Chitty Bills, 370. t-2 Vt. 129. u-8 Mass. 153. v-17 Mass. 94; 2 Vt. 129. w-4 Rob. (La.) 120.

without any attention to long or short months. For instance, a note drawn on the 28th, 29th, 30th, or 31st of January, and due a month from date, will be due on the 28th of February, if the year be not bissextile, because the month of February has no other corresponding day. Those drawn on the 28th or 29th of February, and due one month from date, will be due on the 28th or 29th of March, because the corresponding days are found in the month of March. A bill drawn on the 31st of March, and due one month from date, will be due on the 30th of April; and, on the other hand, one drawn on the 30th of April will be payable on the 30th of May, and not on the 31st. This mode facilitates greatly the ascertaining of the day of protest, and the computation of interest. It is extremely simple.[x] There is another element to be taken into account in the computation of time when bills or notes become due, known as *days of grace*.[y] In computing the time when a note or bill becomes due, the days of grace are added therein, just the same as if they formed part of the bill or note itself.[z] To every practical purpose, therefore, the days of grace are a part of the instrument itself. And the negotiability of a note is as perfect and unrestricted during those days as before their commencement,[a] and no action can be brought upon the instrument until the third day has expired.[b]

All bills of exchange are entitled to three days of grace in time of payment.

Whenever the third day of grace falls upon Sunday, the 4th day of July, the 25th day of December, the 1st day of January, or upon any day appointed by the President of the United States or the governor of this State for a public fast or thanksgiving, the next preceding business day shall be deemed the last day of grace.[c]

As a general rule, notes that are not negotiable are not entitled to days of grace.[d] This class of notes comprehends such as are not drawn in negotiable terms.[e] Such as are payable in specific articles,[f] and such as neither the statute law nor any recognized or established custom has rendered negotiable. If entitled to days of grace by custom, and not by virtue of statute law, the custom must be proved affirmatively.[g]

The maker of a note and the acceptor of a bill is entitled to the usual hours of business, on the third day of grace, in which to make payment; and when a note is not drawn payable at a particular place, or at a bank, the demand of payment may be made at any time before the usual hours of rest. For the purpose of presenting a note or bill for payment, the proper hours of business range through the whole day, down to bed-time in the evening.[h] In other contracts the party has until the last instant of the day to make payment; and negotiable paper is no exception to the general rule.[i] Parties to a note or bill may, if they choose, draw the instrument without grace; and if the intention appear on the face of the bill not to allow any days of grace, it will become due and payable like any other contract. But a note payable on a particular day, without defalcation, is entitled to the usual days of grace;[j] and when days of grace are allowed, the indorser has a right to insist upon them to the same extent as the maker.[k] As the drawer of a bill, for many purposes, stands in the attitude of a first indorser, he also has a right to claim the usual days of grace. In order to charge him, the presentment for payment must be made on the third day of grace.[l]

—— WHOM BY. Bills and notes should be presented for payment by the holder, or by his authorized agent, and a person to whom a note or bill is indorsed for collection is to be regarded as a holder for the purpose of making a demand and giving notice. But an authority to demand payment need not be in writing,[m] and need not be given in express terms.[n] If the notary or agent have the paper in his possession, ready to be delivered up, his right to demand and receive payment will be implied.[o] A mere stranger cannot charge the parties by giving them notice of dishonor,[p] but a party in possession of the paper, though it comes into his hands by accident, as by death of an agent, may and ought to present it for payment, and give the usual notice of refusal.[q] And when a negotiable note or bill comes into the hands of any person under a blank indorsement, *prima facie* he is the holder and entitled to demand and recover the amount due thereon.[r] So when the instrument is drawn payable to bearer.[s] Where the holder dies before the note or bill becomes due, it should be presented for payment by his legal representatives.[t]

—— WHERE AND TO WHOM. The demand of payment is not a mere form; it is an act necessary to be performed by the holder in order to charge the drawer and indorsers; and accordingly, in an action against either of these parties the plaintiff must allege a presentment to the maker or acceptor for payment.[u] But it is not necessary for him to prove, in support of the averment, that the paper was presented to the maker or acceptor personally.[v] Presentment to his bookkeeper, while he is absent, is sufficient.[w] It is sufficient if shown to have been presented at his house or place of business.[w] A note drawn or bill accepted without specifying the place of payment should be pre-

x-Per MARTIN J. Id.; 2 Ld. Raym. 1079; 2 Johns. 203; 3 Cowen, 252; 4 Mass. 53; 11 Id. 88. y-1 Ld. Raym. 743; Edw. Bills, Parsons Bills. z-2 Cowen, 712. a-8 Conn. 505. b-3 Wend. 170; 6 W. & S. 179; 2 Miles, 353; 11 S. & M. 452. c-1 Ld. Raym. 743; Edw. Bills, Parsons Bills. d-10 Conn. 299; 20 Wend. 205; 2 Conn. 69; 3 Hawks. 465. e-10 Conn. 299. f-10 S. & Marsh. 486. g-7 B. Mon. 575. h-2 Hill, 635. i-2 Wend. 170; 2 Bos. Pul. 602; 4 T. R. 170; 8 East. 168; 9 M. & W. 223. j-12 La. 435. k-16 Me. 41. l-1 Blackf. 81. m-18 Johns. 220; 1 Pick. 401. m-Id.; 17 Mass. 95; 7 Id. 486; 9 Id. 423. n-2 Harrison, 487; 9 Mass. 423; 7 Id. 486; 17 Id. 95; 1 Pick. 401; 18 Johns. 220. o-9 Barn. & Cress.; 3 Wend. 179. p-Chitty Bills, 365. q-7 Cowen, 174. r-14 Pick. 172. s-Byles Bills, 159. t-3 Leigh. 197; 7 Wend. 460; 2 Show. 180; 7 East. 231. u-5 Esp. 265. v-12 Ind. 223. w-3 Denio, 145; 2 Hill, 635; 9 Sand. 166; 15 N. Y. 575.

sented for payment to the maker or acceptor at his residence or place of business.[x] If made payable at a place named, it is essential to show, in an action against a drawer or indorser, a presentment at the place appointed.[y] A note made payable at a particular bank (or a particular place)[z] is sufficiently demanded if left there for collection on the day it becomes due.[a] The instrument being made payable at a specified place, it is immaterial where the maker or acceptor resides; and it is sufficient if the presentment be made at the place so named or otherwise agreed upon between the parties.[b] But if a note or bill is drawn payable at a bank, and be not left or presented there for payment at its maturity, the drawer and indorser are *prima facie* discharged.[c] The note or bill being in the bank ready to be surrendered upon payment dispenses with the necessity of making a formal demand.[d] If a note be made or a bill be accepted by several persons who are not partners, a demand of payment must be made on each, as in other cases, personally or at his dwelling-house or place of business.[e] If one of them dies before the day of payment arrives, the demand must be made upon his legal representatives.[f] But where a firm accepts a bill, and one of the partners dies before it becomes due, the presentment for payment should be made to the survivor, on whom, in the first instance, the liability of the firm devolves.[g]

NON-PAYMENT. The contract of the drawer of a bill of exchange and indorser, whether of a negotiable note, bill, or check, is conditional; and one of the conditions upon which it depends is *due notice of non-acceptance or non-payment.*[h] If the holder fail to give the notice of dishonor required by law, the general rule is that the drawer and indorsers are discharged from their respective liabilities.[i] If the bill be presented in the first place by the holder, and payment refused, it should thereupon be placed in the hands of a notary,[j] whose duty it is to present it again to the drawee and demand payment; and in case he again refuses to pay, the notary makes a minute of the refusal, of the reason assigned therefor, and of the time, adding his initials. From this minute he afterward draws up the protest, which is a formal declaration of presentment and refusal to pay, in the usual form, stating the facts according to his minute.[k] A protest on a foreign bill is a part of the custom, and is said to be incident to the constitution of the bill.[l] It should be made by a notary public, or, if there be no such notary in or near the place where the bill is payable, by any inhabitant in the presence of two witnesses.[m] Bills of exchange drawn in one country on another, or in one State on another, are foreign bills.[n] The States of the Union are not foreign to each other in the same sense as are separate and independent nations, but they are so far foreign to each other that the convenience of trade and commerce requires drafts drawn in one State on another to be considered as foreign bills. So far as the relations of business are concerned, no distinction can be reasonably made between bills drawn in England on France, or in France on Spain, and bills drawn in Ohio on New York, or in Iowa on Louisiana.[o]

The demand of payment from the maker or drawee on the last day of grace, and notice of non-payment thereof to the drawer or indorser, within a reasonable time thereafter, is due diligence concerning the same, unless the indorsement shall express other conditions. And such demand of payment and protest must be made by the notary in person; he cannot delegate his official authority.[p] The protest should be made as of the day on which the bill or note becomes payable—that is, on the third or last day of grace; though it need not be drawn up and completed in form until afterward.[q] It should bear the date or show that the protest was made on that day.[r] With exceptions hereinafter mentioned, notice must be given of the non-payment of every foreign and inland bill, promissory note, and check, in order to charge the drawer and indorsers under the law merchant. No precise formula of words is necessary to be used in giving the notice; it is sufficient if the language used is such as in express terms, or by necessary implication, conveys notice to the drawer or indorsers of the identity of the note or bill, and that its payment, upon due presentment, has been neglected or refused by the maker or acceptor.[s] And it is immaterial whether the notice be verbal or in writing.[t] An immaterial variance between the description contained in the notice and the bill or note referred to will not vitiate it. To render the variance fatal it must be such that, under the circumstances of the case, the notice conveys no sufficient knowledge to the indorsers of the identity of the particular note or bill which has been dishonored.[u] Notice of the dishonor

x-16 La. 461; 14 Johns. 114; 1 Comst. 321. y-5 Denio, 329; 19 Johns. 391; 18 Id. 315; 3 Id. 207; 8 Bing. 214; 1 M. & G. 1017; 5 Id. 340; 4 Id 7; 1 Moore & Scott, 387. z-13 Mass. 558. a-7 Wend. 160; 17 Johns. 248; 15 Me. 67; 1 Stark. 475. b-10 N. H. 526; 14 La. 373; 16 Me. 41; 11 Wheat. 171; 2 Peters, 543; 5 How. 69; 12 Mass. 172. c-18 Pick. 63. d-5 Denio, 85; 2 Peters, 543; 6 Mass. 524; 3 Greenl. 147; 9 Porter, 186. e-8 Met. 504. f-5 Hill, 234; 1 Conn 367. g-2 Hill, 635. h-1 Comst. 413, and cases cited. i-2 T. R. 713; 5 Id. 239; 3 Wend. 486; 17 Id. 94; 4 Hill, 263. j-A notary public is an officer known to the law of nations, and recognized by the law merchant, and whose certificate, under seal of office, is evidence of protest in a foreign State without any auxiliary support, and is so received in all courts, according to the usage and custom of merchants. 15 Wend. 527; 7 Porter (Ala.) 529; 1 Brev. 428; 2 Bay (S. C.) 376; 1 Monr. 91. k-Chitty Bills, 457. A protest is, in form, a solemn declaration, written by the notary under a fair copy of the bill, stating that payment or acceptance has been demanded and refused, the reason, if any, assigned, and that the bill is therefore protested, Byles Bills, 202. l-2 Ld. Raym. 993; Chitty Bills, 455. m-1 Monr. 91; 3 Wend. 173. n-6 B. Mon. 60; 4 Id. 600; 3 Hill, 53; 4 Ga. 101 o-1 Doug. (Mich.) 455; 7 Humph. (Tenn.) 548. p-5 Duer. 462; Chitty Bills, 458; 3 Hill, 55. 59. q-3 Wend. 456; 2 Litt. 388, 207; 4 J. J. Marsh, 332; 2 Hill, 635. r-4 T. R. 170. s-1 Comst. 413; 4 B. & C. 339; 2 Johns. Cas. 337; 9 Wend. 279; 9 Peters, 33; 11 Wheat. 431; 23 Wend. 620; 14 Conn. 363; 10 Shep. 392. t-4 Wend. 566; 8 Mo. 336; 8 C. & P. 356. u-1 Comst. 417; 5 Seld. 289; 3 Bosw. 456.

of a bill or note by non-payment "implies that the holder means to insist on the liability of the person notified, and does not intend to give credit to the acceptor or maker, and is universally understood to be equivalent to a demand of payment." If this is not the language of the transaction, why is the notice given?[v] The notice advertises to the indorser that the holder looks to him for payment.[w] He can understand the notice in no other way, for it necessarily implies that the party giving it intends to insist upon his right of recourse.[x] The notice need not state who is owner of the note or bill, or at whose request it is given,[y] nor the day when the note was protested for non-payment, or the place where it was payable. For a protest is a declaration in writing, made by a public officer, under his oath of office, that the bill or note to which it relates was, on the day it became due, duly presented for payment, and that payment was refused; and a notice of such a protest is not merely a notice that this declaration was made, but that the facts so declared had really occurred.[z] The important thing is for him to know in due time that the paper has been dishonored, that he may take prompt measures for his own security.[a] It is not necessary that a copy of the protest should accompany notice of the dishonor of a foreign bill.[b] It is sufficient to inform the drawer or indorser that the bill has been protested for non-payment.[c] But the protest must be produced on the trial,[d] for that is the indispensable evidence that the bill has been dishonored.

A notarial protest is evidence of a demand and refusal to pay a bond, promissory note, or bill of exchange, at the time and in the manner stated in such protest, until the contrary is shown.

When the residence of the parties is known to the notary, it is his duty to give or send the notices to such parties as are intended to be made liable. When the residence of such parties is in the same city or town in which the protest is made, and the residence of such party is known to the notary, there should be a notice in person delivered by the notary, or left at the dwelling or business house of the party sought to be charged on the day of the dishonor of the paper, or before the expiration of the business hours of the succeeding day. Where the residence of the parties sought to be made liable is unknown to the notary, it is his duty to forward the notices to the holder of the paper by the first mail after the protest, or on the day succeeding it.[e]

Where the party entitled to notice resides in one place, transacts business in another, and receives letters in each, and notice is to be given by mail from a third place, it may be directed either to his place of residence or business.[f] But the holder is bound to adopt that mode of service which is the most certain to bring the notice home to the indorser.[g] Where the residence of the drawer or indorser is known, and the notice may be transmitted by mail, the service is completed by inclosing the notice in a letter or envelope and depositing the same in the post-office, properly addressed and prepaid.[h] Where the law permits service by mail, the indorser takes the risk of miscarriage and of all accidents which may prevent the due transmission and delivery of the notice.[i] If there be no mail, and no direct and regular communication, the notice should be sent by the safest and most expeditious conveyance.[j] In any case, the holder is at liberty to send the notice by a private conveyance if he chooses to do so.[k] Where the service of notice is made by mail, the holder must take care that the letter is accurately directed; if a delay occurs through his neglect in this particular, it will discharge the party entitled to notice. If the drawer or indorser designate the place where the notice is to be sent, by writing it under his name, the notice should be sent to the place specified.[l] When the holder does not know and cannot, on diligent inquiry, ascertain the drawer or indorser's residence or place of business, reasonable and due diligence is tantamount to actual notice.[m] If a notary inquire of persons who, from their connection with the transaction, are likely to know the residence of the indorser, and are not interested to mislead the notary, and he acts on the information thus obtained, it is due diligence on his part.[n] The loss of a bill is no excuse for the absence of protest.[o]

—— NOTICE OF SERVICE, BY WHOM. Notice from a mere stranger is not sufficient to charge the drawer or indorser.[p] The notice required by law is something more than a mere knowledge of dishonor, communicated to the drawer or indorser; it is an act to be performed by the holder or his agent, or by some person who is a party to the bill or note, or who would on the same being returned to him, and after paying it, be entitled to call for payment or reimbursement.[q] It is sufficient when it comes from the holder, to charge all the parties. Because he has a right to look to them all for payment, provided he gives to the drawer and indorsers reasonable notice of his intention to do so. And a notice from the holder to all the parties inures to the benefit of each party who stands behind him on the paper; thus, if the

v-3 Conn. 516. w-2 Q. B. 419, S. C.; 11 L. J. (N. S.) Q. B. 224; 18 L. J. (N. S.) 125. x-2 Hill, 593; 2 Peters, 543; 11 M. & W. 372; 17 Me. 360. y-26 Me. 45; 1 Pick. 401. The notice does not usually state the name of the holder, 5 Sand. 330; 18 Barb. 188. z-5 Sand. 330, S. C.; 5 Seld. 279; 18 Barb. 188, S. C.; 2 Kern. 552. a-23 Me. 392; 15 M. & W. 231. b-4 A. & E. 870; 6 N. & M. 372. c-Id. 15; 7 Wend. 527, 10 Mass. 1; 4 Mason, 336; 1 Doug. (Mich.) 455; 2 Id. 425. d-10 Mass. 1; 15 Wend. 527. e-9 Bush. 380. f-4 Wend. 328; 3 Seld. 481. g-3 Kernan, 549. h-1 Peters, 578; 3 Kernan, 555; 3 Esp. 54; 2 H. Bl. 509; 6 East. 8, 9; 2 Smith, 195. i-10 Peters, 572, and cases cited; 5 Johns. 375; 1 Pick. 401; 8 W. & S. 14. j-6 East. 3, 10; Story Bills, §§ 286, 287. k-Holt N. P. C. 476; 23 Me. 287. l-10 Peters, 580; 1 Sand. 93; 25 Barb. 138. m-10 Peters, 572. n-2 Sand. 178; per OAKEY, C. J. o-Poth. 145. p-3 Wend. 173; 12 Pick. 406; 1 T. R. 167. q-Bayley Bills, 7, § 2; 1 Sand. 416; 15 Md. 190.

holder gives due notice to the first and second indorser of a promissory note, the second is entitled to recover thereon against the first indorser on showing that such notice of dishonor was duly given.[r] If the holder gives notice to his immediate indorser, and he to his indorser, and the notice is in this manner carried back to the drawer of a bill, the holder is entitled to bring an action thereon against either of the parties that have been duly notified.[s] A party to whom a note or bill is indorsed for collection may give the notice with the same effect as if the indorsement had been made for value.[t] Even where the paper is not in form indorsed to the bank.[u] Possession of a bill or note by a notary is evidence of a right to protest it; and when a notice signed by a notary public is duly given it is presumed to be done by the authority of the holder.[v] An indorser who has been discharged by the laches of the holder or subsequent parties cannot afterward take up the note or bill and give notice so as to charge prior parties, because all of them are discharged by the same want of diligence.[w] A notice given by a party in possession of the bill, as banker, attorney, or agent, is sufficient, though given in his own name.[x] Where the holder is not satisfied with the responsibility of his immediate indorser, his only safe course is to give notice to all the parties.[y]

—— NOTICE OF SERVICE, UPON WHOM. *Generally.* It is necessary to give notice of non-payment to the drawer and indorsers of notes and bills in order to charge them. A person who indorses an absolute guaranty on the back of a negotiable promissory note is not entitled to notice of dishonor,[z] and one who transfers a bill without indorsement is not, by the law merchant, entitled to notice; as where a draft is delivered by a debtor to his creditor on account of the indebtedness.[a] When a note is made payable to the order of two or more persons who are not partners, and indorsed by them, the notice of dishonor must be given to each; and if one of them die before the note falls due, the holder must be careful to charge the estate of the deceased indorser, or else he will not be entitled to recover thereon against the other.[b] In case of a partnership, notice to one is notice to all.[c] If the indorser be dead at the maturity of the note, and there be executors or administrators at that time known to the holder, notice must be given to them. If he does not know that the deceased has left a will, or whether any administrators have yet been appointed or not, it is sufficient to address the notice to the executor or administrator of the deceased, or to the indorser.[d] Notice addressed to the legal representative of the deceased indorser to the place of his last residence, is good,[e] the holder not knowing the name of the representative.[f] Where a note or bill is indorsed by a firm, and one of the members dies before it falls due, it is sufficient to give notice of dishonor to the surviving partner. For the survivor represents the firm, and is legally answerable as such for its debts.[g] Though a partnership has been dissolved by mutual consent, notice to one of the members, given before the fact of dissolution has been made public, is notice to all.[h] For the partnership still subsists for the purpose of winding up the business and closing the concern, and each may be understood to act as the agent of the rest until notice of dissolution has been made public. As a general rule, failure to give the drawer or indorser due notice of non-payment discharges him. The presumption of law is that he is injured by the want of notice.[i] That the drawer is deprived of the opportunity which he ought to have had to withdraw immediately his effects from the hands of the drawee,[j] and that the indorser is prevented from taking prompt measures to obtain and enforce payment of the note or bill.[k] And this presumption is so strong and uniform as to exclude proof that the drawer has not been injured, in all cases except those in which the evidence is offered to bring the case within one of the recognized exceptions to the general rule.[l]

Exceptions. An agreement made by the drawer or indorser, before dishonor, waiving notice of non-payment, or waiving the protest of a bill or note, will render him liable thereon just the same as if due notice had been given.[m] And any conduct on the part of the drawer or indorser calculated to or actually inducing the holder to omit serving him with notice will have the same effect.[n] Any words by an indorser, waiving demand and notice before dishonor, will render a formal demand and notice unnecessary.[o] A stipulation by the indorser of a note to waive notice of dishonor dispenses with the necessity of giving him notice, but does not dispense with the demand itself; the two acts are perfectly distinct, and each is a condition precedent to the holder's right of recovery.[p] But where the indorser of a note requests the holders not to protest it, and waiving the necessity of protest thereof, this is a waiver of both demand and notice; for the term *protest*, when used among men of business, includes all those acts which are by law necessary to charge an indorser.[q] A waiver of demand

r-18 Johns. 327. s-2 Camp. 373; 2 Taunt. 244. t-1 Hill, 263; 2 Id. 451. u-21 N. Y. 485. v-17 Maine (5 Shep.) 360; 18 Johns. 230. w-4 Barn. & Ald. 451. x-3 A. & E. 93; 3 M. & W. 109; 6 Shepley, 292. y-Bayley Bills, 7, § 2. z-19 Wend. 202; 17 Id. 214, and cases cited. For a guaranty is an unconditional undertaking that the note or bill shall be paid, 20 Johns. 365; 5 Wend. 307; 2 Comst. 225. The guarantor stands in the light of a surety, and may be discharged by the negligence of the holder, 12 Peters, 497. a-1 Wend. 219; 2 B. & C. 445. b-5 Hill, 232; 1 Conn. 367. Notice to one of several joint drawers who are not partners is not notice to the others, 7 Ohio St. 281. c-7 Ohio St. 281; 4 Cowen, 126; 4 S. & M. 479. d-4 How. (Miss.) 114; 4 S. & Marsh. 749; 2 Humph. 112. e-3 Humph. 538. f-See 15 Grattan, 501. g-9 Humph. 51; 4 S. & Marsh. 749; 5 Hill, 232; 1 Johns. Cas. 405; 2 Id. 374; 1 Wend. 148. h-6 Lewis, 684; 6 Cowen, 441; Byles Bills, 37, 39: 19 Ala. (N. S.) 717. i-Chitty Bills, 435; 2 B. & P. 280. j-17 Wend. 94. k-2 Johns. Ch. 418. l-3 Esp. 158; 17 Wend. 94. m-1 Comst. 186; 20 How. 496. n-4 Camp. 285; 1 Johns. Cas. 99; 8 Eng. (13 Ark.) 401; 13 Wend. 504; 13 Barb. 163. o-32 Barb. 282; 17 Wend. 489; 20 Ill. 557. p-11 Wend. 629; 6 Mass. 524. q-3 Denio, 16; 1 Comst. 186; 6 Wheat. 572.

or notice made by a drawer or indorser is not a new contract—it is only a waiver of one of the conditions precedent to his liability, and does not, therefore, require any consideration to support it.[r] A verbal or written communication to the holder, dispensing with the necessity of demand and notice, will be sufficient.[s] Where the indorser writes a waiver of demand and notice over his signature on the note, his contract becomes absolute; he is bound to pay the note as unconditionally as if he had signed it as maker.[t] It puts him in the same situation as if the demand had been made and notice of dishonor given in due time.[u] A waiver of notice, made before dishonor, cannot be proved under an allegation of due notice; the complaint must state facts constituting the cause of action on which the plaintiff seeks to recover.[v]

If the indorser has taken full and ample security against the liability incurred by him, he is not entitled to notice, because he cannot be prejudiced by want of notice;[w] partial or doubtful security falls short of this, and leaves the reason of the rule for requiring notice in full force.[x]

When a bill is accepted for the accommodation of the drawer, notice is unnecessary; for it is obvious that the drawer cannot be injured by the want of notice of non-payment, or that he can suffer any legal damage in consequence of not receiving notice.[y] So, when a note is made for the accommodation of an indorser who is ultimately holden to pay it; for it is clear that he can lose nothing from the failure to receive the usual notice of dishonor.[z] But an accommodation drawer or indorser is entitled to strict notice.[a] As to all the other parties to the instrument, his rights and duties are the same as in the case of business paper.[b]

A drawer is not entitled to notice where he has no funds or effects in the hands of the drawee,[c] but to this exception there are important modifications. If the drawer has made or is making consignments to the drawee, and draws before the consignment comes to hand;[d] or if the goods are *in transitu*, but the bill of lading is omitted to be sent to the consignee, or the goods are lost;[e] or, if the drawer has any funds or property in the hands of the drawee, or there is a fluctuating balance between them in the course of their transactions;[f] or if there is a running account between the drawer and drawee, and the latter has been in the habit of accepting the bills of the drawer without regard to the state of their accounts;[g] or, if the drawer has a reasonable expectation that the bill will be paid, he is entitled to notice of dishonor.[h] If the drawer of a bill has no funds or assets in the hands of the drawees, or expectation of funds, or any arrangement or agreement with them to accept the bill, he cannot ordinarily suffer any injury for the want of notice, and he is not entitled to it.[i]

The indorser's right to notice is not at all affected by the drawer's want of funds or effects in the hands of the drawee;[j] unless the act of drawing be fraudulent and the indorser implicated in the fraud.[k]

Ignorance of a party's residence will excuse delay in giving him notice, when the time is consumed in the use of diligence to acquire the necessary information. It would be very hard, when the holder of a bill does not know where the indorser is to be found, if he lost his remedy by not communicating immediate notice of dishonor of the bill. The holder must not allow himself to remain in a state of passive and contented ignorance; but if he uses reasonable diligence to discover the residence of the indorser, notice given as soon as this is discovered is due notice of the dishonor of the bill, within the usage and custom of merchants;[l] for exercise of reasonable and due diligence is equivalent to actual notice.[m] The holder or indorser who acts upon credible information—information on which he has a right to rely, in giving notice of dishonor, retains his right of recourse notwithstanding he may have been misled in regard to the residence of the party to be charged. Delay in giving notice may also be excused, because the day on which the holder should have given notice is a public festival, on which he is strictly forbidden by his religion to attend to any secular affairs.[n] "The law merchant respects the religion of different people. For this reason we are not obliged to give notice of the dishonor of a bill on our Sunday," or a Jew on a day during which his religion does not permit him to attend to any sort of business.[o]

Generally, the indorser of a note not negotiable is not entitled to the usual privilege of an indorser of negotiable paper; he stands as principal and not as surety to his indorser, and has no right to insist upon a previous demand of the maker and notice of non-payment.[p]

Where the drawer or indorser has been discharged by the laches of the holder, and that fact appears, there must be, in order to render him liable, clear proof that the promise was made with a full knowledge of all the facts

r-19 Penn. St. 396. s-4 Mass. 245; 6 Id. 409; 9 Id. 159; 5 Shep. (17 Me.) 16; 5 Pick. 436; 6 Wheat. 572; 1 Comst. 186; 20 How. 496. t-8 Cush. 157. u-17 Penn. St. 303. v-5 M. & W. 418; 5 B. & Ald. 165; 13 Barb. 162, and cases cited. w-1 Esp. 302; 7 Wend. 165; 5 Mass. 170; 15 East. 222; 1 S. & R. 334; 34 Me. 227; 19 Ala. 703; 13 Barb. 163; 3 Kernan, 155; 4 W. & S. 328; 3 Md. 265. x-3 Kernan, 55. y-9 B. & C. 44. z-2 Peters Cond. 64; 7 Wend. 168; 40 Me. 74. a-9 Porter, 300; 10 Conn. 308; 95 Eng. C. L. 494. b-9 Pick. 547; 6 A. & E. 502; 4 Cush. 188. c-1 T. R. 405; 1 Denio, 367; 2 Ala. 368; 21 Pick. 327. d-12 East. 175. e-16 East. 43; 3 Camp. 217. f-15 East. 216, 221; 7 Id. 359. g-12 East. 175. h-4 M. & S. 226; 2 Camp. 503; 7 Bing. 217. i-11 Humph. (Tenn.) 74; 28 Barb. 390, 392; Story Bills, § 311. j-Peake, 202; 4 Cranch. 153. k-4 Rand. 553. l-Per Ld. ELLENBOROUGH, 2 Camp. 463; S. C. 12 East. 433; 1 B. & C. 245; 29 Eng. L. & Eq. 604. m-3 M. & W. 166; 4 Wheat. 438; 12 East. 433; 2 Hill, 578; 3 Id. 520. Ante *service of notice*. 2 Sand. 178; Id. 171, and cases cited; 3 Comst. 272; 4 How. 345. n-2 Camp. 602; Chitty Bills, 454. o-Story Bills, § 340. p-8 Wend. 403; Bing. N. C. 249; 2 Scott, 423; 1 Hodges, 324, S. C.; 11 Ohio, 102; 3 Clarke (Iowa) 366.

and circumstances.[q] A promise to pay under a misapprehension of fact is no waiver of the consequence of laches;[r] nor is a promise made in ignorance of a material fact a waiver; as where the drawer or indorser promises to pay without knowledge that no notice has been sent.[s] If it be shown that the holder has been guilty of laches, it must also appear that the promise was made with a full knowledge of them, or it will not bind the party making it.[t] But if no laches are shown, a promise to pay is presumptive evidence of due notice.[u]

—— NOTICE OF SERVICE—WHEN. Notice of dishonor cannot be given until after a demand and refusal of payment.[v] A premature notice is a nullity. It is not necessary that the party giving the notice should have, at the time, personal knowledge of the dishonor.[w] A notice given on the day the bill or note becomes due is not too soon, for, though payment may still be made within the day, non-payment on presentment is a dishonor.[x] And when the third day of grace falls upon Sunday, fourth of July, twenty-fifth of December, first of January, or any day appointed by the President of the United States or the governor of this State for a public fast or thanksgiving, the presentment for payment and notice of non-payment may be made on the next preceding business day, which is in either case the last day of grace.[y]

Where the parties reside in the same place, notice to the drawer or indorser on the day of the dishonor and after it, or in the course of the next succeeding day, is reasonable, and is in time;[z] but the notice is not in time unless it be given so as to reach the party residing in the same place on the day succeeding the dishonor. If sent by post, it must be deposited in time to be delivered on that day.[a] If by private hand, it must be served before the expiration of the day succeeding the dishonor.[b] It is not at all material in what manner the service is made if the notice actually reaches the party in due time.[c] That is, on the right day and within the customary hours of business, having respect to the usages of the place.[d]

Where the parties do not reside in the same place the notice of dishonor must be put into the post-office early enough to go by the mail of the day succeeding the last day of grace,[e] unless the mail of that day is closed at an unreasonably early hour, or before early and convenient business hours.[f] If there be two mails leaving on the same day, the first closing before the common hours of business, it is sufficient to transmit the notice by the second.[g] Indeed, the holder is not bound to send off the notice by a mail that closes before the usual hours of business begin, even if there be no second mail leaving on that day.[h] The holder is not bound, in any case, to send off the notice on the day of the dishonor;[i] nor is either of the indorsers bound to transmit the notice to his indorser on the day he receives it. Each party has a day for giving notice.[j] The result of the authorities then is, that the holder of a bill or note is bound to despatch the notice of dishonor by mail on the day after default is made in payment of it, unless the mail closes at an unreasonably early hour; that an indorser is bound to use the same diligence in sending it forward on the day after he receives it; and that neither of them is obliged by law to send it forward on the very day the bill is dishonored or the notice received. When no mail leaves on the day after notice is received, or the paper is dishonored, it is sufficient to put the letter in the post-office in time to go by the next mail.[k] For the purpose of giving notice, a bank or banker, with whom a bill is deposited for collection, is to be considered as a distinct holder, and has a day to give notice to his customer; while the customer has another day in which to give notice to the antecedent parties.[l] The rule is the same, though the paper be transmitted through several banks, indorsed from one to the other for collection.[m] The holder should give notice of dishonor to all the parties to whom he intends to look for payment,[n] but it is enough for him to send or give due notice to his indorsers for the purpose of charging the party indorsing the bill over to him;[o] and it is the business of each indorser to take care that the party responsible to him is duly notified.[p] The over diligence of one will not supply the want of diligence in another.[q] Reasonable diligence in giving notice (when there is no dispute about the facts) is a question of law.[r]

PAYMENT.

APPLICATION OF. The debtor has the first right to direct the application of any payment he may make.[s] But to make such application

[q]-4 Humph. (Tenn.) 336. [r]-1 T. R. 712; 5 Burr, 2672. [s]-8 Johns. 384. [t]-5 Johns. 248; 12 Wheat. 183; 20 How. 495; 23 Wend. 379; 36 N. H. 540; 9 Cal. 236; 33 Penn. St. 134; 20 Ill. 557; 11 Ohio St.; 10 Cush. 159. [u]-7 East. 231; 14 Mo. 59. [v]-2 Caines, 343; 38 Penn. St. 135. [w]-4 Ellis & Blackburn, 615. [x]-3 Camp. 193; 2 Kernan, 551; 5 Sand. 330; 1 Johns. Cas. 328; 6 Wheat. 104; 9 Barr, 178. [y]-1 Ld. Raym. 743; Edw. Bills, Parsons Bills. [z]-23 Pick. 305; 2 Camp. 208; 9 East. 347; 2 B. & A. 500. [a]-3 C. & P. 250; 1 Md. 285; 9 East. 347; 1 T. R. 167; 11 Johns. 187. [b]-Holt. C. N. P. 676; 2 Taunt. 224; S. C. 2 Camp. 373; 3 Wend. 276. [c]-1 Peters, 578; 7 Blackf. 447; 7 Hammond, 506; 8 Watts & Serg. 14. [d]-9 Wheat. 987; 2 Burr, 660; 2 Hill, 635; 1 Md. 59; 18 Ala. 256. [e]-2 Wheat. 373; 9 Peters, 33; 2 Hill, 451; 5 Cowen, 303. [f]-1 Ohio State, 206; 1 Peters, 605. 618; 3 Pick. 180, 183; 8 Id. 51; 9 N. H. 559; 7 Gill. & Johns. 79; 18 Me. 292; 5 Cowen, 303; 3 Wend. 276; 4 Leigh, 37; 2 Marshall, 610; 5 Littell, 84; 3 Conn. 489; 7 Watts & Serg. 264; 1 La. 222; 2 Rob. 243; 1 Ala. 752: 18 Conn. 363; 4 Bing. 715: 1 Bos. & P. 750; 5 M. & Sel. 68; 1 S. & Marsh, 261, 664; 18 Conn. 373; 24 Me. 458. [g]-1 Hill, 263. [h]-24 Me. 458; 1 S. & Marsh. 644. [i]-9 Peters, 33: 1 Hill, 263; Conn. 484; 7 Gill & Johns. 79; 17 Mass. 449; 9 N. H. 559; 2 Marshall, 610. [j]-2 Maule, 68. [k]-1 Moody & Malkin, 61; 24 Maine, 458. [l]-5 Maule & Selw. 68; 2 Taunt. 388; 15 East. 290; 1 Hill, 263; 21 N. Y. 485, 487. [m]-5 Cowen, 303; 2 Hill, 451; 3 B. & P. 599; 5 Mass. 167. [n]-3 C. & P. 250; 9 Peters, 33. [o]-2 Wheat. 377. [p]-3 Johns. Cas. 89; 18 Johns. 230; 2 Hill, 457. [q]-8 Foster, 302; 4 B. & Ald. 451; 4 Leigh. 37, 50; 5 Humph. 469; 8 Porter, 258; 20 Eng. L. & Eq. 220; 15 M. & W. 231; 29 Eng. L. & Eq. 504. [r]-21 Wend. 645; 11 Johns. 187; 6 Ohio, 66; 1 Peters, 378: 2 Marsh. 616; 7 S. & R. 323; 17 Mass. 453. [s]-7 Wheat. 13: 20 Pick. 441; 5 Watts, 544; 2 Bailey, 617; 4 Gill & Johns. 361; 8 Watts & Serg. 320; 5 Iredell, 551; 7 Blackf. 236; 1 Kelly, 241; 1 Branch, 409; Davies, 146; 6 Com. 432. The rule that the debtor may apply payment as he pleases, applies only to voluntary payments, 10 Pick. 129.

he must give directions before or at the time of payment.[m] If no appropriation be made by him, it then devolves upon the creditor to make it.[n] Yet the creditor must make such an application as the debtor could not reasonably or justly object to,[o] and such as would be most for his interest at the time.[p] If there are two demands and the debtor pays a sum exactly equal to one of them, it will be considered as having been paid in discharge of that.[q] If one be due while the other is not, the payment applies to the former.[r] The law will make the application first to the interest and then to the principal.[s] To the debt which is prior in date.[t] To the debt that is less secured.[u] If application be directed by neither, then the law will make the application according to equity.[v] A debtor or creditor cannot appropriate a payment in such a manner as to affect the relative liabilities or rights of sureties without their consent.[w]

—— MADE—HOW. Payment of negotiable notes and bills must always be made in money.[x] If drawn payable in anything else they are not negotiable, and are not governed by the rules applicable to negotiable paper. For instance, a note made by a farmer, payable in farm produce, without specifying any time or place of payment, is payable on demand made at the farm of the debtor; and in an action against the maker, it is necessary to show a refusal to pay on such demand.[y] The same principle applies to where a merchant gives his note payable in goods, or a mechanic gives his due bill payable in work; the goods must be demanded of the merchant at his store, and the work must be required of the mechanic at his shop.[z] There is no absolute safety short of a payment of money. If the holder takes payment in bank bills, it may turn out that the bank has failed; and if he takes a check it may be dishonored. The custom of merchants requires that the holder of a bill shall present the instrument, at its maturity, to the acceptor, demand payment, and upon receipt of the money deliver up the bill.[a] If he departs from this custom, and especially if he takes a draft on a banker, or any other security, whereby the time of payment is extended, though only till the next morning, the drawer and indorsers will be discharged. But, if the time of payment is not extended, and the holder retains possession of the bill, so that he is ready to surrender it on payment to the drawer or indorser, and the demand and protest are made and given in due time, there is no reason why the taking of a check on the bank as a means of obtaining the money on the bill, should operate to discharge any of the parties thereto.[b] The taking of a note, or draft, or check is no payment unless the parties make it such by express and positive agreement.[c] The note of the debtor, receipted as cash, is not an absolute payment; nor is the note of a third person, unless it be expressly accepted as payment.[d] Such receipt may be explained or even contradicted.[e] But the creditor receiving a draft drawn by his debtor or a third person, may make it by his own laches, or by taking some other security in its stead.[f] When bills are taken in payment of a debt, and the creditor sues on the original consideration, payment of the bill will be presumed until the contrary appear.[g] And where a creditor takes from his debtor a check on a bank or a negotiable note, he cannot recover on the original consideration without showing the check to have been dishonored or surrendering the note to be cancelled.[h] A check drawn payable to the order of the creditor and indorsed by him, produced by the debtor, is evidence of payment of so much money;[i] and proof of delivery of the check to him in payment of the debt, though payable to bearer and the production of it by the drawer, will raise the presumption that the person to whom it was delivered received the money on it.[j]

Payment means payment in due course and not by anticipation; and if a negotiable note or bill of exchange be paid before its maturity, and not surrendered, and afterwards came into the hands of a *bona fide* holder, it is valid security in his hands.[k] A bank that pays a check prematurely does not thereby appropriate the drawer's funds; it is a payment without authority.[l] The acceptor of a bill, whether inland or foreign, and the maker of a promissory note, should pay it on demand at any time within business hours on the day it becomes payable; and if it be not paid on such demand, the holder may instantly treat it as dishonored.[m] But the maker or acceptor has, as we have seen, the whole of that day in which to make payment; and though he should in the course of the day refuse payment, and thus entitle the holder to give notice of dishonor, still if he makes payment afterward on that same day, it

m-1 Overton, 488; 4 Iredell Eq. 42. n-2 Harr. & Gill. 159; 4 Cranch. 316; 1 Mo. 315; 5 Day, 166; 1 Pick. 332; 10 Id. 129; 1 Scam. 196; 6 Watts & Serg. 9; 20 Pick. 339; 23 Id. 473; 7 How. 681; 5 Denio, 470; 14 N. H. 352. o-19 Vt. 26; 1 Sanf. S. C. 416; 12 S. & Marsh. 631; 21 Vt. 456; 14 N. H. 431; p-2 N. H. 193; 2 Harr. & Johns. 402; 14 Pick. 314. Davies, 146. q-3 Caines, 14; 15 Wend. 19. r-1 Bibb. 334; 10 Watts. 255; 5 Mason, 11. s-1 Harr. & Johns. 754; Id. 98; 1 Dev. 341; 8 W. & S. 17; 1 Strobh. 426; 8 S. & Marsh. 368; 3 Sand. Ch. 608; 11 Paige, 619; 2 Fla. 445. t-4 Harr. & Johns. 351; 9 Wheat. 720; 10 Conn. 175; 4 Mason, 332; 9 Shep. 138; 9 Watts. 386; 1 Woodbury & Minot, 150; 11 Met. 174; Davies, 146; 14 N. H. 431. u-4 Ired. Eq. 42; 2 Rich. Eq. 43; 10 S. & Marsh, 113. v-Gilpin, 106; 12 S. & R. 301; 9 Wheat. 720; 5 Mason, 323; 1 Harr. & Johns. 754; 2 Vt. 283; 12 Id. 256; 1 Branch. 409; 5 Gilman, 449. w-Gilpin, 106; 12 N. H. 320; 1 McLean, 493; 5 S. & Marsh. 410; 5 Leigh. 329. x-4 Car. & Payne, 508. y-5 Cowen, 516; 2 Bibb. 280; 16 Mass. 453; 1 Hempst. 67. z-5 Cowen, 518; 2 Denio, 145. a-7 Barn. & Cress. 90; 8 Barb. 408. b-Chitty Bills; Story Bills. c-5 Johns. 68; 9 Id. 310; 15 Id. 224; 6 Wend. 490; 5 Denio, 360; 3 Comst. 168; 7 Abb. 259; 10 Md. 27. d-5 Johns. 68. e-1 Sand. 9; 5 Wend. 85. f-9 Wend. 122; 5 Hill, 466; 1 Sand. 81; 23 Wend. 345. g-5 Esp. 52; 3 E. D. Smith, 253. h-1 Johns. 34; 10 Id. 104; 15 Id. 147; 1 M. & R. 365; 29 Penn. St. 448. The bank stamp "*paid*" may be explained by showing it was made by mistake, Hill & Denio, 63. i-3 Esp. 196. j-4 Taunt 493; 4 Esp. 9. k-4 Mass. 372; 11 Johns. 128; 14 Gratt. 1; 3 Camp. N. P. 193; 3 T. R. 80; Chitty Bills, 260, 395. l-6 Duer. 76; 13 East. 516; 8 Wend. 478. m-3 B. & P. 599; 4 T. R. 170

will be sufficient, and will render the notice of the dishonor of no avail.[n] The indorser, of course, becomes liable to an action as soon as the credit given to the maker or acceptor has expired.[o]

—— WHO BY. The maker of a promissory note and the acceptor of a bill of exchange, being the parties primarily liable, are bound to pay the bill or note at its maturity; hence the payment of a note by the maker, or the payment of a bill by the acceptor, when properly made, discharges the drawer and indorsers thereon, and cancels or puts an end to the security as an existing obligation.[p] When a bill is paid by an accommodation acceptor, the law implies a contract on the part of the drawer to refund to the acceptor the amount so paid, with such damages as he may have sustained in the transaction.[q] Having been paid, it remains in the hands of the acceptor as a voucher to be used by him in his settlement with the drawer, or as an item of evidence in an action brought for the recovery of the money paid.[r] The same principles apply to the case of a promissory note, made for the accommodation of the payee, or of some other person to whom it is delivered for negotiation.[s] And payment of the note by the surety, while it cancels the note, raises an implied contract on the part of the principal debtor to repay the same to the surety.[t] As between the makers of a note and the payee or holder, the makers are all principals, though one of them signs as "security."[u] As between themselves, the relation of the parties may be proved.[v] Payment of a note or bill by an indorser is a satisfaction of it only in respect to subsequent indorsers. An indorser who takes up by paying dishonored paper becomes the holder as against prior parties,[w] and may transfer it or put it into circulation; it is paid only as to subsequent indorsers;[x] for a bill is not discharged until paid by or on behalf of the acceptor, nor a note until paid by or on behalf of the maker.[y] For this reason, when an indorser takes up a dishonored note or bill, he is at liberty to put it again in circulation;[z] whereas payment by the maker of a note or the acceptor of a bill discharges it, so that it is no longer negotiable.[a] One who voluntarily and officiously pays the debt of another, without request or authority to do so from the debtor, cannot recover from him the sum paid.[b] After a foreign bill has been protested for non-payment, any person may pay it (under protest) for the honor of the drawer or indorser, and is entitled to demand repayment, not only from the person for whose honor he made the payment, but from all other parties who are liable to that person.[c] With this exception to the general rule, there is no reason why an officious payment and satisfaction of a bill or note should not be held to cancel the security.[d]

—— WHO TO. Payment should be made to the holder and real proprietor of the bill, or to some person authorized by him to receive the same;[e] it should be made to the party having the title and possession of the instrument.[f] If drawn payable to bearer, or indorsed in blank so that the title passes by mere delivery, possession alone is presumptive evidence of title and sufficient authority to demand and receive payment.[g] The maker or acceptor will be protected in paying a note or bill to the party presenting it under such circumstances as would give a right of action thereon to a purchaser in good faith for value.[h] And he is bound to pay a *bona fide* holder who has parted with value for the same before it became due, notwithstanding it may have been previously lost or stolen.[i] But having notice that the bill or note has been lost by the real proprietor or stolen from him, he should not pay the same to the finder, or other person, until the latter establishes a clear title or gives an adequate indemnity against the claim of any other person.[j] With notice of the loss, the maker or acceptor pays at his peril; for if it turns out that the party in possession was not the real owner of the bill nor entitled to recover thereon as a *bona fide* holder, he will be obliged to pay it over again to the real proprietor.[k] In determining the question of title, where a note or bill is presented for payment, the maker or acceptor must ascertain whether the indorsements are properly made, so as to vest the title in the person demanding payment.[l] The maker must at all events see that he pays to the order of the payee, for if his indorsement is a forgery, or spurious, it is a payment by mistake.[m] If the indorsements on the note or bill be in blank, it is sufficient to make certain that the payee's indorsement is genuine; but if the successive indorsements be special, the holder cannot derive title to the paper through a forged indorsement. Thus, where the payee of a note drawn payable to him, or order, indorses it specially payable to A. or order, and he again indorses it specially payable to B. or order, the title to the note is in B., and no other person has the right to demand payment of it except as his agent.[n] Possession of a note transferable by delivery only, or indorsed in blank, is *prima facie* proof of title.[o] The case is different where the payee indorses it in blank: here, though there are subsequent special indorsements on the note, the

n-3 Wend. 170; 2 Cowen, 766; Byles Bills, 175; 6 W. & S. 179. o-2 Dowl. P. C. 81; 1 Cromp. M. & Ros. 370; 3 Tyrw. 487. p-2 Denio, 205. q-3 Barb. 634. r-7 Barb. 143; 2 Denio, 205; 5 Hill, 160; 21 Wend. 502. s-3 Johns. Cas. 5; 1 Wils. 85; 3 T. R. 182; 3 Camp. 101; 2 Wheat. 385. t-Byles Bills, 193; 5 Blackf. 37. u-6 Barb. 199; 2 Comst. 406. v-10 Barb. 512. w-29 Conn. 347. x-14 Gratt. 1. y-Byles Bills, 174; 6 Foster, 422. z-3 Wend. 75; 1 Cowen, 387; 3 Comst. 494. a-2 Met. 238; 2 Eng. C. L. R. 267. b-3 Johns. 434; 8 Id. 436; 14 Id. 87. c-Bayley Bills, Ch. 8, § 1; 13 Johns. 492. d-4 Miller (La.) 530.

e-11 East. 40; Dougl. 623. f-1 Hill, 287; 1 Kern. 404; 1 Duer, 434; 17 N. Y. 205; 20 Id. 138; 13 Ind. 516. g-18 Johns. 230. h-2 Johns. 50; 1 Denio, 583; 5 Wend. 600; 8 Id. 478. i-11 Johns. 128; 1 Hall, 562; 2 Pick. 545; 4 Watts & Serg. 545; Burr, 452, 1516. j-13 East. 135; 1 Rose, 99; 9 B. & C. 208. k-4 Taunt. 799; 2 C. & P. 261; 4 M. & W. 16. l-1 Hill, 287. m-1 Kernan, 402; 12 N. Y. 205; 20 Id. 138. n-15 Johns. 247; Story Notes, § 383; 2 Camp. N. P. 214, n.; 6 Esp. 57; Chitty Bills, 231, 268; 3 Cowen, 303; 8 Conn. 431; 3 Wend. 344. o-6 Mass. 451; 11 Id. 288; 16 Pick. 135; 6 Blackf. 485; 1 Johns. 104; 18 Eng. L. & Eq. 514.

holder is at liberty to deduce his title through the first indorser;[p] and hence the maker is protected in paying the note to the party in possession, just the same as if it had been originally made payable to bearer. If the first indorsement be special and the second in blank, the subsequent holder takes title through both of these indorsements,[q] and the maker should see that both of them are genuine when he pays the note. Where the person receiving payment on a forged bill has no recourse to any other party thereon, or has the same right of action, notwithstanding the want of notice, the question of laches does not arise. Thus, where the drawee accepts and pays a bill payable to the order of a fictitious person, or to the order of a real person who never had any interest in the bill, and whose name has been forged upon it by the drawer, the bill being negotiated in that condition, and none of the parties but the drawer having any knowledge of the forgery, the drawee or acceptor cannot recover back the money. The title to the bill passes in the same manner as if it had been drawn payable to a fictitious person, or to bearer; and inasmuch as the acceptor has no recourse to the prior parties, he has no right to recover back the money so paid.[r] Where a bank pays a forged check, or a check that has upon it the genuine signature of its customer, but has been fraudulently altered to a larger sum, it cannot debit the drawer with the sum so paid without authority.[s] But if a bill or check be drawn in so careless and improper a manner as thereby to enable a third person to practise a fraud, the customer and not the bank must bear the loss.[t] A draft that has not been accepted and a bank check should not be paid after notice from the drawer countermanding the authority, nor after the death of the drawer, which is a revocation of the authority.[u]

The person transferring a negotiable note or draft, whether by indorsement or delivery, impliedly guarantees the title to it, unless the transfer be made under such circumstances as to show clearly that the purchaser took it at his own risk.[v] And hence the person who obtains money or goods on the instrument, or has it discounted, is bound to refund what he has received, in case it proves to be a forgery.[w] But if the transfer is made without indorsement, the person transferring it is liable only to his immediate assignee—he is not a party to and is not liable on the bill.[x]

A party paying money under a mistake of law cannot recover it back; but if he pay money under a mistake of the real facts (and has not omitted to avail himself of the means of knowledge in his power), he may recover back such money.[y]

[p]-1 Denio, 608; 4 Johns. 27. [q]-1 Sand. 199; 6 Esp. 57. [r]-1 Comst. 213; Chitty Bills, 431; 16 N. Y. 336; 90 Eng. C. L. 519. [s]-5 Barn. & C. 750; 2 Camp. 485; 1 Kernan, 404. [t]-4 Bing. 228; 6 C. & P. 18. [u]-Chitty Bills, 429, 430; 2 Ves. Jun. 118; 24 Wend. 240. [v]-5 Taunt. 488; 5 Id. 495; 6 Mass. 321; 7 Yerg. 310; 2 Johns. 455; 5 Conn. 71; 7 T. R. 66; 2 B. & P. 518. [w]-1 C. & P. 197; 15 Johns. 240. [x]-Ld. Raym. 928; 15 East. 7. [y]-6 B. & C. 671; 16 N. Y. 336; 34 Barb. 323; 3 Moore, 635; 12 East. 434. [z]-1 Esp. 463; 2 Hill, 140; 20 N. Y. 138. [a]-9 Johns. 64; 12 Id. 343. [b]-10 Wend. 85; 16 Id. 659. [c]-7 Barn. & Cress 90. [d]-8 Barb. 408. [e]-Peake's Cas. 25. [f]-2 Camp. 439; Peake, 179; 1 Esp. 473; 3 Id. 196; 4 Taunt. 293; 7 La. 82; 4 M. & G. 804. [g]-3 B. & A. 313. [h]-10 Adol. & Ellis, 616; 4 Bing. 273; 10 John. 104; 3 Wend. 344; 12 Id. 173. [i]-15 Miss. 204. [j]-1 Sand. 9; see ACCORD AND SATISFACTION; CONTRACTS. [k]-7 Wend. 610; 8 Id. 194; 16 Johns. 152. [l]-Story Notes, 414; Chitty Bills, 408, 410.

—— RECEIPTS. Where a part payment is made on a negotiable note or bill, the party paying should have a receipt indorsed upon the instrument; otherwise, he may be compelled to pay it over again to a *bona fide* holder.[z] But the maker of a note or due bill not negotiable, may safely pay money on it to the payee, where he has no notice or reason to suppose that it has been assigned.[a] When paid in full it should be surrendered or cancelled, so that the maker may not afterward be compelled to prove that it has been satisfied.[b] The acceptor of a bill on being called on for payment is entitled to have the bill surrendered to him as a voucher, and the maker of a negotiable note stands in the same relation; neither of them can be compelled to pay, unless the holder produces and offers to deliver up the instrument, or tenders sufficient indemnity, where it has been lost.[c] And the indorser paying a note has the right to demand that it be surrendered to him.[d] A receipt not specifying by whom the payment was made, indorsed on the back of a bill, is presumptive evidence that the bill was paid by the acceptor.[e] But the signature of the person signing the receipt must be proved, and it must appear to be that of a person entitled to receive payment.[f] A receipt indorsed on a note may be contradicted or explained like any other receipt for money paid.[g] The maker or acceptor of notes and drafts not negotiable, cannot refuse to pay on the ground that they are not produced and ready to be surrendered.[h] The assignee of such paper takes it subject to whatever defence the maker or acceptor may have to it, as against the payee.[i] Where the creditor accepts the note of a third person as payment, it is a good accord and satisfaction.[j]

—— RELEASE OF PRINCIPAL DEBTOR. The drawer of a bill, and each of the successive indorsers, whether of a note or bill, being charged with notice of non-payment upon a due demand made, is bound to pay the amount and take up the paper. He cannot, like a surety, require of the holder active diligence to collect the money of the party primarily liable to pay; nor does he generally enter into the contract without a full and valuable consideration.[k] By entering into a contract with the maker of a note, or acceptor of a bill, extending the time of payment, the holder tacitly engages to give the same credit to all the parties who may be entitled to a remedy over against the maker or acceptor.[l] To give his contract legitimate effect is to arrest the remedies of all the parties on the bill or note, and thus convert the contract of each into a different undertaking. So when the holder enters into an

agreement with the maker or acceptor, founded on a good consideration, giving him time for payment, the contract operates as a release of the drawer and indorsers.[m] But a contract not based upon a valid consideration, does not have the effect of a release; for delay under such a contract is, in the eye of the law, merely gratuitous.[n] A contract made with the drawer of a bill, or with the prior indorser of a note or bill, will discharge all subsequent indorsers,[o] but will not operate as a release of the maker or acceptor.[p] As between the first and subsequent indorsers, the former is regarded in the light of principal; he stands behind them upon the paper, and is bound to take it up in case of the default of the maker. The contracts of the several indorsers are like so many links in a chain, and if the holder consent to dissolve the first, the chain is no longer capable of binding either of the parties.[q] So long as the holder makes no valid and binding agreement for delay, he is at liberty to use every endeavor to secure the payment of the bill or note; he may receive part payment;[r] he may take new securities;[s] he may negotiate for delay;[t] he may receive and transmit propositions to the indorsers for an extended credit;[u] and he may voluntarily forbear to bring an action against any or all of the parties, so long as he can without coming into contact with the bar raised by the statute of limitations. An agreement made by the holder with the principal debtor, extending the time of payment, or even releasing him from his liability, will not discharge the drawer or indorser if he assents to the arrangement.[v] So, if the holder give time to the maker or acceptor, and the drawer or indorser afterward promises to pay, with knowledge of the fact, he is precluded from taking advantage of the indulgence so granted.[w] A release of a debt or liability given on a good consideration extinguishes the indebtedness;[x] but a release without consideration, and not under seal, is void.[y] A new consideration gives effect to a release not under seal.[z] Where one of the makers of a promissory note adds to his signature the word "surety," the holder is bound to treat him as such, and cannot vary the terms of the contract by extending the time of payment, or otherwise, so as to increase the risk of the surety without discharging him. An extension of credit to the debtor for one day discharges the surety as effectually as if made for one year.[a] Taking security from or giving time to one of several joint makers of a note, or acceptors of a bill, does not discharge the others.[b] Several sureties who successively sign a note at the request of the principal, without communication with each other, are bound, on the failure of the principal, to contribute equally to the payment of the note.[c] The word *surety* added to the signature of a maker is evidence that he did not give the note for value received by him.[d] Where a bill of exchange is accepted for the accommodation of the drawer, the holder does not discharge him by giving the acceptor further time for payment; for here the drawer is ultimately liable to pay the amount secured by the bill, and does not stand in the light of a surety.[e] Nor will an agreement with the drawer, giving him time for payment, discharge the acceptor for his accommodation.[f]

So, in respect to a promissory note, if made for the accommodation of the payee, delay granted to him will not discharge the maker.[g]

PRACTICE.

—— DAMAGES is the rate or per cent. paid to the holder of a bill of exchange which has been dishonored. It is the subject of distinct statute regulation in nearly every State of the Union. See GENERAL STATUTES.

—— EVIDENCE. Generally, the pleadings show what the plaintiff must prove to maintain his action, and what the defendant must prove to establish his defence. When a single fact is put in issue, such as the making of the note, or the acceptance of the bill in suit, one party holds the affirmative and the other the negative; and the entire evidence is directed to the proof or disproof of that fact. In all actions, allegations of the execution of written instruments and indorsements thereon, of the existence of a corporation or partnership, or of any appointment or authority may be taken as true, unless the denial of the same be verified by the affidavit of the party, his agent or attorney.[h]

In an action by the payee against the maker of a negotiable note or the acceptor of a bill of exchange, it is generally enough to produce the instrument, prove the signature of the defendant and the amount due thereon. If the action be against several acceptors of a bill or makers of a note, the handwriting of each must be proved, unless the defendants are sued as partners, in which case it must be shown that the defendants were partners, and that the note or acceptance was made or given in the name of the firm by one of the firm.[i] If the action be against the makers of a joint and several promissory note, it is incumbent upon the plaintiff to prove that it was made by the parties described in the complaint. A note beginning "I promise to pay," and signed by two persons, is a joint and several note.[j] The acceptance being made after sight of a bill, admits the drawer's signature.[k] The acceptance admits also the ability of the drawer, and that the draft was properly drawn; so that, though drawn by an agent, it is not necessary, in an action against the acceptor, to show the agent's

m-7 Wend. 290; 17 Id. 501; 8 East. 576; 4 Bing. 717. n-4 Bing. 717; 12 Wheat. 554; 1 B. & P. 652; 10 Johns. 18c. o-21 Wend. 108. p-7 Paige, Ch. 9. q-3 Esp. 46; 2 B. & P. 61. r-8 East. 576; 1 Johns. Cas. 131; 3 M'Cord, 13; 16 Johns. 41. s-1 Barn. & Cress. 14. t-2 Car. & P. 468. u-16 East. 105. v-17 Johns. 170; 10 Pick. 528; Id. 533; 16 Ind. 91. w-12 East. 38. x-4 B. & C. 506, 515, *n*. y-1 Cowen, 122; 7 Id. 224; 17 Johns. 175. z-14 Wend. 116. a-3 Denio, 512. b-2 B. & Ald 210; 6 Price, 111. c-2 Seld. 33. d-1 Denio, 116; 10 Barb. 512; 2 Comst. 406; 13 Wend. 400. e-3 Camp 281; 22 Ill. 330. f-3 Camp. 362. g-3 Barn. & Ad. 41. h-See titles ACTIONS, PLEADING. i-7 Wend. 172. j-1 Camp. 403; S. C. 10 East. 264; Peake R. 130; Holt, N. P. C. 474. k-3 Comst. 230, and cases cited: 1 Strange, 648.

authority;[w] and the production of the bill by the payee is sufficient proof of his title to it.[x] In an action by an indorsee against the acceptor, the plaintiff must prove his acceptance and the payee's indorsement;[y] and if the indorsement be special, it must appear to have been made to the plaintiff, or he must show a subsequent indorsement to himself. Bills and notes made payable to bearer circulate and are considered as money; and, as the title passes by delivery, possession is evidence of the holder's property in them.[z] And there is no legal difference between a bill or note payable to bearer and one payable to a particular person or bearer; in either case the holder is *prima facie* the lawful bearer, to whom the same is payable.[a] The same presumption is raised in favor of the holder of a note or bill drawn payable to order after the same has been indorsed in blank.[b] On a note for value received, made payable to one *or* other of two persons, action should be brought in the name of both, and recovery may be had on proof of the execution of the note.[c] In an action against an indorser of a bill or note, the plaintiff need not prove the signature of the maker, drawer, or prior indorsers; nor can the defendant impeach the genuineness of the bill or note, for his indorsement admits the ability and signature of every antecedent party.[d] There is a warranty implied in the transfer of every negotiable instrument that it is not forged.[e] In an action by an indorsee against his immediate indorser, the latter is estopped from denying the drawing and indorsement of the bill to himself.[f] The plaintiff need not prove, in an action upon negotiable paper, that the same was made, accepted, or indorsed for an adequate consideration; the presumption being that the contract of the several parties to the instrument was entered into for value received, and that the holder acquired it in the usual course of business for value. But this presumption may be overcome. For instance, if it be shown that the bill or note in suit has been lost, or has been stolen from the owner, the plaintiff must show himself to be a *bona fide* holder for value. This he may do by showing that he took the paper fairly, in the usual course of business, and gave a valuable consideration for it.[g] So, if it be shown that the bill or note was obtained by fraud, duress, without consideration, on an illegal consideration, or for a particular purpose and dishonestly used for another.[h]

As to what defence is allowed if the instrument is negotiated when overdue, see ante, INDORSEMENT. And payment before due may be given in evidence against indorsee.

In actions against the drawer of bills and checks, and against the indorser of negotiable paper, the plaintiff must prove as well as allege that the paper was duly presented for acceptance or for payment and dishonored, and that due notice thereof was given to the defendant. When an action against the drawer or indorser is brought upon a bill that has been accepted, payable at a particular bank or place, the plaintiff must prove a presentment for payment at the place designated in the acceptance,[i] and within the usual hours of business.[j] Where a bill is drawn payable a certain number of days after sight, or after demand, the plaintiff must prove a presentment to the drawee for acceptance as a means of fixing the time of payment;[k] but this is not necessary where a bill is drawn payable so many days or months after date. In an action against a drawer or indorser of a foreign bill, the plaintiff must prove, beside the presentment and notice of dishonor, a protest for non-acceptance or non-payment.[l] The protest, when made by a notary in a foreign State, and attested under the seal of his office, proves itself, and is evidence of presentment and refusal.[m] It is well settled that bills of exchange drawn in one State of the Union and payable in another are foreign bills, within the meaning of the rule which makes the notarial protest *prima facie* evidence of the presentment and dishonor of such bills.[n]

—— LIMITATION. See General Statutes.

—— PLEADING.[o] Forms of pleading are much changed. The parties are required to plead respecting the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence in the manner prescribed by the law; and the rules by which the sufficiency of the pleadings is to be determined are those established by the law. The action must be brought in the name of the lawful holder and owner of the paper, and the complaint must contain a statement of all the facts necessary to be proved on the trial, in order to entitle the plaintiff to recover thereon against the defendant.[p] An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit the action is prosecuted; but generally every action must be prosecuted in the name of the real party in interest. The phrase, "a trustee of an express trust," includes a person with whom or in whose name a contract is made for the benefit of another. Mercantile agents and factors, who, according to the usage and custom of merchants, do business in their own names for other parties, are trustees in fact, and are entitled to sue on contracts made by them with third persons. Hence a factor taking a note payable to himself on the sale of his principal's goods is *prima facie* entitled to recover thereon.[q]

The complaint must show the title of the

w-1 Camp. N. P. C. 82. x-1 Denio, 367; 18 Johns. 230; 1 Sand. 37. y-2 Hill, 287; 3 Comst. 230. z-4 A. & E. 870; 5 Pick. 526. a-17 Wend. 214; 28 Barb. 44. b-Bayley Bills, 5, § 1. c-1 B. & A. 417; 4 Wend. 575. d-Bayley Bills, 11. e-15 Johns. 240; 2 Camp. 182; 1 Salk. 127; 1 Ld. Raym. 443. f-88 Eng. C. L. 266; 15 N. Y. 575. g-1 Burr. 452; 3 Id. 1226; Dough. 633.

h-1 Camp. N. P. C. 100; 2 Id. 574; 5 Bing. 469; 4 Taunt 114; 13 M. & W. 73. i-8 Bing, 214; 17 Johns. 248; 2 Sand. 166. j-2 Sand. 166; 17 Johns. 248. k-Greenl. Ev. § 176. l-Chitty Bills, 655; Greenl. Ev. § 183. m-20 Wend 81; S. C. 22 Wend. 264. n-2 Peters, 586. o-For forms, see title PLEADING. p-Gould's Pl. Ch. 4 § 7-9. q-2 Sand. 706; Edw. Badm 282.

plaintiff. If the action be brought in the name of an indorsee against the makers of a promissory note, the complaint must show by some suitable averment that the note has been indorsed or transferred to the plaintiff, so that he is the holder and owner of the note.[p] In an action, counter-claim, or set-off, founded upon an account, promissory note, bill of exchange, or other instrument, for the unconditional payment of money only, it is, in general, sufficient for the party to give a copy of the account or instrument, with all credits, and the indorsements thereon, and to state that there is due to him, on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange are parties in the action, it is necessary to state, also, the kind of liability of the several parties, and the facts as they may be, which fix their liability. In an action brought by the payee against the maker, it is sufficient to allege the making of the note, give a copy of it, and claim the amount due thereon from the defendant to the plaintiff.[q] So in an action by the payee against the acceptor of a bill of exchange, it is sufficient for the plaintiff to give a copy of the bill and of the acceptance in the complaint, and allege that the plaintiff, who is the payee of the bill, is the holder and owner of it; that no part of it has been paid, but that the whole amount of it is justly due to the plaintiff from the defendant.[r] As against the maker it is sufficient to allege that the payee, to whose order the note was made payable, transferred it by an indorsement in blank, and that it was afterward transferred to the plaintiff, who is the owner and holder of the note.[s] As against a remote indorser, it is enough to allege the making of the note or bill in a negotiable form; that it was regularly indorsed to the defendant; that he transferred it by an indorsement in blank, and that it was subsequently transferred to the plaintiff; and it is not incumbent upon the plaintiff to prove on the trial, either the handwriting of the drawer, or any of the indorsements antecedent to that of the defendant, for each indorsement admits the genuineness of the paper and all prior indorsements.[t] When a note is made payable to the order of a particular person, and he transfers the same for value, without indorsement, the purchaser or assignee may recover on it, under the present practice, in his own name, and is not compelled to allege or prove a transfer by indorsement.[u] Substantially the same rules of pleading apply in an action against the acceptor of a bill, as in action against the maker of a promissory note; for each of them is the party primarily liable on the instrument, which is in both cases an instrument for the payment of money only.[v] There need be no difference between a complaint in favor of the payee of a note or bill, and a complaint in favor of the indorsee, except that in the latter case there should be an allegation showing a transfer or indorsement of the paper to the plaintiff. On a note payable to a particular person or bearer, it is sufficient for the plaintiff to allege the making and delivery of the note to the payee, and that the plaintiff is now the lawful holder and owner of the note, stating as usual the amount due upon it.[w] When an indorsee brings an action against the maker or acceptor of a note or bill payable to a particular person or order, it is obvious that the complaint should show that the payee indorsed the paper and that it was transferred to the plaintiff.[x] Against an indorser, it is necessary to allege the making of the note or bill, describing it according to its legal effect, or giving a copy thereof; that the defendant indorsed the same to the plaintiff, or to a prior party through whom he derives title; that the same was duly presented to the maker or acceptor for payment when the same became due, and was dishonored; and that the defendant was duly notified of the dishonor. Demand and notice being conditions precedent, may be alleged in the manner specified by the code; where the code prevails, otherwise by the common law.[y] The plaintiff must plead specially the facts dispensing with the demand and notice.[z] In all actions upon negotiable paper the answer must traverse some matter of fact, such as the drawing, or making, or indorsing,[a] or accepting or presenting, or notice of dishonor; and new matters of confession and avoidance must be pleaded specially.[b]

In all actions, allegations of the execution of written instruments and indorsements thereon will be taken as true, unless the denial of the same be verified by the affidavit of the party, his agent or attorney.

Bill for Foreclosure. See PRACTICE.

Bill of Gross Adventure. See MARITIME LAW.

Bill of Health. See MERCANTILE LAW.

Bill of Information. See PRACTICE.

Bill of Interpleader. See PRACTICE.

Bill of Lading. See BAILMENTS; MERCANTILE LAW.

Bill for New Trial. See PRACTICE.

Bill Obligatory. See BOND.

Bill of Pains and Penalties. See CRIMINAL LAW.

Bill of Parcels. See BAILMENTS: COMMON CARRIERS.

p-1 Duer, 601. q-10 How. Pr. 274. r-2 Duer, 629. The complaint must show that the bill has become due, and should claim interest from a day specified, besides costs. s-5 Sand. 52. It being averred that the note or bill payable to order was indorsed by the payee in blank, it is sufficient in an action by the indorsee to aver further and generally that it was afterward transferred to the plaintiff. 12 How. Pr. 460; 16 Id. 143. The plaintiff need not aver a transfer to himself by indorsement. 11 Barb. 620; 12 How. Pr. 166; 22 Id. 150. t-2 Camp. 182; 1 Salk. 127; 1 Ld. Raym. 443; 15 N. Y. 575; 88 Eng. C. L. 266. u-11 Barb. 620; 29 Miss. (8 Jones) 202. v-10 How. Pr. 274; 2 Duer, 629; 2 Bibb. Pr. 402. w-17 Barb. 530; 3 Kernan, 542. x-The indorsement here is essential to convey the instrument as negotiable paper. y-5 How. Pr. 107. On an "instrument for the payment of money only," it is enough to give a copy of it, and state the amount due to the plaintiff thereon; but an action against an indorser is founded on the instrument and certain extrinsic facts which are necessary to be averred and proved, 8 How. Pr. 61; 6 Id. 420; 5 Id. 107. z-3 Cow. 252; 7 Port. 175; 5 Pick. 436; 5 M & W. 418; 4 Sand. 665; Byles Bills, 337. a-3 Bos. 103 5 Abb. 455; 6 Id. 304; 3 Bos. 162. b-Byles Bills, 339.

Bill of Particulars. See PRACTICE.
Bill Payable. See BOOK-KEEPING; MERCANTILE LAW.
Bill of Peace. See PRACTICE.
Bill Penal. See CONTRACTS.
Bill of Perpetuate Testimony. See PRACTICE.
Bill Quia Timet. See PRACTICE.
Bill Receivable. See BOOK-KEEPING; MERCANTILE LAW.
Bill of Review. See PRACTICE.
Bill of Revivor, etc. See PRACTICE.
Bill of Sale. See CONTRACTS.
Bill of Sight. See MERCANTILE LAW.
Bill Single. See CONTRACTS.
Bill Supplemental. See PRACTICE.
Bill to Take Testimony. See PRACTICE.
Binding Out. See APPRENTICESHIP.
Binding Over. See CRIMINAL LAW; PRACTICE.
Bipartite. See CONTRACTS.
Birth. See CHILDREN; MEDICAL LAW.
Bissextile. See DAY; TIME.
Blackmail. See CRIMINAL LAW.
Blank. See CONTRACTS; EVIDENCE.
Blank Indorsement. See BILLS OF EXCHANGE AND PROMISSORY NOTES.
Blasphemy. See CRIMINAL LAW.
Blind. See AFFIDAVITS; CONTRACTS; WILLS; WRITINGS.
Blockade. See INTERNATIONAL LAW.
Blood. See PERSONAL RELATIONS; RELATIONSHIP.
Boarder. See BAILMENTS; CONTRACTS; INNKEEPER.
Board of Supervisors. See OFFICE AND OFFICERS.
Boat. See MARITIME LAW; SALE.
Body Corporate. See CORPORATIONS.
Bona fides. See CONTRACTS.
Bondage. See APPRENTICESHIP; PERSONAL RELATIONS.

BONDS. See ASSIGNMENT; BONDS, NOTES, AND BILLS; CONTRACTS; and CONVEYANCES, ante; and title SURETYSHIP, post.

A BOND is an obligation in writing, and under seal.[a] It may be single—a simple obligation—as where the obligor binds or obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to another on a day named. It may be, and usually is, conditional, as, that if the obligor does some particular act, the obligation shall be void, or else remain in full force and effect.

A bond absolute for the payment of money differs from a promissory note only in having a seal.[b]

A COUNTER BOND is a bond to indemnify.[c]

A FORTHCOMING, REDELIVERY OR REPLEVIN BOND is a bond given for the security of the sheriff, constable, or other officer, conditioned to produce the property attached or levied on when required.[d]

JOINT BONDS are the bonds of two or more obligors. Actions to enforce them must be joint against them all.

JOINT AND SEVERAL BONDS are the bonds of two or more obligors, who bind themselves jointly and severally to the obligees. The obligees can sue all the obligors in such a bond jointly, or any one of them separately, for the whole amount, but cannot bring a joint action against a part—that is, treat it as joint with some and several as to others. Upon payment of the whole by one of such obligors, a right to contribution arises in his favor against the other obligors.

CONDITION. The condition is a vital part of a conditional bond, and generally limits and determines the amount to be paid in case of a breach,[e] but interest and costs may be added.[f]

A condition annexed to a bond is termed a defeasance. A condition defeating a conveyance of land in a certain event is called a mortgage. Conditions annexed to realty are to be distinguished from limitations. A stranger may take advantage of a limitation, but only the grantor or obligor, or his heirs, can take advantage of a condition.[g]

Conditions must be made at the same time as the original contract, conveyance, or obligation, but may be by a separate instrument, which is then considered as constituting one transaction with the original.[h]

Unlawful conditions are void. Conditions in restraint of marriage generally are held void.[i] Otherwise of conditions restraining from marriage to a particular person, or restraining a widow from a second marriage.[j] A condition in general restraint of alienation is void,[k] but a condition restraining alienation for a limited time may be good.[l]

ASSIGNMENT. The rule that a condition cannot be assigned, and that no one but the heirs can take advantage of a breach, does not uniformly obtain in modern times, and in many of the States the common law rule is broken in upon.[m]

CONSTRUCTION. Conditions which go to defeat an estate or destroy an act are strictly construed; while those which go to vest an estate or enforce an act are liberally construed.[n] The condition of an obligation is said to be in the language of the obligee, and for that reason is to be construed liberally in favor of the obligor.[o] But whenever an obligation is imposed by a condition, the construction is to be favorable to the obligee.[p]

FORM. Any words suitable to indicate the intention of the parties may be used in the creation of a condition, as "On condition," "Provided always," "Provided nevertheless," "For that," etc.

The words of condition need be in no particular place in the instrument.[q]

EFFECT. The effect of conditions may be

a-2 S. & R. 502; 11 Ala. 19; 1 Harper, 434; 1 Blackf. 241; 6 Vt. 40; 1 Baldwin C. C. 129. b-2 S. & R. 115; see Read Pl. 236. c-2 Leon. 90. d-2 Wash. 189; 11 Gratt. 522; Litt. Sel. Cas. 12; 5 J. J. Marsh, 318; 6 Dana, 112; 1 Blackf. 359; 6 Id. 72; 10 Ohio St. 488. e-7 Cow. 224. f-12 Johns. 350; 2 Johns. Cas. 240; 1 E. D. Smith, 350; 1 Hempst. C. C. 271. g-2 Dutch. 1; 3 Id. 276; 2 Paine C. C. 545. h-5 S. & R. 375; 7 W. & S. 335; 3 Hill N. Y. 95; 3 Wend. 208; 10 Ohio, 433; 10 N. H. 64; 2 Me. 132; 7 Pick. 157; 6 Blackf. 113. i-13 Mo. 211; see 10 Penn. St. 350. j-10 Eng. L. & Eq. 139; 2 Sim. Ch. (N. S.) 255; 6 Watts, 213; 10 Id. 348. k-1 Denio, 449; 14 Miss. 730; 24 Id. 203; 6 East. 173; see 21 Pick. 42. l-Co. Litt. 223; 2 S. & R. 573; 1 Watts, 389; 10 Id. 325. m-13 S. & R. 172; 16 Penn. St. 150; 5 Pick. 528; 10 Id. 306; see 2 Canes, 345; 20 Barb. 455; 4 Haring. Del. 140; 19 N. Y. 100. n-Crabbe Real Prop. § 2130; 17 N. Y. 34; 4 Gray 140; 35 N. H. 445; 18 Ill. 431; 15 How. 323. o-Co. Litt. 42, *a.*, 183 *a.*; 2 Parsons Contr. 22; Shepp. Touchst. 375, 376; Dyer, 14 *b.*, 17 *a.*; 1 Johns. 267. p-1 Sumn. C. C. 440. q-1 T. R. 645; 6 Id. 668.

to suspend the obligation; as, if I bind myself to convey an estate to you on condition that you first pay me one thousand dollars; in this case no obligation exists until the condition is performed; or, 2, to rescind the obligation: as, if you agree to buy my house on condition that it is standing unimpaired on the tenth of May; or, I convey to you my farm on condition that the conveyance shall be void if I pay you one thousand dollars; in such cases the obligation is rescinded by the nonperformance of the condition; or, 3, it may modify the previous obligation: as, if I bind myself to convey my farm to you on the payment of five thousand dollars if you pay in bank stock, or six thousand if you pay in money; or in case of gift or bequest may qualify the gift or bequest as to amount or persons.

The effect of a condition precedent is, when performed, to vest an estate, give rise to an obligation, or enlarge an estate already vested.[q] Unless a condition precedent be performed no estate will vest; and this even where the performance is prevented by act of God, or of the law.[r] Not so if prevented by the party imposing it.[s]

If a condition subsequent was void at its creation or becomes impossible, unlawful, or in any way void, the estate or obligation remains intact and absolute.[t]

In case of a condition broken, if the grantor is in possession the estate revests at once.[u] But if the grantor is out of possession he must enter,[v] and is then invested of his previous estate.[w]

PERFORMANCE should be complete and effectual.[x] An inconsiderable casual failure to perform is not non-performance.[y] Any one who has an interest in the estate may perform the condition; but a stranger gets no benefit from performing it.[z] Conditions precedent, if annexed to land, are to be strictly performed, even when affecting marriage.[a] Conditions precedent can generally be exactly performed; equity will not generally interfere to avoid the consequence of non-performance.[b] But in cases of conditions subsequent, equity will interfere where there was even a partial performance, or where there is only a delay in performance.[c] This is the ground of equitable jurisdiction over mortgages.

Non-performance of a condition which was possible at the time of its making, but which has since become impossible, is excused if the impossibility is caused by act of God,[d] or by act of law, if it was lawful at its creation;[e] or by act of the party, as, when the one imposing the obligation accepts another thing in satisfaction, or renders the performance impossible by his own default.[f] If performance on one part becomes impossible by act of God, the whole will in general be excused.[g]

Where conditions are liberally construed a strict performance is required; where conditions are strictly construed a reasonably exact performance is sufficient.

If the place of performance be agreed upon, neither party alone can change it, but either may with the consent of the other.[h]

Generally, where no time of performance is limited he who has the benefit of the contract may perform the condition when he pleases, at any time during his life,[i] and need not do it when requested.[j] But if a prompt performance be necessary to carry out the will of a testator, the beneficiary cannot have a lifetime in which to perform the condition.[k] In this case no previous demand is necessary.[l] But even then a reasonable time is allowed.[m]

DATE AND DELIVERY. The date is not considered of the substance of a deed; and therefore a bond which either has no date, or an impossible date, is still good, provided the real day of its being dated or given, that is, delivered, can be proved.[n] It must be delivered by the party whose bond it is to the other.[o] But the delivery and acceptance may be by altering.[p]

FORFEITURE. Upon the forfeiture of a bond courts will not permit a man to take more than his principal, interest, and expenses, in case the forfeiture accrued by non-payment of money borrowed, damages sustained upon the non-performance of covenants, and the like.

In case of a bond conditioned for the payment of money, the payment or tender of the principal sum due with interest and costs, even though the bond were forfeited and suit commenced thereon, is a satisfaction and discharge.[q]

If a bond lie dormant for twenty years it cannot afterwards be recovered, for the law raises a presumption of its having been paid, and the defendant may plead *solvit ad diem* (he paid at the day) to an action upon it.[r] In some cases, under particular circumstances, even a less time may found a presumption.[s]

The statute as to the presumption of payment after twenty years is in the nature of a statute of limitations. It is available as a bar to an action to recover on the instrument, but not where the party asks affirmative relief based upon the fact of payment.[t]

OBLIGATION OF. See CONTRACTS, ante.

FORMAL REQUISITES. The instru-

q-12 Barb. 440. r-Co. Litt. 42; 2 Bl. Comm. 157; 4 Kent Comm. 125; 4 Jones, 249. s-13 B. Mon. 163; 2 Vt. 469. t-2 Bl. Comm. 157; 15 Ga. 103. u-5 Mass. 321; 5 S. & R. 375; 22 Me. 39. But see 2 N. H. 120. v-8 Blackf. 138; 12 Ired. 194; 18 Conn. 535; 8 N. H. 477; 34 Me. 322; 8 Exch. 67. w-Co. Litt. Butler's note, 94. x-1 Rolle Abr. 425. y-6 Dana, 44; 17 N. Y. 34. z-10 S. & R. 186. a-1 Mod. 300; 1 Atk. Ch. 361. b-3 Ves. Ch. 89; 1 Atk. Ch. 361; 3 Id. 330; West, 350; 2 Brown Ch. 431. c-Crabbe R. Prop. § 2160; 4 Ind. 628; 26 Me. 525. d-10 Pick. 507. e-4 Monr. 158; 1 Penn. St. 495. f-21 Pick. 389; 1 Paine. C. C. 652; 6 Pet. 745; 1 Cow. 339. g-1 Bos. & P. 242; Cro. Eliz. 280; 5 Co. 21; 1 Ld. Raym. 279. h-1 Rolle, 444; 11 Vt. 612; 3 Leon. 260. i-Plowd. 16; Co. Litt. 208 *b*. j-Co. Litt. 209 *a*. k-5 S. & R. 384. l-5 S. & R. 385. m-1 Rolle Abr. 449. n-2 Bl. Comm. 304; Com. Dig. *Fait B.* 3; 3 Call. 309. o-13 Md. 1; 5 Gray, 440; 11 Ga. 286. See 37 N. H. 306; Bac. Abr. *Obligations* C. p-10 Ind. 1. q-2 Bl. Comm. 340. r-1 Burr. 434; 4 Id. 1963. s-1 T. R. 271; Cowp. 109. t-12 N. Y. 409; 14 Id. 477.

ment must be in writing and sealed,[u] except in States where private seals are abolished by statute or otherwise; where, however, seals are required, a sealing, sufficient where the bond is made, is held sufficient though it might be an insufficient sealing if it had been made where it is sued on.[v] The signature (and seal) may be in any part of the instrument.[w]

Where a bond is required by statute, every material requirement must be observed. If it contains anything illegal, it is so far void. If it contains anything superfluous, it is so far treated as mere surplusage. If any material thing is omitted, the statute is not complied with.[x]

See CONDITION, above.

PARTIES. There must be proper parties; a man cannot be bound to himself, even in connection with others.[y]

No person can take the benefit of a bond except the parties named therein.[z] Except, perhaps, in some cases of bonds given for the performance of their duties by certain classes of public officers.[a]

If the bond run to several persons jointly, all must join in suit for a breach, though it be conditioned for the performance of different things for the benefit of each.[b]

PENALTY. The principal sum in a bond is usually one-half of the penal sum specified in the condition. The recovery against a surety in a bond for the payment of money is not limited to the penalty, but may exceed it so far as necessary to include interest from the time of the breach. So far as interest is payable by the terms of the contract, and until default made it is limited by the penalty; but after breach it is recoverable, not on the ground of contract but as damages, which the law gives for its violation.[c]

BOND OR OBLIGATION FORMS.

Bond or Obligation—Short Form.

For Payment of Money, With or Without Penalty.

Know all men by these presents:

That I, A. B., of ——, in the county of ——, and State of ——, am bound unto C. D., of ——, for the payment of —— dollars, on the —— day of ——, with interest at —— per cent. per annum; for which I bind myself, my heirs, executors, and administrators, to the said C. D., his executors, administrators, and assigns (in the penal sum of —— dollars).

Witness my hand and seal, this —— day of ——.

A. B. [*Seal.*]

Bond or Obligation—Short Form.

Without Condition.

Know all men by these presents:

That I, A. B., am held and firmly bound unto C. D. in the sum of —— dollars lawful money of the United States of America, to be paid to the said C. D., or his certain attorney, A. A., or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the —— day of ——.

In testimony whereof, I have set my hand and seal to this instrument, on the —— day of ——.

A. B. [*Seal.*]

Executed and delivered in presence of W. T., N. S.

Bond or Obligation—General Form.

Know all men by these presents:

That I, A. B., of the town of ——, in the county of ——, and State of ——, am held and firmly bound unto C. D., of ——, in the sum of one thousand dollars, to be paid to the said C. D., his executors, administrators or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal. Dated the —— day of ——.

The condition of the above obligation is such:

That if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators or assigns, the just and full sum of five hundred dollars, in five equal annual payments, from the date hereof, with annual interest, then the above obligation to be void; otherwise to remain in full force and virtue.

A. B. [*Seal.*]

Sealed and delivered in presence of W. T., N. S.

Bond or Obligation—General Form.

For Payment of Money.

Know all men by these presents:

That I, A. B., of the town of ——, in the county of ——, and State of ——, merchant, am held and firmly bound unto C. D., of the said town, farmer, in the sum of —— dollars (*here insert the penal sum, which is commonly double the amount of the principal sum intended to be secured, in order to cover interest, costs, expenses, and other contingencies*), good and lawful money of the United States, to be paid the said C. D., his executors, administrators, or assigns, for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated the —— day of ——.

The condition of this obligation is such.

That if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators or assigns, the just and full sum of —— dollars (*here insert the principal sum to be secured*), with interest at the rate of —— per cent. per annum (*or* with legal interest) for the same, on the —— day of ——, which will be in the year ——, without fraud or other delay, then this obligation is to be void, otherwise to remain in full force.

A. B. [*Seal.*]

Executed in presence of W. T., N. S.

Condition—Interest Periodical.

With interest thereon from the date hereof (*or* from the —— day of ——, A. D. ——), at the rate of —— per cent. per annum (*or* with legal interest thereon), payable semi-annually (*or* quarterly), on the —— day of —— and —— (*designating the months intended*), in each year, until the whole of said principal sum be paid, without fraud or other delay.

Condition—Payment in Instalments, Equal Annual, With Interest, etc.

In —— annual payments, from the date hereof (*or* commencing on the —— day of ——), with interest thereon, at the rate of —— per cent. per annum;

(*Or*, with legal interest thereon), payable annually, with such instalments;

(*Or*, semi-annually, *or* quarterly on the —— days of —— [*naming the months for payment of interest*], in each year).

Condition—Payment in Instalments, Unequal, With Interest, etc.

In manner following: that is to say, the sum of —— dollars, on the —— day of ——, next; the sum of —— dollars, on the —— day of ——; and the remaining sum of —— dollars, in one year from the said last-mentioned date, together with the interest, at the rate of —— per cent. per

u-1 Baldw. C. C. 129; 6 Vt. 40. v-2 Caines, 362. w-7 Wend. 345. x-See 9 Pick. 395. y-5 Cow. 688. See 3 Jones Eq. 311. z-Hob. 9; 14 Barb. 59. a-4 Wend. 414; 8 Md. 287; 4 Ohio St. 418; 7 Cal. 551; 1 Grant Cas. 359; 3 Ind. 431. b-2 N. Y. 388. c-8 N. Y. 35.

annum (*or* with legal interest), on the whole sum remaining unpaid, at the time of each payment.

Condition—Payment in Instalments, With Interest.

With interest, at the rate of —— per cent. per annum. (*Or* with legal interest.)

Said principal to be paid in —— equal annual instalments, with the interest on such instalment, on the —— day of ——, in each year.

Condition—Payment After Death of Third Person.

With interest at the rate of —— per cent. per annum. (*Or* with legal interest.) Within the space of —— months next after the decease of M. T., of ——, merchant.

Bond or Obligation—General Form.

Interest Clause.

Know all men by these presents:

That I, A. B., of the city of ——, in the State of ——, am held and firmly bound unto C. D., of ——, in the sum of —— dollars (*inserting the penalty*), to be paid to the said C. D., his executors, administrators, or assigns, for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, dated the —— day of ——.

The condition of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators, or assigns, the just and full sum of —— dollars, on the —— day of ——, with interest, at —— per cent. per annum, payable half-yearly from the date hereof, without fraud or other delay, then the above obligation to be void; otherwise, to remain in full force.

And it is hereby expressly agreed, that, should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of —— days, then and from thenceforth—that is to say, after the lapse of the said —— days—the aforesaid principal sum of —— dollars, with all arrearages of interest thereon, shall at the option of the said C. D., or his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. A. B. [*Seal.*]

Executed in presence of }
W. T., N. S. }

Condition—Insurance.

The condition of this obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall and do well and truly pay, or cause to be paid unto the above-mentioned C. D., his executors, administrators, or assigns, the just and full sum of —— dollars, on the —— day of ——, which will be in the year ——, with interest thereon at —— per cent. per annum (*or* with legal interest); and shall keep the buildings erected, or to be erected, on the premises described in a certain mortgage, executed by the said A. B. (and W. B., his wife), and bearing even date herewith, and being collateral hereto, insured in some solvent incorporated insurance company of the State of ——, against loss or damage by fire, to an amount not less than —— dollars; and shall assign the policy to be taken for such insurance to the obligee herein, or his executors, administrators, or assigns, as collateral security hereto.

And it is hereby expressly agreed, that in case the insurance above mentioned shall not be effected or continued in the manner above provided, that then the said obligee, his executors, administrators, or assigns, may effect or continue such insurance in the name of the said obligor, or otherwise, and the premiums paid therefore shall be chargeable as part of the principal sum hereby secured to be paid.

And it is hereby further expressly agreed, that, in case any instalment of principal, or any part thereof, or any interest moneys, or any part thereof, hereby secured to be paid, shall remain due and unpaid for the space of —— days after the same shall, by the terms hereof, become due and payable (*or* any insurance premiums paid by the obligee or his representatives, as aforesaid, shall not be repaid within —— days after notice thereof to the said A. B., his executors, administrators, or assigns), that then and from thenceforth—that is to say, after the lapse of said —— days—the whole principal sum hereby secured to be paid, together with all arrearages of interest thereon, shall, at the option of the said C. D., his executors, administrators, or assigns, become due and payable forthwith, although the period first above limited for the payment thereof may not then have expired, anything herein contained to the contrary notwithstanding.

Bond or Obligation—General Form.

Condition for the Payment of Money, with Power of Attorney to Confess Judgment, Annexed.

Know all men by these presents:

That A. B. is held and firmly bound unto C. D. in the sum of —— dollars, lawful money of the United States of America, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, —— heirs, executors, and administrators, —— firmly by these presents.

Sealed with his seal, dated the —— day of ——.

The condition of this obligation is:

That if the above-bounden A. B., his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named C. D., or his attorney, executors, administrators, or assigns, the just sum of —— dollars, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and effect. A. B. [*Seal.*]

Sealed and delivered in the presence of W. T., N. S. }

To A. A., Esq., attorney of the —— court, at ——, in the county of ——, in the State of ——, or to any other attorney of the said court, or of any other court, there or elsewhere.

Whereas, A. B., in and by a certain obligation bearing even date herewith, does stand bound unto C. D., in the sum of —— dollars, lawful money of the United States of America, conditioned for the payment of (*state what, as* a certain promissory note, etc.; *or* a certain debt contracted for, etc.)

These are to desire and authorize you, or any of you, to appear for said A. B., his heirs, executors, or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought, or to be brought, against me, or my heirs, executors, or administrators, at the suit of the said C. D., his executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me, or my heirs, executors, or administrators, for the sum of —— dollars, debt, besides costs of suit, in such manner as to you shall seem meet: and for your, or any of your so doing, this shall be your sufficient warrant.

And I do hereby for myself, and for my heirs, executors, and administrators, remise, release, and forever quit-claim unto the said C. D., or his attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——.

A. B. [*Seal.*]

Sealed and delivered in the presence of W. T., N. S. }

Bond or Obligation—General Form.

Another—With Warrant of Attorney, to Confess Judgment.

Know all men by these presents:

That I, A. B., of ——, in the county of ——, and

State of ——, am held and firmly bound unto C. D., of the city of ——, and State of ——, in the sum of —— dollars (*inserting the penal sum*), good and lawful money of the United States, to be paid to the said C. D., his executors, administrators, or assigns; for which payment, well and surely to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal; dated this —— day of ——.

The condition of the above obligation is such:

That if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators, and assigns, the just and full sum of —— dollars, with legal interest for the same, on or before the —— day of ——, then this obligation to be void; otherwise, to remain in full force.

A. B. [*Seal.*]

Executed in presence of W. T., N. S.

To any attorney of the —— court of the State of ——, or of any other court, there or elsewhere:

Whereas, I, A. B., of ——, by a certain obligation, bearing even date herewith, do stand bound unto C. D., of ——, in the sum of —— dollars (*penal sum*), conditioned for the payment of —— dollars (*principal sum*), and interest, these presents are to desire and authorize you, or any of you, on the request of said C. D., to appear for me, my executors, or administrators, in the said court, or elsewhere, in a proper action there or elsewhere brought, or to be brought against me, my executors, or administrators, at the suit of the said C. D., his executors, administrators, or assigns, on the said obligation, as of the present, or any antecedent, or subsequent term, or in vacation of the said court, or any other court, there or elsewhere to be held, and confess judgment thereupon against me, my executors, or administrators, for the said sum of —— dollars (*penalty*), debt, besides costs of suit, by *non sum informatus*, *nihil dicit*, or otherwise, as to you shall seem meet; and for your, or any of your so doing, this shall be your sufficient warrant.

And I do hereby, for myself, my executors and administrators, remise, release, and forever quitclaim unto the said C. D., his executors, administrators, and assigns, all and all manner of error and errors, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon, or thereto, or in anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——.

A. B. [*Seal.*]

Sealed and delivered in the presence of W. T., N. S.

Bond or Obligation—Annuity.

Payment of an, for a Term of Years.

Know all men by these presents:

That I, A. B., of ——, county of ——, and State of ——, am (*or* we, A. B., of ——, and C. D., of ——, are) held and firmly bound unto W. D., widow of D. D., deceased, of the town of ——, in the county of ——, and State of —— (*or* unto D. D., of ——, and W. D., of, etc.), in the sum of —— dollars, good and lawful money of the United States, to be paid to the said W. D., her executors, administrators, or assigns (*or* to the said D. D. and W. D., their executors, administrators, or assigns), for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators (*or* we do bind ourselves, our heirs, executors, and administrators, jointly and severally), firmly by these presents.

Sealed with my seal (*or* our seals); dated this —— day of ——.

The condition of the above obligation is such,

That if the above-bounden A. B., his (*or* A. B. and C. D., their) heirs, executors, or administrators, or any of them, shall yearly and every year, during the term of —— years, to be computed from (the —— day of —— last past before) the day of the date of the above-written obligation, well and truly pay, or cause to be paid, unto the above-named W. D., her executors, administrators, or assigns, the annuity or clear yearly sum of —— dollars, by even and quarterly (*or* half-yearly) portions, paid at or upon the —— days of the months of —— in each year, the first payment thereof to begin and be made on the —— day of —— next ensuing the day of the date of this obligation, and also pay a proportionable part of the said annuity, or clear yearly payment of ——, for, or in respect of so many days as shall have elapsed from the last half (*or* quarter) yearly day of payment next preceding the decease of the said W. D. up to the day of her death, then this obligation is to be void; but if default shall be made in payment of the said annuity, or any part thereof, at any of the times aforesaid, then the said obligation is to remain in full force.

A. B. [*Seal.*]

Executed in presence of W. T., N. S. (*Or*, A. B. [*Seal.*] B. A. [*Seal.*])

Bond or Obligation—Apprentice.

By a Father for Service of.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, am held and firmly bound unto C. D., of ——, in —— county, and State of ——, in the sum of —— dollars (*inserting penal sum*), good and lawful money of the United States, to be paid to the said C. D., his executors, administrators or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal; dated this —— day of ——, A. D. ——.

Whereas S. B., son of the above-bounden A. B., by indenture of apprenticeship, bearing even date with the above-written obligation, has been apprenticed to the above-named C. D., with him to dwell and abide, from the day of the date thereof unto the full end and term of —— years thence next ensuing, as by the said indenture more fully appears:

Now the condition of this obligation is such:

That if the said S. B. shall well and truly serve and dwell with the said C. D. after the manner of an apprentice, during all the said term of —— years, according to the true intent and meaning of the said indenture; and if the said S. B. shall not, during said time, detain, convert, waste, embezzle, make away or lend, without his master's order or privity, any goods and chattels of the said C. D., his executors or administrators, but shall behave himself honestly and obediently towards the said C. D., his executors and administrators, as a good and dutiful apprentice ought to do, during the said term (*or may provide for the obligor reimbursing, as in the following form, last clause*), then this obligation is to be void; otherwise, to remain in full force.

Executed in presence of W. T., N. S. A. B. [*Seal.*]

Bond or Obligation—Bail Bond.

Know all men by these presents:

That we, A. B., C. D., and E. F., of ——, are held and firmly bound unto S. F., sheriff of the county of ——, in the sum of one thousand dollars, to be paid unto the said S. F., his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the —— day of ——.

The condition of this obligation is such:

That if the above-bounden A. B., defendant, shall appear in a certain action of trespass, commenced against the said A. B., by P. F., plaintiff, in the supreme court of judicature of the people of the State of ——, by putting in special bail within —— days after the —— day of —— next (*return day of writ*), and by perfecting such bail if required, according to the rules and practice of the said court, then the above obligation to be void, otherwise to remain in full force and virtue.

Seal, etc.

Bond or Obligation—Bill of Credit.

This present writing witnesseth:

That I, A. B., of ——, merchant, do undertake with C. D., of ——, merchant, his executors and administrators, that if he deliver unto E. F., of ——, trader, or any of his assigns, to his use, any sum or sums of money, amounting to the sum of —— or under, and shall take in my name a bill under the hand and seal of the said E. F., containing and showing the certainty thereof; that then I, my executors or administrators, having the same bill delivered to me or them, shall immediately, upon the receipt of the same, pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, all such sums of money as shall be contained in the said bill; for which payment, in manner and form aforesaid, well and truly to be made, I bind myself, my executors and administrators, by these presents.

Sealed with my seal, etc.

Bond or Obligation—Bill Penal.

Or Without Penalty, for the Payment of Money.

Know all men by these presents:

That I, A. B., of ——, do owe unto C. D., of ——, the sum of ——, to be paid unto the said C. D., his executors, administrators, or assigns, on the —— next ensuing the date hereof; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators (in the sum of ——), firmly by these presents.

In witness whereof, I have hereunto set my hand and seal this —— day of ——, A. D. ——.

Bond or Obligation—Bill Single.

For an Unlimited Sum

Know all men by these presents:

That I, A. B. (*the obligor*) am held and firmly bound to C. D. (*the obligee*) in all and every such sums and sum of money, as already have been, or hereafter shall or may be paid or advanced; and all and every such sums and sum of money, to pay which a liability or engagement has been, or shall or may be entered into, or incurred by him, the said C. D., by reason or means of accepting or paying the drafts, bills or promissory notes of the said A. B., or by discounting for him other bills of exchange, or promissory notes, or by affording to him other pecuniary assistance; together with lawful interest for the same, from the time or respective times of advancing the same; and also commission and other charges according to custom, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns; For which payment well and truly to be made I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents.

Sealed with my seal; Dated, etc.

Sealed and delivered in presence of W. T., N. S.

Bond or Obligation—Bottomry Bond.

Know all men by these presents:

That I, M. R., master (*or* owner, *or* master and owner) of the ship or vessel called the V., now lying at the port of ——, am held and firmly bound unto C. D., of the city of ——, in the county of ——, and State of ——, merchant (*or* unto E. F., of ——, and C. D., of ——), in the sum of —— dollars, good and lawful money of the United States (*or other currency in which payment is to be made*), to be paid to the said C. D., his executors, administrators, or assigns (*or* to the said E. F. and C. D., their executors, administrators, or assigns), for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, and furniture (and freight), firmly by these presents.

Sealed with my seal; dated this —— day of ——.

Whereas, the above-bounden M. R. has borrowed, taken up, and received of the said C. D., the full and just sum of —— dollars, which sum is to run at bottomry on the body, tackle, apparel, and furniture (and freight) of the said ship or vessel (*here state the voyage for which the loan is made, e. g., thus*): from the port or road of P., on a voyage to the port of R., having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage, at the rate or premium of —— per cent. for the voyage (*or* at the rate or premium of —— per cent. for every calendar month the said ship or vessel shall be out on said voyage, and so in proportion for a less time than a month), in consideration whereof the usual risks of the seas, rivers, enemies, fires, pirates, etc., are to be on account of the said C. D.: And whereas, for the further security of the said C. D., the said M. R. has agreed to and does by these presents mortgage and assign over to the said C. D., his executors, administrators, and assigns, the said ship or vessel (and her freight), together with all her tackle, apparel, and furniture; and it is hereby declared that the said ship or vessel and appurtenances (and her freight) are thus assigned over for the security of the bottomry taken up by the said M. R., and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

Now the condition of the above obligation is such, that if the above-bounden M. R., his heirs, executors, and administrators, or either of them, shall and do well and truly pay, or cause to be paid, unto the said C. D., or to his attorneys in ——, legally authorized to receive the same, or to his executors, administrators, or assigns, the full and just sum of ——, being the principal of this bond, together with the premium which shall become due thereupon, at or before the expiration of —— days after the safe arrival of the said ship or vessel at her moorings in the harbor of R., or, in case of the loss of the said ship or vessel, such an average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise, to remain in full force.

Having signed three bonds of the same tenor and date, either one thereof being accomplished, the other two are to be void and of no effect.

A. B. [*Seal.*]

Bond or Obligation—Bottomry Bond by a Part Owner.

Signing as Attorney for Other Owner.

Know all men by these presents:

That I, M. R. (master, and) one-third owner of the ship or vessel V., now lying in the port of ——, for myself, and O. R., who owns the other two-thirds of said ship or vessel, by me are held and firmly bound unto C. D., of the city of ——, in the county of ——, and State of ——, merchant (*or* unto C. D., of ——, and E. F., of ——), in the sum of —— dollars, good and lawful money of the United States (*or other currency in which payment is to be made*), to be paid to the said C. D., his executors, administrators, or assigns (*or* to the said C. D. and E. F., their executors, administrators, or assigns), for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals; dated this —— day of ——.

And it is hereby declared that the said ship or vessel and appurtenances (and her freight), are thus assigned over for the security of the bottomry taken up by the said M. R., and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

Now, therefore, the condition of the above obligation is such, that if the above-bounden M. R. and O. R., their heirs, executors, or administrators, or either of them, shall well and truly pay, or cause to be paid, unto the said C. D., or to his (*or* to C. D. and E. F., or to their) attorneys, at ——, legally authorized to receive the same, or to the executors, administrators, or assigns of said C. D. (and E. F.), the just and full sum of —— dollars, being the principal of this bond, together with the premium which shall become due thereon, at or before the expiration of —— days after the arrival of the said ship or vessel at the port of ——; or, in case of the loss of the said ship, such an average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise, to remain in full force.

Having signed three bonds of the same tenor

and date, either one thereof of which being accomplished, the other two are to be of no effect.

M. R. [*Seal.*]
Executed in presence of W. T., N. S. } O. R. [*Seal.*]
by A A.

Bond or Obligation—Conveyance of Land.

Know all men by these presents:

That we, A. B. and B. A., as principals, and S. S. and Y. Y., as sureties, are firmly bound unto C. D. in the sum of —— dollars, to the payment of which to the said A B. and B. A., or their executors, administrators, or assigns, we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

The condition of this obligation is:

That whereas the said obligors have agreed to sell and convey unto the said obligee a certain tract of real estate, situated ——, and bounded as follows, namely:

The same to be conveyed by a good and sufficient warranty (*or other*) deed of the said obligors, conveying a good, clear, and sufficient title to the same, free from all incumbrances.

And whereas, for such deed and conveyance it is agreed that the said obligee shall pay the sum of —— dollars, of which —— dollars are to be paid in cash upon the delivery of said deed, and the remainder by the —— note of the said obligee, bearing interest at —— per cent. per annum, payable semi-annually, and secured by a —— mortgage in the usual form upon the said premises, such note to be (*describe the note*).

Now, therefore, if the said obligors shall upon tender by the said obligee of the aforesaid cash, note, and mortgage at any time within —— from this date, deliver unto the said obligee a good and sufficient deed as aforesaid, then this obligation shall be void, otherwise it shall be and remain in full force and effect.

In witness whereof, we hereunto set our hands and seals this —— day of ——.

A. B., B. A., *Principals.*
S. S., Y. Y., *Sureties.*

Signed and sealed in presence of W. T., N. S. }

Bond or Obligation—Conveyance of Land.

Know all men by these presents:

That A. B., of ——, in the county of ——, and State of ——, held and firmly bound unto C. D., of ——, in the county of ——, and State of ——, in the penal sum of —— dollars, for the payment of which sum, well and truly to be made to C. D., his heirs, executors, and administrators, I bind myself, my heirs, executors, and administrators, firmly by these presents:

Sealed with my seal, and dated this —— day of ——.

The condition of the above obligation is such:

That whereas the said A. B. this day has given the said G. D. promissory note of even date herewith.

Now, if, on payment of the said note being made on or before the time the same shall become due, and all taxes on the land hereinafter described having been paid by the said A. B., and no right of pre-emption having been established or claimed on the said land, or any part thereof, the said A. B., or his legal representatives, shall, whenever thereunto afterwards requested, execute and deliver to the said C. D., or his legal representatives, a good and sufficient deed, conveying to him or them the (*here follows a description of the land*), free and clear of all incumbrance (except, etc.), then this obligation to be null and void, otherwise of full force and effect.

It is distinctly understood and agreed by and between the parties hereto that the time of payment herein above fixed shall be material and of the essence of this contract, and that in case of failure therein, the intervention of equity is forever barred.

A. B. [*Seal.*]
Signed, sealed, and delivered in presence of W. T., N. S. } C. D. [*Seal.*]

Bond or Obligation—Corporation.

Know all men by these presents:

That I, A. B., of ——, am held and firmly bound unto the —— Insurance Company, in the sum of one thousand dollars, to be paid to the said —— Insurance Company, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the —— day of ——.

The condition of the above obligation is such.

That if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named —— Insurance Company, the just and full sum of five hundred dollars, in five equal annual payments from the date hereof, with annual interest, then the above obligation to be void; otherwise to remain in full force and virtue.

A. B. [*Seal.*]
Sealed and delivered in presence of W. T., N. S. }

Bond or Obligation—Corporation Negotiable, etc.

See title BONDS, NOTES, AND BILLS, ante.

Bond or Obligation—Covenants, etc.

See PERFORMANCE, below.

Bond or Obligation—Deed of Land.

Know all men by these presents:

That A. B., of the county of ——, and State of —— is held and firmly bound to C. D., of ——, in the sum of —— dollars, to be paid to said ——, his executors, administrators, or assigns, to the payment whereof he binds himself, his heirs, executors, and administrators, firmly by these presents.

Sealed with —— seal, and dated the —— day of ——.

The condition of this obligation is,

That if ——, the said C. D., upon payment of —— dollars, and interest, by said A. B. within —— years from this date, agreeably to his —— note of even date herewith, shall convey to said C. D., and his heirs forever, a certain tract of land, situated in the county of ——, and State of ——, to wit: (*describing it*), by a warranty (*or other*) deed in common form duly executed and acknowledged, and in the meantime shall permit said C. D. to occupy and improve said premises for his own use, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, I have hereunto set my hand and seal, the day and year first above written.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Bond or Obligation—Deed by Vendor to Purchaser.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, am held and firmly bound unto C. D., of the town of ——, in the county of ——, and State of ——, merchant, in the sum of —— dollars, good and lawful money of the United States, to be paid to the said C. D., his executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents:

Sealed with my seal; dated this —— day of ——.

Whereas, the above-bounden A. B. has this day agreed to sell to the said C. D. the following described tract of land in the county of ——, in the State of ——, to wit: (*describing it*), on condition that the said C. D. shall pay the sum of —— dollars in manner following, to wit: (*stating time, etc.*), and for which the said C. D. has given his promissory note.

Now the condition of this obligation is such,

That if said C. D. shall pay said note at maturity, and shall in the meantime pay all taxes on said land, and the said A. B. shall on the completion of said payments make, execute and deliver, or cause to be made, executed and delivered (*here state the conveyance to be given, as*), a good and sufficient warranty-deed to the said C. D. for said tract of land, then this obligation to be void; otherwise to remain in full force.

And it is expressly agreed by and between said parties, that time is of the essence of this contract, and that in the event of the non-payment of said sum of money, or any part thereof, promptly at the time herein limited, that then the said A. B. is absolutely discharged at law and in equity from any and all liability to make and execute such deed, and may treat the said C. D. as a tenant holding over after the termination, or contrary to the terms of his lease; or if he prefer to do so, may enforce the payment of said note.

A. B. [*Seal.*]

Executed in presence of }
W. T., N. S. }

Bond or Obligation—To Deliver to Sheriff Goods.

Levied on and Left in Defendant's Possession, With Surety.

Know all men by these presents:

That we, A. B., of ——, in —— county, and State of ——, and S. Y., of the same place, merchant, are held and firmly bound unto S. F., the sheriff of —— county, in the sum of —— dollars, good and lawful money of the United States, to be paid to the said S. F., his executors, administrators, or assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated this —— day of ——.

Whereas the above-named S. F., sheriff of the said county of ——, by virtue of an execution (*or* a writ of *fieri facias*), issued out of the court of ——, for the ——, to him directed and delivered, has seized and taken in execution the following goods (*describing them*), as the property of the above-bounden A. B., defendant in the said execution (*or* writ of *fieri facias*).

Now the condition of this obligation is such, that if the above-bounden A. B. or S. Y., or their executors, administrators, or assigns, or any of them, shall well and truly deliver up, or cause to be delivered up to the said sheriff, all the above-mentioned goods, whenever required by the said sheriff, in a sound and in every way as good a situation and condition as when the above-mentioned goods were first levied on by the said sheriff, and that too without fraud or other delay, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal.*]
S. Y. [*Seal.*]

Executed in presence of }
W. T., N. S. }

Bond or Obligation—To Execute a Conveyance.

With Surety.

Know all men by these presents:

That we, A. B., of ——, in —— county, and State of ——, and B. A., of ——, are held and firmly bound unto C. D., of the town of ——, in —— county, and State of ——, in the sum of —— dollars, to be paid to the said C. D., his executors, administrators, or assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated this —— day of ——.

The condition of the above obligation is such,

That if the above-bounden A. B., on or before the —— day of —— next, or, in case of his death before that time, if the heirs of the said A. B. within —— months after his decease, if such heirs shall then be of full age, or if within age, then within —— months after such heirs shall be of full age, do and shall upon the reasonable request, and at the proper cost and charges in the law of the said C. D., his heirs or assigns, make, execute, and deliver, or cause so to be to the said C. D., his heirs or assigns, or to such person or persons as he or they shall nominate and appoint, and to such uses as he or they shall direct (*here state the conveyance stipulated for, as*) all and every such deed or deeds, conveyance or conveyances whatsoever, which shall be needful for conveying and confirming unto the said C. D., his heirs and assigns, a good, absolute, and indefeasible estate of inheritance in fee simple, clear of all incumbrances, except a mortgage made by A. B. for $1,000, and due —— years from date.

A good and sufficient conveyance in fee simple, with the usual covenants.

(*Or*, a good and sufficient warranty deed, in fee simple, free from all incumbrance, and with full covenants), of the following described premises, to wit: all (*here describing the premises*), then the above obligation to be void; otherwise, to remain in full force and virtue.

A. B. [*Seal.*]
B. A. [*Seal.*]

Executed in presence of }
W. T., N. S. }

Bond or Obligation—Executors.

Know all men by these presents:

That I, A. B., of ——, am held and firmly bound unto E. X. and T. R., of, etc., executors of the last will and testament of D. D., deceased, late of ——, in the sum of one thousand dollars, to be paid to the said E. X. and T. R., executors, as aforesaid, the survivors or survivor, or his or their assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the —— day of ——.

The condition of the above obligation is such:

That if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named E. X. and T. R., executors, as aforesaid, the survivors, or survivor, or his or their assigns, the just and full sum of five hundred dollars, in five equal annual payments from the date hereof, with annual interest, then the above obligation to be void; otherwise to remain in full force and virtue.

A. B. [*Seal.*]

Sealed and delivered in presence of W. T., N. S. }

Bond or Obligation—Legatees.

Know all men by these presents:

That we, A. B. and O. P., of, etc., are held and firmly bound unto E. X. and T. R., of, etc., executors of the last will and testament of D. D., deceased, late of the town of ——, in the sum of one thousand dollars, to be paid to the said E. X. and T. R., executors, as aforesaid, the survivors, or survivor, or his or their assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the —— day of ——.

Whereas, in and by the last will and testament of the said D. D., deceased, a legacy of one hundred dollars is bequeathed to the said A. B., which has been paid to him by the said E. X. and T. R., executors as aforesaid:

Now the condition of this obligation is such:

That if any debts against the deceased, above named, shall duly appear, and which there shall be no other assets to pay, and if there shall be no other assets to pay other legacies, or not sufficient, that then the said A. B. shall refund the legacy so paid, or such ratable proportion thereof, with the other legatees of the deceased, as may be necessary for the payment of such debts, and the proportional parts of other legacies, if there be any, and the costs and charges incurred by reason of the payment to the said A. B.; and that if the probate of the will of the said deceased be revoked, or the will declared void, then the said A. B shall refund the whole of the legacy, with interest, to the said E. X. and T. R., their executors, administrators, or assigns.

Sealed, etc.

A B. [*Seal.*]
O. P. [*Seal.*]

Bond or Obligation—Legatee or Representative.

Before Suit.

Know all men by these presents:

That we, A. B. and O. P., of, etc., are held and firmly bound unto E. X. and T. R., of, etc., executors of the last will and testament of D. D., deceased, late of the town of ——, in the sum of one thousand dollars, to be paid to the said E X. and

T. R., executors, as aforesaid, the survivors, or survivor, or his or their assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents:

Sealed with our seals. Dated the —— day of ——.

Whereas, the said A. B. is about to commence a suit in the supreme court of judicature of the people of the State of ——, against the said E. X. and T. R., as such executors, as aforesaid, for the purpose of recovering the amount of a certain legacy bequeathed to him, in and by the last will and testament of the said D. D., deceased (*or*, for the purpose of recovering the distributive share of the property of the said D. D., deceased, due to him, the said A. B., as one of the sons of the said D. D., deceased).

Now the condition of this obligation is such:

That if any debts owing by the said deceased shall hereafter be recovered, or duly made to appear, for the payment of which there shall be no assets other than the said legacy (*or* distributive share), that then the said A. B. shall refund the amount that may be recovered in any action by him against the said executors, or such ratable part thereof, with the other legatees (*or* representatives) of the deceased, as may be necessary for the payment of the said debts, and the costs and charges incurred by a recovery against the said executors in any suit therefor.

(*If the bond is given by a legatee, the following clause must be added*):

And also, if no sufficient assets shall remain, after the payment of said legacy, to pay any other legacy which may be due, that then the said A. B. shall refund such ratable part or proportion thereof, with the other legatees, or representatives, of the deceased, as may be necessary for the payment of such other legacy.

Sealed, etc.

Bond or Obligation—Of Two Obligors.

Know all men by these presents:

That we, A. B. and B. A., of, etc., are held and firmly bound unto C. D., of, etc., in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said C. D., his executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the —— day of ——.

The condition of the above obligation is such:

That if the above-bounden A. B. and B. A., or either of them, their or either of their heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named C. D., etc. (*as in preceding form*).

Sealed and delivered in presence of W. T., N. S. } A. B. [*Seal.*] B. A. [*Seal.*]

Bond or Obligation—Obligors to Obligees, Two or More, to Two or More.

For Payment of Money at One Period.

Know all men by these presents:

That we, A. B., of ——, in the county of ——, B. A., of ——, are held and firmly bound to C. D., of ——, D. C., of —— (*and so on if more obligees*), in the sum of ——, to be paid to the said C. D. and D. C., or either of them (*if more than two, say*, or any of them), or their certain attorney, executors, administrators, or assigns, for which payment, to be well and truly made, we bind ourselves, and each of us, by himself, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the —— day of ——.

The condition of this obligation is such:

That if the above-bounden A. B. and B. A, or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the above-named C. D., D. C., or either of them (*if more than two, say* or any of them), their or either of their executors or administrators, the full sum of two hundred and fifty dollars, with lawful interest for the same on the —— day of ——, next ensuing the date of the above-written obligation, without fraud or delay, then this obligation shall be void; otherwise the same shall remain in full force.

Sealed and delivered, etc.

Bond or Obligation—One Obligor to Several Obligees.

Know all men by these presents:

That I, A. B., of the town of ——, in the county of ——, and State of ——, am held and firmly bound unto C. D., of the city of ——, and State of ——, E. F., of the same place, and G. H., of ——, in the State of ——, in the sum of —— dollars (*inserting the penal sum*), good and lawful money of the United States, to be paid to the said C. D., E. F., and G. H., their executors, administrators, or assigns, for which payment, well and truly to be made, I do bind myself, and my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal; dated this —— day of ——.

The condition of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C. D., E.F., and G. H., or their executors, administrators, or assigns, the just and full sum of, etc. (*as in other cases*).

A. B. [*Seal.*]

Executed in presence of } W. T., N. S. }

Bond or Obligation—For Performance.

To be Indorsed on a Contract or Agreement.

Know all men by these presents:

That we, A. B. and B. A., of, etc., are held and firmly bound unto C. D., of, etc., in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said C. D., his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated this —— day of ——.

The condition of this obligation is such, that if the above-bounden A. B., his executors, administrators, or assigns, shall, in all things, stand to, and abide by, and well and truly keep and perform, the covenants, conditions, and agreements, in the within instrument contained, on his or their part to be kept and performed, at the time, and in the manner and form therein specified, then the above obligation shall be void; else to remain in full force and virtue.

Sealed, etc.

Bond or Obligation—Respondentia Bond.

Know all men by these presents

That I, M. R., master (*or* owner, *or* master and owner) of the ship or vessel called the V., now lying at the port of ——, am held and firmly bound unto C. D, of the city of ——, in the county of ——, and State of ——, merchant (*or* unto E. F., of ——, and C. D., of ——), in the sum of —— dollars, good and lawful money of the United States (*or other currency in which payment is to be made*), to be paid to the said C. D., his executors, administrators, or assigns (*or* to the said E. F. and C. D., their executors, administrators, or assigns), for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, and furniture (and freight), firmly by these presents.

Sealed with my seal; dated this —— day of ——.

Whereas the above-bounden A. B. has (*or* A. B. and B. A have) borrowed, taken up, and received of the said C. D., the full and just sum of —— dollars, which sum is to run at respondentia on the said ship or vessel (*here state the voyage for which the loan is made*), at the rate or premium of

—— per cent. for the voyage (*or* at the rate of —— per cent. for every calendar month the said ship or vessel shall be out on the said voyage, and so in proportion for a less time than a month); in consideration of which the usual risks of the seas, rivers, enemies, fires, pirates, etc., are to be on the account of the said C. D.; and whereas, for the further security of the said C. D., the said A. B., for and on account of the owners, their executors, administrators, and assigns, has agreed to, and does by these presents mortgage and assign over to the said C. D., the several goods, wares, and merchandise laden and to be laden on the said ship or vessel; which said goods, wares, and merchandise, with their produce, are thus mortgaged and assigned over, for the security of the respondentia taken up by the said A. B., and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon:

Now the condition of the above obligation is such:

That if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said C. D., or to his attorneys (*or* to C. D. and E. F., or to their attorneys), at ——, legally authorized to receive the same, or to the executors and administrators of the said (E. F. and) C. D., the just and full sum of —— dollars, being the principal of this bond, together with the premium which shall become due thereupon, at the expiration of —— months after the safe arrival of the said ship or vessel at her moorings in the port of ——, or in case of the loss of the said ship or vessel, such average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise, to remain in full force. Having signed three bonds of the same tenor and date, either one thereof being accomplished, the other two are to be of no effect. A. B. [*Seal.*]

Executed in presence of }
W. T., N. S. }

Bond or Obligation—Service.

In Consideration of the Payment of a Debt.

Know all men by these presents:

That I, A. B., of ——, in consideration of the sum of ——, to me in hand paid by C. D., of ——, have bound myself, and by these presents do bind myself a servant unto the said C. D., to serve him, the said C. D., his executors and administrators (and assigns), for the space of —— months and —— days from the day of the date hereof; and I do covenant so to serve faithfully during the said time; and so to serve at the rate of —— dollars per month for all such moneys as the said C. D. has undertaken, or shall undertake, and be obliged to pay at my request, for me and on my account, he, the said C. D., finding and providing for me during the said time, in board, lodging, and washing, as is customary for servants.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——.

A. B. [*Seal.*]

Bond or Obligation—Several Persons, Bound Severally for Several Amounts.

Know all men by these presents:

That we, A. B., of ——, in the county of ——, and State of ——, and B. A., of ——, and E. F. and G. H., of ——, in said county, are severally and respectively held and firmly bound unto C. D., of said ——, in the respective sums following, viz., the said A. B., B. A., and E. F. in the sum of —— dollars each, and the said G. H. in the sum of —— dollars, good and lawful money of the United States, to be paid to the said C. D., his executors, administrators, or assigns; for which said several payments, well and truly to be made, each of them doth hereby bind himself, his heirs, executors, and administrators, severally and respectively, but not jointly, nor one for the other, firmly by these presents.

Sealed with our seals; dated this —— day of ——.

The condition of this bond is, etc. (*as in other cases*).

Bond or Obligation—Several Persons Severally, for Several Sums.

Know all men by these presents:

That A. B., of ——, B. A., of ——, A. A., of ——, B. B., of ——, and A. B. A., of ——, are severally and respectively held and bound unto C. D., in the respective sums following, viz., each of them, the said A. B., B. A., A. A., B. B., in the sum of —— apiece, and the said A. B. A. in the sum of ——, to be paid to the said C. D., his heirs, etc., to which said several payments, well and truly to be made, each of them doth hereby bind and oblige himself, his heirs, etc., severally and respectively, but not jointly, nor one for the other, firmly by these presents.

Sealed, etc.

Bond or Obligation—Unliquidated Sum.

Know all men by these presents:

That I, A. B., of ——, merchant, am held and firmly bound to C. D., of said place, banker, in all and every such sums and sum of money, as already have been, or hereafter shall or may be paid or advanced by him for me; and all such sums of money, to pay which a liability or engagement has been, or shall, or may be entered into or incurred by him, the said C. D., by reason or means of accepting or paying the drafts, bills, or promissory notes of me, the said A. B., or by discounting for me other bills of exchange or promissory notes, or by affording to me other pecuniary assistance, together with lawful interest upon the same, from the time or respective times of paying or advancing the same; and also the commissions and other charges according to lawful custom, to be paid to the said C. D., his executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal; dated this —— day of ——. A. B. [*Seal.*]

Bond or Obligation—Warranty Shall be Kept.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, am held and firmly bound unto C. D., of ——, in —— county, and State of ——, in the sum of —— dollars, good and lawful money of the United States, to be paid to the said C. D., his executors, administrators or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal; dated this —— day of ——, A. D. ——.

Whereas the said A. B., for the consideration of —— dollars, to him in hand paid, or secured to be paid, did make, finish, and sell unto the said C. D., a hot-air engine, with retorts, and appurtenances (*or other article, as the case may be*), which he has delivered and placed in the factory of said C. D., which he has and hereby does, for himself, his heirs, executors, and administrators, warrant to be good in each and every respect, and to remain good and sufficient for the space of —— years,

Now, therefore, the condition of the above obligation is such:

That if the said engine, retorts, and appurtenances, or any part thereof, shall within the time aforesaid prove defective or insufficient, in the opinion of any three competent and disinterested mechanics or engineers, then this obligation is to be in full force, otherwise to be void.

A. B. [*Seal.*]
Executed in presence of } C. D. [*Seal.*]
W. T., N. S. }

VARIOUS CONDITIONAL CLAUSES.

CONDITION—BILL OF SALE.

From an Owner of Part of a Ship, that an Owner of Another Part (Being Abroad) Shall Execute a Bill of Sale thereof, the Other Owners of all the Other Parts Having Executed the Same.

Whereas C. D., of, etc., owner of one-quarter part of all that —— ship, called the S., burthen

about five hundred tons, now lying at, etc., whereof A. B., of ——, owner of one other quarter part of the said ship, the above-bound G. H., owner of one other quarter part; I. K., of, etc., owner of one-eighth part of the said ship, by a bill of sale, bearing date, etc., have bargained and sold to the said L. M. their several shares in the said ship, and the appurtenances, as by the said bill of sale appears; and whereas O. P. and Q. R., of, etc., are owners of the other eighth part of the said ship, and are made parties to the said bill of sale, but, they being absent, the said G. H. has undertaken with the said L. M. that they shall duly execute said bill of sale, or otherwise by some other deed, sufficiently convey the said eighth part of the said ship, with the appurtenances, to the said L. M., and thereupon the said L. M. hath paid to the said G. H. the sum of ——, being the purchase-money for the said eighth part;

Now the condition of this obligation is such:

That if the said O. P. and Q. R., their executors, etc., shall within —— after the date above written duly sign, seal, and execute the said bill of sale to the said L. M., or otherwise, by some other deed, duly executed, sufficiently convey the said eighth part of the said ship, with the appurtenances, to the said L. M., and if, in the mean time, the said L. M., or his assigns, shall quietly hold the said eighth part of the said ship, with the appurtenances, belonging to the said O. P. and Q. R., without any denial or interruption by the said O. P. and Q. R., or their assigns, or any other person or persons whatsoever, then this obligation shall be void, otherwise to be in full force and effect.

Condition—Bill of Sale, By Part Owners of a Ship, on Selling the Same.

To Procure Bill of Sale from the Other Part Owner.

Whereas the above-bounden A. B. has (*or* A. B. and B. A. have), by bill of sale of even date herewith, sold and assigned unto the said C. D., his share (*or* their several shares) in the ship or vessel, called the S., and the appurtenances;

And whereas M. N., of ——, is owner of the other —— part of the said ship or vessel, but, he being absent, the said A. B. has (*or* A. B. and B. A have) undertaken with the said C. D. that the said M. N. shall duly execute a like bill of sale, or otherwise by some other deed, sufficiently convey the said —— part of the said ship, with the appurtenances, to the said C. D., and thereupon the said C. D. has paid to the said A. B. the sum of —— dollars, being the purchase-money for the said —— part, to be conveyed by said M. N.

Now, therefore, the condition of the above obligation is such:

That if the said M. N., his executors, administrators, or assigns, shall within —— months after the date above written, duly sign, seal, and execute such bill of sale to the said C. D., or otherwise duly and sufficiently convey the said —— part of the said ship, with the appurtenances, to the said C. D.; and if, in the meantime, the said C. D., his executors, administrators, or assigns, shall quietly hold the said —— part of the said ship, with the appurtenances, belonging to the said M. N., without any denial or interruption by the said M. N., or any other person or persons whatsoever, then this obligation to be void and of no effect; otherwise, to be and remain of full force and virtue. [*Signature and seal.*]

Condition—Conveyance—That a Third Person Shall Convey on Coming of Age.

Whereas the above-bounden A. B. and one M. N. are the heirs (*or* devisees) of one D. D., deceased, and as such heretofore seized of certain premises in the —— aforesaid, described as follows: (*describing the premises*); and whereas the above-named C. D. has agreed with the said A. B. and M. N. for the purchase of the said premises, for the sum of —— dollars; but the said M. N., not being yet of age, cannot now join in conveying the same to the said C. D.; and whereas the said C. D., at the request of the above-bounden A. B. (*and name surety, if any*), and on his (*or* their) promise and undertaking that the same M. N. should, as soon as he shall have attained the age of twenty-one years, at the proper costs and charges of the said C. D., convey to the said C. D., his heirs and assigns, his undivided interest in and part of the said premises, has paid into the hands of the said A. B. the whole of the said purchase-money; and the said A. B., by his deed of even date herewith, has conveyed his undivided interest in and part of the said premises, to the said C. D., his heirs and assigns: Now the condition of this obligation is such, that if the said M. N. shall within a reasonable time after he shall have attained the said age of twenty-one years, at the proper costs and charges of the said C. D., convey unto the said C. D., his heirs and assigns, by such deeds and conveyances as the counsel of the said C. D. shall advise, his undivided interest in and part of the said premises, and that without any consideration to be paid him by the said C. D. for so doing; and also if, and in case the said A. B. (*and name also surety, if any*), his (*or* their) heirs, executors, or administrators, shall in the meantime, and until the said M. N. shall have executed such conveyances as aforesaid, save, defend, keep harmless and indemnified the said C. D., his heirs, executors, and administrators, and the said premises, and the rents, issues, and profits thereof, of and from all claims and demands to be made thereto, by or on the part and behalf of the said M. N., then this obligation to be void; otherwise to remain of full force.

[*Signatures and seals.*]

Condition—Covenants for the Performance of.

The condition of the above obligation is such, that if the above-named A. B., his heirs, executors, and administrators, do and shall, well and truly perform, fulfil, and keep, all and every the covenants specified and contained in a certain indenture of, etc., bearing even date with the above-written obligation, and made between, etc., which on the part and behalf of the said A. B., his heirs, executors, and administrators, is, are, and ought to be, performed, fulfilled, and kept, according to the true intent and meaning of the same indenture; then the above-written obligation shall be void; otherwise, etc.

Condition—To Deliver Lost Title Deeds When Found, etc.

Whereas, certain title deeds and evidences of title to premises heretofore occupied by the above-bounden A. B., in the village of ——, in the State of ——, have been lost or mislaid, not having been recorded, and the said A. B., upon conveying said premises to C. D., by deed of even date with these presents, agreed with him to save harmless, and keep indemnified the said C. D., his heirs, executors, administrators, and assigns, against all persons whatsoever, claiming any right or title to the said premises or any part thereof, and all costs and charges attending the same, until the said title deeds and evidences of title shall appear to be found; and also, that in case the said title deeds and evidences to the said premises should at any time hereafter be found, then the same should be delivered to the said C. D., his heirs or assigns, whole and uncancelled.

Now the condition of this obligation is such, that if the said A. B., his heirs, executors, and administrators, do and shall from time to time, and at all times hereafter until the said title deeds and evidences, forming a complete title to the said premises, shall be found, save harmless, and keep indemnified the said C. D., his heirs, executors, administrators, and assigns, of, from, and against, all mortgages and other charges, and incumbrances affecting the said premises, and against all and every person and persons whatsoever, claiming any estate, right or title of, in or to the same, or any part thereof; and, if such title-deeds and evidences, or any of them, shall at any time hereafter be found, if the same shall be delivered up to the said C. D., his heirs or assigns, in whole and uncancelled, without fraud or other delay, then this obligation is to be void: otherwise, to remain in full force.

[*Signatures and seals.*]

CONDITION—EXECUTE AN ASSIGNMENT.

The condition of the above obligation is such:

That if the above-bounden A. B., his executors, administrators, or assigns, on or before the —— day of —— next, shall, upon the reasonable request, and at the proper cost and charges of the said C. D., his heirs or assigns, make, execute, and deliver, or cause so to be, to the said C. D., his heirs or assigns, or to such person or persons as he or they shall nominate and appoint, and to such uses as he or they shall direct, a good and sufficient assignment of all such estate and interest as he, the said A. B., now has in the lands and tenements of M. N. at ——, then this obligation to be void; otherwise, to remain in full force.

A. B. [*Seal.*]

CONDITION—EXECUTE A QUIT-CLAIM DEED.[a]

The condition of the above obligation is such:

That if the above-bounden A. B. shall well and truly make, execute, and deliver to the said C. D. a deed of release and quit-claim of said A. B.'s interest in (*designating the property*), and shall suffer and permit the said C. D., his heirs and assigns, to peaceably occupy and possess said interest, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal.*]

CONDITION—GOODS, RETURN OF, OR THEIR VALUE.

Whereas the above-named C. D. and E. F. have delivered to the above-bounden A. B. certain merchandise, consisting of (silks, velvets, and other goods), to the value of —— dollars, to be by him sold (by public sale forthwith, for ready money):

Now the condition of this obligation is such:

That if the said A. B., his executors or administrators, shall, within —— next ensuing the date hereof, return unto the said C. D. and E. F., or either of them, their or either of their executors, administrators or assigns, all such of the said merchandise as shall then remain unsold (casualties happening by fire, only, excepted), and pay, or cause to be paid, unto the said C. D. and E. F., or either of them, their or either of their executors or administrators or assigns, all such moneys as shall have been by him then received for the merchandise so sold (or the price of all such merchandise which shall then have been sold), then this obligation to be void; otherwise, to remain in full force.

[*Signature and seal.*]

CONDITION—ILLEGITIMATE CHILD, TO CONTRIBUTE TO THE SUPPORT OF.

Whereas the said W. W. has made oath before J. P., a justice of the peace in and for the said town (*or* county) of ——, that the above-bounden A. B. is the father of a male (*or* female) bastard child, of which she has lately been delivered, and the said A. B. has thereupon agreed to assist the said W. W. in the support and maintenance of the said child:

Now, therefore, the condition of the above obligation is such:

That if the above-bounden A. B., his heirs, executors, and administrators, or any of them (*or* the above-bounden A. B. and C. D., or either of them, or their or either of their heirs, executors, or administrators), shall and do well and truly pay to the said W. W., her executors, administrators, or assigns, towards the support and maintenance of the said child, the sum of —— dollars and —— cents per week, for each and every week from the —— day of ——, during the term of —— years, if said child shall live so long, then, etc. (*as above*).

CONDITION—TO INDEMNIFY ON PAYING A LOST BOND.

Whereas the above-named C. D., by his bond or obligation under seal, bearing date on or about the —— day of ——, became bound to the above-bounden A. B. in the penal sum of —— dollars, conditioned for the payment of the sum of —— dollars, unto the said A. B., his executors, administrators or assigns, on the —— day of —— (*stating it according to the condition of the lost bond*), as by the said bond, when produced, will more fully appear; and whereas the said bond is alleged to be lost, so that the same cannot be found; and whereas the said ——, at the request of the said C. D., and on his promise of indemnity, has made him full satisfaction of and for the said bond:

Now the condition of this obligation is such:

That if the above-bounden A. B., his heirs, executors or administrators, or any of them, shall, in case the said bond or obligation be found, or come to the hands or power of the said A. B., his heirs, executors or administrators, or any of them, or to the hands, custody, or power of any other person, deliver or cause the same to be delivered unto the said C. D., his executors or administrators, in order to be cancelled, and also shall and at all times indemnify and save harmless the said C. D., his heirs, executors, and administrators, from and against any and all suits, actions, damages, costs, charges and expenses by reason of said bond, or any of the money so paid, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal.*]
E. F. [*Seal.*]

BOND OR OBLIGATION—INDEMNITY

To Indemnify Maker of Note or Acceptor of Bill for Accommodation, from Loss Thereby, with Surety.

Know all men by these presents:

That we, A. B., of ——, in —— county, and State of ——, and B. A., of ——, are held and firmly bound unto C. D., of ——, county of ——, and State of ——, in the sum of —— dollars, good and lawful money of the United States, to be paid to the said C. D., his executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated this —— day of ——.

Whereas the said C. D. has, without consideration to him moving therefor, and solely for the accommodation of the above-bounden A. B., made and advanced to the said A. B. his promissory note (*or* accepted a bill of exchange drawn by —— upon him) for —— dollars, bearing date the —— day of ——, and payable to —— (with interest), —— days after the date thereof:

Now the condition of this obligation is such,

That if the said above-bounden A. B and B. A., their executors or administrators, or any of them, shall well and truly pay the said sum of —— dollars, for the payment of which the said note (*or* bill) is so given, and the interest thereof, on the day of payment therein mentioned, and in full discharge thereof, and indemnify and save harmless the said C. D., his executors and administrators, from and against any and all suits, actions, damages, costs, charges, and expenses, by reason of said note (*or* bill), then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal.*]
B. A. [*Seal*]

CONDITION—TO INDEMNIFY ON PAYING A LOST NOTE OR BILL.

Whereas a promissory note for —— dollars, made by ——, or a bill of exchange drawn by ——, upon ——, bearing date at ——, the —— day of ——, and payable —— months after the date, to the order of ——, at —— (and indorsed by ——), and which is now the property of the above-bounden A. B, has been lost (*or* destroyed), and cannot now be produced by him; and whereas at his request, and upon his promise to indemnify and save harmless the said C. D. in the premises, and to deliver up the said note, when found, to the said C. D., to be cancelled, the said C. D. has this day paid unto the said A. B. the sum of —— dollars, the receipt whereof the said A. B. doth hereby acknowledge, in full satisfaction and discharge of the said note:

Now the condition of the above obligation is such:

That if the above-bounden A. B. and E. F., their heirs, executors, or administrators, or any of them, shall well and truly indemnify and save

[a] This form only binds the obligor for what interest he may have, and is not broken if he be ousted by better title; Sawtell *v.* Pike, 20 Me (2 Applet.) 169.

harmless the said C. D., his executors and administrators, from and against the said note (*or* bill), any and all damages, costs, charges, and expenses (and all actions or suits, whether groundless or otherwise), by reason of said note (*or* bill), and also deliver, or cause to be delivered up the same, when and so soon as the same shall be found, to be cancelled, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal*]
E. F. [*Seal.*]

CONDITION—INDEMNITY.

To Indemnify Partners Having Indorsed for Accommodation, Against Liability Thereby.

Whereas the said C. D. & Co. have, without consideration to them moving therefor, and solely for the accommodation of the above-bounden A. B., indorsed a promissory note made by —— (*or* a bill of exchange drawn by —— upon ——), for —— dollars, bearing date the —— day of ——, and payable to —— (with interest), —— days after the date thereof.

Now the condition of the above obligation is such:

That if the above-bounden A. B. and B. A., their heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, the said sum of —— dollars, for the payment of which the said note (*or* bill) is so given, and the interest thereof, according to the tenor thereof, and in full discharge thereof, and indemnify and save harmless the said C. D. and E. F., their executors and administrators, and each of them,[a] from and against any and all liability[b] by reason of said note (*or* bill), as well as against any and all suits, actions, damages, costs, charges, and expenses by reason thereof, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal*]
B. A. [*Seal*]

CONDITION—TO INDEMNIFY A SURETY IN A BOND FOR PAYMENT OF MONEY.

Whereas the above-named C. D., at the special instance and request of the above-bounden A. B., and for his debt, together with and as well as he, the said A. B., is held and firmly bound unto a certain E. F., of ——, in and by an obligation bearing even date herewith, in the penalty of —— dollars, lawful money, as aforesaid, conditioned for the true payment of (*here recite the condition of the previous bond*):

Now the condition of the above obligation is such,

That if the above-bounden A. B., and his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the said E. F., his executors, administrators, or assigns, the said sum of —— dollars, with interest thereon at the rate of —— per cent. per annum, as aforesaid, on the —— day of —— (*or, if the bond is made payable at different times, say*, at the several times limited in the said recited condition), according to the true intent and meaning of said condition, and in full discharge and satisfaction of said obligation, and shall indemnify and save harmless the said C. D., his heirs, executors, and administrators, from and against any and all suits, actions, damages, costs, charges, and expenses, by reason of said recited obligation, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal.*]
E. F. [*Seal*]

CONDITION—INDEMNITY.

To Indemnify Tenant on Paying Rent, When Title is in Dispute

Whereas the above-named A. B. claims from the said C. D. rent of certain premises in (*state where*), to wit, —— dollars, due on the —— day of ——, and one E. F. also claims some title to said premises, and to be of right entitled to said rents, or some part thereof:

Now the condition of the above obligation is such:

That if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly, at all times, indemnify and save harmless the said C. D., his heirs, executors, and administrators, from and against any and all actions, suits, damages, costs, and expenses for or by reason thereof, then this obligation is to be void; otherwise, to remain in full force.

A. B. [*Seal.*]

CONDITION—LIFE, TO KEEP A PERSON DURING

The condition of this obligation is such.

That whereas the above-bound A. B., for and in consideration of the sum of ——, to him in hand paid by the above-named C. D., hath agreed and undertaken to keep and maintain the said C. D., during his life; if, therefore, the said A. B., his executors or administrators, shall from time to time, and at all times hereafter during the natural life of the said C. D., well and sufficiently maintain and keep, or cause to be well and sufficiently maintained and kept the said C. D., in the house of him, the said A. B., with meat, drink, clothes, and all other things necessary and convenient.

CONDITION—MARRY, OR TO PAY A SUM OF MONEY.

The condition of the above obligation is such:

That if the above-bounden A. B. do, on or before the —— day of ——, espouse and marry D. D., daughter of the said C. D., if the said D. D. will thereunto assent and the laws of this State (*or* Commonwealth) will permit the same; or, if it shall happen that the said A. B. shall not marry her as aforesaid, then if the said A. B. shall well and truly pay, or cause to be paid, unto the said D. D., her executors, administrators and assigns, the sum of —— dollars on the —— day of —— next ensuing the said —— day of ——, above mentioned and limited for the said marriage, then this obligation is to be void; otherwise, to remain in full force. [*Signatures and seals.*]

CONDITION—PAY OFF AND CANCEL A MORTGAGE.

Whereas the above-bounden A. B. and W. B. his wife heretofore agreed to convey, and have this day conveyed to the said C. D. certain lands in (*here briefly designating the premises*), by a full warranty-deed; and whereas said premises are subject to the payment of a mortgage, bearing date the —— day of ——, executed by the said —— and —— his wife, to ——, of the city of ——, and county of ——, for the purpose of securing the payment of the sum of —— dollars, in —— years from the day of the date thereof, with semi-annual interest, as secured by the condition of a bond, of like date therewith, executed by the said —— to the said ——, which said mortgage is a lien upon the premises aforesaid, and was recorded in the office of the clerk of the county of ——, on the —— day of ——, at pages —— and ——, of book —— of mortgages, at —— o'clock m., and upon which there is now remaining due and unpaid the said principal sum of —— dollars, with interest from the —— day of —— last past; which sum the above-bounden A. B. agreed to pay, and to satisfy and cancel of record said mortgage.

Now, therefore, the condition of the above obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or either of them (*or* the above-bounden A. B. and W. B., or either of them, or their or either of their heirs, executors, or administrators), shall well and truly pay, or cause to be paid, unto the said —— (mortgagee), or his executors, administrators, or assigns, all such sum and sums of money as are or may hereafter become due on the said bond and mortgage, executed by the said A. B. and his wife as aforesaid, and forever satisfy and discharge the

[a] An agreement to indemnify partners against suits against them extends to suits against one of them, in a place where by law it is not necessary that a suit be against all the partners of a firm liable. Hill *v.* Packard, 5 Wend 375. [b] This will render the obligors liable upon the bond in case the obligees become duly charged as indorsers or acceptors of the accommodation paper.

same, saving the said C. D., his heirs, executors, administrators and assigns, harmless of and from all and all manner of costs, charges, and expenses in the premises, then the above obligation is to be void, otherwise, to remain in full force.

[*Signatures and seals.*]

Book. See ACCOUNTS; AUTHORITIES; COPYRIGHT; EVIDENCE; MERCANTILE LAW.
Book-Keeping. See title ACCOUNTS, ante.
Books. See BOOK, above.
Booty. See MILITARY LAW.
Borough. See MUNICIPAL CORPORATIONS.
Borrower. See ANIMALS; BAILMENTS.
Bottomry. See MARITIME LAW.
Bought Note. See CONTRACTS; SALES.
Boundary. See EVIDENCE; REAL PROPERTY.
Branch. See DESCENTS; DESCENDANTS
Breach. See CONTRACTS; COVENANTS; TRUSTS.
Breaking. See BURGLARY; CRIMINAL LAW.
Breaking Doors. See ARREST; CRIMINAL LAW; PRACTICE.
Breath. See MEDICAL LAW.
Bribe. See CRIMINAL LAW.
Bribery. See CRIMINAL LAW.
Bridge. See HIGHWAY.
Brief. See PRACTICE.
Brief of Title. See PRACTICE.
Brokers. See AGENCY; BAILMENTS.
Brothel. See CRIMINAL LAW.
Brother. See PERSONAL RELATIONS.
Brother-in-Law. See PERSONAL RELATIONS.
Bruise. See MEDICAL LAW.
Building. See REAL PROPERTY.
Bulk. See CONTRACTS; SALES.
Bullion. See MONEY.
Buoy. See MERCANTILE LAW.
Burden of Proof. See EVIDENCE.
Burglariously. See PLEADING.
Burglary. See CRIMINAL LAW.
Burial. See DEATH.
Bushel. See WEIGHTS AND MEASURES.
Business Hours. See BILLS OF EXCHANGE, BONDS AND NOTES; HOURS; TIME.
By Estimation. See CONVEYANCES.
By-Laws. See BAILMENTS; COMMON CARRIERS, ETC.; CORPORATIONS.
Cabinet. See GOVERNMENT; OFFICE AND OFFICERS.
Cadet. See MILITARY LAW.
Calendar. See CRIMINAL LAW; TIME; YEAR.
Calling the Plaintiff. See PRACTICE.
Canon Law. See LAW.
Canvass. See ELECTIONS; VOTES.
Capias. See PRACTICE.
Capita. See DESCENT; DESCENDANTS.
Capital Crime. See CRIMINAL LAW.
Capital Punishment. See CRIMINAL LAW.
Capital Stock. See CORPORATIONS.
Capitation. See TAXES.
Capitulation. See MILITARY LAW.
Captain. See MILITARY LAW.
Caption. See PLEADING.
Capture. See MILITARY LAW.
Cards. See CRIMINAL LAW.
Care. See BAILMENTS; DILIGENCE; NEGLIGENCE.
Cargo. See BAILMENTS; MARITIME LAW.
Carnal Knowledge. See CRIMINAL LAW; MEDICAL LAW; RAPE.
Carrier. See BAILMENTS.
Carrying Away. See CRIMINAL LAW.
Cart. See PROPERTY, ETC.; WAGON.
Carte Blanche. See SIGNATURE.
Cartmen. See BAILMENTS; COMMON CARRIERS, ETC.
Case. See PRACTICE.
Case Stated. See PRACTICE.
Cash. See MONEY.
Cash Book. See BOOK-KEEPING.
Cashier. See BANKING.
Castigatory. See PERSONAL RELATIONS; SCOLD; WOMEN.
Castration. See CRIMINAL LAW.
Casualty. See ACCIDENT.
Casus Fœderis. See INTERNATIONAL LAW.
Casus Omissus. See CASE; PRACTICE.
Catching Bargain. See BARGAIN; CONTRACTS.
Cause. See PLEADING; PRACTICE.
Cause of Action. See PRACTICE.
Caveat. See PATENTS; PRACTICE.
Caveat Emptor. See CONTRACTS; PERSONAL PROPERTY; REAL PROPERTY; SALES.
Cede. See INTERNATIONAL LAW.
Census. See GOVERNMENT; INHABITANTS.
Cepi. See PRACTICE.
Cepit. See PLEADING; PRACTICE.
Certainty. See CONTRACTS; PLEADING.
Certificate. See PRACTICE.
Certificate of Registry. See MARITIME LAW.
Certified Check. See BILLS OF EXCHANGE; BONDS AND NOTES.
Certiorari. See PRACTICE.
Cession. See GOVERNMENTAL LAW.
Cestui que Trust. See TRUSTS.
Challenge. See CRIMINAL LAW.
Chamber. See HOUSE; REAL PROPERTY.
Chamber of Commerce. See MERCANTILE LAW.
Chambers. See PRACTICE.
Champerty. See CONTRACTS; CRIMINAL LAW.
Chancellor. See OFFICE AND OFFICERS.
Chancery. See COURTS; PRACTICE.
Chapels. See REAL PROPERTY.
Character. See EVIDENCE.
Charge. See CONTRACTS; DEVISES; LIENS; PLEADING; PRACTICE.
Charges. See COSTS; PRACTICE.
Charitable Uses. See GIFTS.
Charities. See GIFTS.
Charter. See RIGHTS.
Charter Party. See AFFREIGHTMENT; CONTRACTS.
Chase. See ANIMALS.
Chastity. See CRIMINAL LAW; SLANDER; SELF-DEFENCE.
Chattel. See PROPERTY.
Cheat. See CONTRACTS; FRAUD.
Check. See BILLS OF EXCHANGE; BONDS AND NOTES.
Child. See DESCENT; DESCENDANTS; PERSONAL RELATIONS.
Chirograph. See CONVEYANCES.
Chose. See PERSONAL PROPERTY.
Chose in Action. See RIGHTS.
Christianity. See RELIGION.
Church. See REAL PROPERTY.
Circuit. See COURTS; PRACTICE.
Circuity of Action. See ACTION; PRACTICE.
Circumstances. See EVIDENCE.
Citation. See AUTHORITIES; PRACTICE; PROCESS
Citizen. See PERSONAL RELATIONS.
Civil Action. See ACTION; PRACTICE.
Civil Commotion. See CRIMINAL LAW; GOVERNMENT; INSURRECTION.
Civil Death. See DEATH; PERSONAL RELATIONS.
Civil Law. See LAW.
Civil Obligation. See CONTRACTS; OBLIGATION; PRACTICE.
Civil Officer. See OFFICE AND OFFICERS.
Civil Remedy. See PRACTICE.
Claim. See PROPERTY; RIGHTS.
Claimant. See ADMIRALTY; PRACTICE.
Class. See PERSONAL RELATIONS.
Clause. See ASSIGNMENTS; BONDS; CONTRACTS CONVEYANCES; LAWS; WILLS; ETC.
Clearance. See MARITIME LAW.
Clearing House. See COMMERCIAL LAW.
Clerical Error. See WRITINGS.
Close Copies. See COPIES; WRITINGS.
Co-Administrator. See OFFICE AND OFFICERS; PERSONAL RELATIONS.
Co-Assignee. See OFFICE AND OFFICERS; PERSONAL RELATIONS.
Co-Executor. See OFFICE AND OFFICERS; PERSONAL RELATIONS.
Coast. See REAL PROPERTY.
Code. See LAW.
Codicil. See WILLS.
Coercion. See ACTS; CONTRACTS CRIMINAL LAW.
Cognizance. See PLEADING.
Cognovit. See PLEADING.
Cohabitation. See MARRIAGE.
Coins. See MONEY.

Collateral. See ASSURANCE; CONSANGUINITY; ESTOPPEL; FACTS; ISSUE; KINSMEN; LIMITATION; SECURITY; WARRANTY.
Collector. See OFFICE AND OFFICERS.
College. See SCHOOLS.
Collision. See MARITIME LAW.
Colloquium. See PLEADING.
Collusion. See CONTRACTS; FRAUD.
Colonial Law. See LAW.
Colony. See GOVERNMENT.
Color. See PERSONAL RELATIONS: PLEADING.
Color of Office. See OFFICE AND OFFICERS.
Colt. See ANIMALS; HORSE.
Combination. See CRIMINAL LAW.
Comity. See LAW.
Commencement. See PLEADING.
Commerce. See INTERNATIONAL LAW.
Commercial Law. See LAW.
Commissary. See MILITARY LAW.
Commission. See AGENCY; BAILMENTS; COMMON LAW; CRIMINAL LAW; PATENTS.
Commissions. See AGENCY; CONTRACTS; PRACTICE; SALES.
Commitment. See PRACTICE.
Committee. See LEGISLATION.
Common. See REAL PROPERTY.
Common Assurances. See CONVEYANCES.
Common Bar. See PLEADING.
Common Bench. See COURTS.
Common Carriers. See BAILMENTS.
Common Carriers of Passengers. See BAILMENTS.
Common Courts. See PLEADING.
Common Fishery. See FISHERY; REAL PROPERTY.
Common Highway. See HIGHWAY; REAL PROPERTY.
Common Law. See LAW.
Common Nuisance. See CRIMINAL LAW.
Common Pleas. See COURTS.
Common Recovery. See PRACTICE.
Common Schools. See SCHOOLS.
Common Scold. See PERSONAL RELATIONS; WOMEN.
Common Seal. See CORPORATIONS.
Common Sense. See MEDICAL LAW.
Communication. See CONTRACTS; EVIDENCE.
Community. See MARRIAGE.
Commutation. See CRIMINAL LAW.
Compact. See CONTRACTS.
Company. See CORPORATIONS.
Comparison of Handwriting. See EVIDENCE; WRITINGS.
Compensation. See AGENCY; BAILMENTS; CONTRACTS; PRACTICE.
Competency. See EVIDENCE; WITNESSES.
Compilation. See COPYRIGHT.
Complaint. See CRIMINAL LAW.
Composition. See COPYRIGHT; DEBTOR.
Compound Interest. See INTEREST; MONEY.
Compounding. See CRIMINAL LAW.
Compromise. See CONTRACTS.
Comptroller. See OFFICE AND OFFICERS.
Compulsion. See ACTS.
Concealment. See CONTRACTS: INSURANCE.
Conclusion. See PLEADING: PRACTICE.
Conclusive. See EVIDENCE: PRESUMPTION.
Concubinage. See MARRIAGE.
Condemn. See CRIMINAL LAW: SENTENCE.
Condemnation. See MARITIME LAW.
Conditions. See COMMON LAW; CONTRACTS; DEVISES: FEE: MARRIAGE.
Conditional Sale. See FEE; LIMITATION; STIPULATION; SALE.
Condonation. See MARRIAGE.
Confederacy. See CRIMINAL LAW; INTERNATIONAL LAW; PLEADING.
Confederation. See GOVERNMENT.
Confession. See CRIMINAL LAW; EVIDENCE.
Confession and Avoidance. See PLEADING.
Confessor. See EVIDENCE.

Confidential Communications. See EVIDENCE.
Confirmation. See CONTRACTS.
Confiscate. See GOVERNMENT.
Conflict. See LAW
Confusion. See GOODS; PERSONAL PROPERTY; RIGHTS.
Congregation. See CHURCH; PERSONAL RELATIONS.
Congress. See GOVERNMENT.
Conjecture. See EVIDENCE.
Conjugal Rights. See MARRIAGE.
Conjunction. See PLEADING.
Connivance. See CONTRACTS; MARRIAGE.
Conquest. See INTERNATIONAL LAW.
Consanguinity. See PERSONAL RELATIONS.
Consent. See CONTRACTS; SALES.
Conservator. See OFFICE AND OFFICERS.
Consideration. See BAILMENTS; BILLS OF EXCHANGE; BONDS AND NOTES; CONTRACTS.
Consignment. See BAILMENTS; FACTORS.
Consolidation. See PRACTICE.
Conspiracy. See CRIMINAL LAW.
Constable. See OFFICE AND OFFICERS.
Constituted Authorities. See GOVERNMENT
Constitution. See CONSTITUTIONAL LAW
Constraint. See ACTS.
Construction. See BILLS OF EXCHANGE; BONDS AND NOTES; CONTRACTS; INSURANCE; PRACTICE; WORDS.
Constructive. See ACTS; NOTICE.
Consul. See INTERNATIONAL LAW; OFFICE AND OFFICERS.
Consultation. See PRACTICE.
Consummate. See MARRIAGE.
Contagious Disorders. See HEALTH; MEDICAL LAW.
Contempt. See LEGISLATION; PRACTICE.
Contents Unknown. See BAILMENTS; BILL OF LADING.
Context. See CONSTRUCTION; CONTRACTS.
Contingent. See DAMAGES; ESTATE; LEGACY REMAINDER; USE.
Continuance. See PRACTICE.
Continuando. See PLEADING.
Continuing. See CONSIDERATION; DAMAGES.
Contra, etc. See CONTRACTS; PLEADING.
Contraband of War. See INTERNATIONAL LAW.

CONTRACTS. See AGENCY; APPRENTICESHIP, ASSIGNMENT; BAILMENTS; BILLS OF EXCHANGE; BONDS AND NOTES; CONVEYANCES; PARTNERSHIP; SALES; SURETYSHIP; WARRANTY; ETC., ETC.

AN AGREEMENT is a mutual contract in consideration between two or more parties.[a]

A "contract" is "the agreement of two competent parties, about a legal and competent subject-matter, upon a mutual legal consideration, with a mutuality of obligation."[b]

All contracts are divided into two classes:

1. SIMPLE CONTRACTS are those not of specialty or record. They are the lowest class of express contracts, and answer most nearly to our general definition of a contract. They are by *parol* (which includes both oral and written). The only distinction between oral and written contracts is their mode of proof. And it is inaccurate to distinguish *verbal* from *written;* for contracts are equally *verbal* whether the words are *written* or *spoken* —the meaning of verbal being expressed in words.[c]

2. SPECIALTIES are those which are under seal, as bonds, conveyances, deeds, and mortgages. They are not merely written, but

a-5 East. 10: 4 Gill & J. 1; 12 How. 126. b-4 Kas. 379. "A contract is an agreement between two or more parties, for the doing or the not doing of some particular thing." 4 Wheat. 197; 2 Leon. 224, 225; 20 Am. Jour. 1; Parson's Contr. Vol. 1, p. 6; Id. Vol. 11, pp. 295-297: 5 East. 16; 4 B. & Ald. 595; 5 Cranch. 142; 17 Mass. 122; 6 Conn. 81. "A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing." 2 Bl. Com. 446. A mental reservation is of no effect, 1 Disney, 520. c-See 3 Burr. 1670; 7 T. R. 350, n; 11 Mass. 27, 30; 5 Id. 299, 301; 7 Conn. 57; 1 Caines, 386.

signed, *sealed*, and *delivered* by the party bound. The solemnities connected with these acts, and the formalities of witnessing, gave, in early times, a character and importance to this class of contracts, which implied so much caution and deliberation (consideration) that it was unnecessary to prove the consideration, even in a court of equity.[e] Very little of this real solemnity (except witnessing) now remains, and a scroll is substituted for the seal, though seals have in some States been abolished and witnessing rendered unnecessary. Still the distinction with regard to specialties remains intact. When a contract by specialty is changed by a parol agreement, the whole contract becomes parol.[f]

The law makes no distinction in contracts, except between contracts which are, and contracts which are not, under seal.[g]

Specialties include contracts of record,[h] as judgments, recognizances, and the like. These are the highest class of contracts. They are contracts entered into by the intervention of some public authority, and are witnessed by the highest kind of evidence, viz., matter of record.[i]

"Agreement" is seldom applied to specialties; "contract" is generally confined to simple contracts; and "promise" refers to the engagement of a party without reference to the reasons or considerations for it, or the duties of other parties.[j]

An agreement ceases to be such by being put in writing under seal, but not when put in writing for a memorandum,[k] or as a simple contract.

Conditional contracts are those which are to have full effect only in case of the happening of certain events or the existence of a given state of things.

Executed contracts are where nothing further remains to be done by either party; as, the sale and delivery of goods for a price paid.

Executory contracts where something further is to be done in order to perform the contract; as, the purchase of a horse to be delivered on payment of the price.

Executory agreements are such as rest on articles, memorandums, parol, promises or undertakings, and the like, to be performed in the future, or which are entered into preparatory to more solemn and formal alienations of property.[l]

An executed agreement always conveys a chose in *possession*, while an *executory agreement* conveys a chose in *action* only.

Express contracts are where the terms of the contract are openly uttered or put in writing at the time of making.

Implied contracts are those which the law presumes the parties to have made, although the terms were not openly expressed.

Thus, every one who undertakes any office, employment, or duty, impliedly contracts with his employers to do it with integrity, diligence, and skill; and he impliedly contracts to do whatever is fairly within the scope of his employment.[m]

Implied promises, or promises in law, only exist where there is no express stipulation between the parties touching the same matter;[n] for a thing which is expressed invalidates that which otherwise might have been implied by intendment of law.[o]

Oral contracts are "simple contracts."

Verbal contracts are "simple contracts."

Written contracts are "simple contracts" or "specialties."

The essentials of a legal contract are:[p]

1. CONSIDERATION, for this is in legal contemplation the *cause* of the contract.

2. SUBJECT-MATTER, the *object*, or what the parties to it propose as its effects.

3. PARTIES, for there can be no contract without parties.

4. ASSENT of the parties, without which there is no contract.

The legal obligation of a contract consists in the right of either party to have it enforced against the other, or to recover compensation for its breach by due process of law.[q]

There is no contract which the law will recognize and enforce, unless the parties to it have agreed to the same thing, in the same sense.[r] Thus where the defendants wrote to the plaintiffs, offering them a certain quantity of "good" barley at a certain price, the plaintiffs replied, "Of which offer we accept, expecting you will give us '*fine*' barley and full weight." The court held that there was not a sufficient acceptance to sustain an action for non-delivery of the barley.[s] So, if a person sends an order to a merchant to send him a particular quantity of goods on certain terms of credit, and the merchant sends a less quantity of goods, at a shorter credit, and the goods sent are lost by the way, the merchant must bear the loss, for there is no *agreement*, express or implied, between the parties.[t] At a sale by auction, every bid by any one present is an offer by him, and it becomes a contract as soon as the hammer falls, or the bid is otherwise accepted, but until it is accepted it may be withdrawn by the bidder;[u] but a buyer is discharged from a purchase made under "catching conditions."[v]

There is an apparent exception to this rule, when, for example, A. declares that he was not understood by B., or did not understand B. in a certain transaction, and that therefore there is no bargain between them; and B. replies by showing that the language used on both sides

e-Plowd. 305; 7 T. R. 477; 4 B. & Ad. 652; 3 Bingh. 111; 1 Foubl. Eq. 342, n. f-2 Watts. 451; 9 Pick. 298; 13 Wend. 71. g-Parsons' Contr. 6. h-1 Parsons' Contr. 7. i-4 Bl. Comm. 465. j-3 Burr. 1670-1; 7 T. R. 350, n; 5 Mass. 299-301; 7 Conn. 57; 1 Caines, 386. k-Dane Abr. *c* 11. l-Powell Contr. m-6 Scott, 761. n-2 Bl. Comm. 444; 2 T. R. 105; 7 Scott, 69; 1 Nev. & P. 633. o-Tayler Law Gloss. p-See Parsons' Contr. Vol. 1, p. 8. q-2 Kas. 135; 10 Ohio, 412-414.

r-1 Sumner, 218; 2 Woodb. & M. 359; 7 Johns. 410; 4 Wheat 225; 9 Port. (Ala.) 605; 3 Cal. 147; 5 M. & W. 535; 16 E. L. & E. 473 (S. C.); 11 C. B. 954; 21 N. Y. (10 Smith) 40; 3 Met. (Ky.) 80; 3 T. R. 148; 23 Penn. St. 398. s-5 M. & W. 535. t-3 Johns. 534. u-3 T. B. 148; 23 Penn. St. 308; 6 A. & E. 829; 16 Me. 17; 9 Pick. 441; 2 Fairf. 414; 7 Cush. 485; 2 East. 116. v-2 Jur. 1078; 4 Bing. N. C. 463; 3 A. & E. 355; 2 Jur 29; 4 Camp. 140.

was explicit and unequivocal, and constituted a distinct contract. Here B. would prevail.

The reason is, that the law presumes that every person means that which he distinctly says.

The first point is, to ascertain what the parties themselves meant and understood. But it must be their intention as expressed in the contract. Thus, if a contract spoke of "horses," it would not be possible for the court to read this word "oxen," although it might be made certain by extrinsic evidence that it was so intended.[w]

If the parties, or either of them, show that a bargain was honestly but mistakingly made, which was materially different from that intended to be made, it would be a good ground for declaring that there was no contract.[x]

Fraud destroys all obligations and contracts into which it enters, and the law relieves the party defrauded. If both parties act fraudulently, neither can take advantage of the fraud of the other. If one acts fraudulently, he cannot set his own fraud aside for his own benefit.

ABANDONMENT of a contract is only lawful when it will in no wise prejudice the rights of the other party, and this though there be no consideration, provided the act or work has been undertaken; for though not required to do an act gratuitously, if a person undertakes it he is answerable if he does not fulfil his engagement. See BAILMENTS, GRATIS, above; NUDUM PACTUM, below.

ABATEMENT may always be made; that is, a less may be taken for a greater sum due, and will be a satisfaction of such larger sum, provided it carries with it an *additional* benefit. Thus a reduction may be made by a creditor for the *prompt* payment of a debt due him from another.[y] So with any other advantage or inducement.

ACCESSORY CONTRACTS are made to assure the performance of a prior contract, either by the same parties or by others. Of these are mortgages, pledges, suretyship, etc.

If the accessory contract is a contract by which one is to answer for the debt, default, or miscarriage of another, it must, under the statute of frauds, be in writing, and disclose the consideration, either explicitly or by the use of terms from which it may be implied.[z] Such a contract is not assignable, so as to enable the assignee to sue on it in his own name.[a] An accessory contract of this kind is discharged not only by the fulfilment or release of the principal contract, but also in any material change in the terms of such contract by the parties thereto, for the surety is bound only by the precise terms of the agreement he has guaranteed.[b] Thus, a surety will be discharged if the right of the creditor to enforce the debt be suspended for any definite period, however short; and a suspension for a day will have the same effect as if it were for a month or a year.[c] But the surety may assent to the change and waive his right to be discharged because of it.[d] If the parties to the principal contract have been guilty of any misrepresentation, or even concealment, of any material fact, which, had it been disclosed, would have deterred the surety from entering into the accessory contract, the security so given is voidable at law on the ground of fraud.[e] So, the surety will be discharged should any condition, express or implied, that has been imposed upon the creditor by the accessory contract be annulled by him.[f] An accessory contract, to guarantee an original contract which is void, is void also.[g]

It is a general rule that payment or release of the debt due, or the performance of a thing required to be performed by the first or principal contract, is a full discharge of such accessory obligation.[h] And that an assignment of the principal contract will carry the accessory contract with it.[i]

ACCIDENT. See title ACCIDENT, above.

ACCORD is an agreement to receive some act or thing in satisfaction of a claim or injury.[j] A satisfaction agreed upon between the party injuring and the party injured, which when performed, is a bar to all actions upon this account. Accord is generally used in the phrase "Accord and satisfaction."[k]

An accord must be legal. An agreement to drop a criminal prosecution as a satisfaction for an assault and imprisonment is void.[l]

Satisfaction should proceed from the defendant.[m] Accord and satisfaction by a co-partner is a bar to an action against the others;[n] and acceptance of satisfaction from one joint wrongdoer discharges the rest;[o] accord and satisfaction to one of several co-plaintiffs will be so to all.[p]

It must be advantageous to the creditor,[q] and he must receive an actual benefit therefrom which he would not otherwise have had.[r] Restoring to the plaintiff his chattels, or his land, of which the defendant has wrongfully dispossessed him, will not be any consideration to support a promise by the plaintiff not to sue

w-11 Bl. 596–614; 16 C. B 420; 30 Eng. L. & Eq. 479; C. B. 1855; Eng. L. & Eq. 496; 47 Me. 530. x-Adam's Eq. 160, *et seq.*; 26 Beav. 285; 28 Id. 240. y-Weskett Ins. 7. z-5 M. & W. 128; 7 Id. 510; 5 B. & Ad. 1109; 1 Bingh. (N. C.) 761; 15 Penn. St. 27; 20 Barb. 298; 13 N. Y. 232; 4 Jones (N. C.) 287. a-21 Pick. 140; 5 Wend. 307. b-2 Nev. & P. 126; 9 Wheat. 680; 1 Eng. L. & Eq. 1; 3 Wash. 66, 70; 12 N. H. 320; 13 Id. 240. c-2 Ves. Sr. Ch. 540; 2 White & T. L. Cas. 707; 5 Ired. Eq. 91; 7 Hill N. Y. 250; 3 Denio, 512; 2 Wheat. 253; 28 Vt. 209. d-13 N. H. 240; 2 McLean, 6699; 5 Ohio, 510; 8 Me. 121. e-5 Bingh. (N. C.) 156; 3 B. & C 605; 5 B. & P. 419; 9 Ala. (N. S.) 42; 2 Rich. (N. C.) 590; 10 Clark & F. Ho. Cas. 936. f-8 Taunt. 208; 14 Barb. 123; 6 Cal. 24; 27 Penn. St. 317; 6 Hill, N. Y. 540; 9 Wheat. 680; 17 Wend. 179, 422. g-7 Humph. 261; see 27 Ala. (N. S.) 291. h-Poth. Ob. 1 C. 1 S. 1 Act, 2 n. 14; 182, 186; see 8 Mass. 551; 15 Id. 233; 17 Id. 419; 4 Pick. 11; 8 Id. 422; 5 Met. Mass. 310; 7 Barb. 22; 2 Barb. Ch. 119; 1 Hill & D. 65; 6 Penn. St. 228; 24 N. H. 484; 3 Ired. 337. i-7 Penn. St. 280; 17 S. & R. 400; 5 Cow. 202; 5 Cal. 515; 4 Iowa, 434; 24 N. H. 484. j-9 Co. 79; 3 Bl. Comm. 15. k-2 Greenl. Ev. § 28; Bac. Abr. *Accord*; 5 Md. 170. l-5 East. 294; see 2 Wils. 341; Cro. Eliz 541. m-Cro. Eliz. 541; 1 Str. 24. n-9 Co. 79 B.; 2 East. 317. o-3 Taunt. 117; 1 Chit. Pl. Co. Litt. 232, A.; 8 T. R. 168; 12 East. 317; 9 Co. 79, B.; 5 Id. 117, A.; 7 Vt. 320; 2 Ohio, 90. p-5 Co. 117. B. q-5 East. 294; see 2 Wils. 241; Cro. Eliz. 541. r-2 Watts, 424; 2 Ala. 476; 3 J. J. Marsh, 497.

him for those injuries.[a] The payment of a part of the whole debt is not a good satisfaction, even if accepted;[t] otherwise, however, if the amount of the claim is disputed[u] or contingent;[v] and if the negotiable note of the debtor,[w] or of a third person[x] for part, be given and received, it is sufficient; or if a part be given at a different place,[y] or at an earlier time, it will be sufficient;[z] and, in general, payment of a part suffices if any additional benefit be received.[a] And the receipt of specific property, if agreed to, is sufficient, whatever its value;[b] but both delivery and acceptance must be proved.[c]

The satisfaction must be a reasonable and complete satisfaction of the thing demanded, and operate as an extinguishment of the original cause of action. Therefore, acceptance of a less cannot be a satisfaction, in law, of a greater sum, unless there be a release or some consideration for the residue.[d]

An accord that the defendant shall employ workmen in two or three days is bad.[e] An accord to pay a less sum on the same or a subsequent day is bad.[f] The performance of an uncertain accord will not aid the defect.[g]

An accord without satisfaction is no bar to an action. The execution of the accord must be complete and perfect,[h] except where the new promise itself is a satisfaction for the debt or broken contract.[i]

Generally, if the new promise be founded upon a new consideration, and is clearly binding upon the original promisor, this is a satisfaction of the former claim,[j] and otherwise it is no satisfaction.[k] But even a promise, which would not itself be a satisfaction, may, if it be fully performed at the right time, and in the right way (and not merely tendered), become then a satisfaction.[l] If a new promise is executory, and not binding, it is no satisfaction until it be executed, and, although it is to be performed on a future day certain, the promisee may have his original action before the new promise becomes due;[m] but if it be a binding promise for a new consideration, performable at a future day certain, then the original right of action is suspended until that day comes; but if the promise is not then duly performed, this right revives, and the promisee has his election, to sue on the original cause of action, or on the new promise, unless by the terms or the legal effect of the new contract the new promise is of itself a satisfaction and an extinction of the old one.[n] Thus, where one takes a negotiable promissory note, on time, for money which is due or to become due, this note is conclusive evidence of an agreement for delay or credit, and no action can be maintained on the original cause of action until the maturity of the note;[o] if then the note is not paid, an action may be brought upon the note, or on the original cause of action, unless the facts show that the promisee took the note in payment, or the law implies it.[p]

An agreement to cancel and release mutual claims, or to discontinue mutual suits, is a mutual accord and satisfaction; and either party may rely on it as a bar against the further prosecution of the suit or claim by the other.[q]

If there be a new agreement, resting on sufficient consideration, and otherwise valid, to suspend a previous claim or cause of action, until the doing of a certain thing, or the happening of a specified event, the action cannot be maintained on that claim in the meantime.

To show that the accord and satisfaction were simultaneous, and consisting of the delivery of a certain thing, it must be proved, not only that the thing was delivered, but that it was received in satisfaction.[r] But if property of the debtor came lawfully into the possession of the creditor, and they then agreed that it may be retained by him, and shall be in satisfaction of the debt, this is a good accord and satisfaction.[s]

The accord and satisfaction must be advantageous to the creditor,[t] he must receive from it a distinct benefit, which otherwise he would not have had.[u]

If the promise be executed literally, or in form, but is rendered inoperative or worthless to the creditor, by the debtor's act or omission, it has no effect as an accord and satisfaction.[v]

If an accord and satisfaction be made by a third party, and is accepted as satisfaction, it is

a-Bac. Abr. *Acc.* A.; Perkins, § 749: Dyer, 75; 5 East. 230; 11 Id. 390: 1 Str. 426; 3 Hawks, 580; 2 Litt. 49; 5 Day, 360; 1 Root, 426; 1 Wend. 164; 3 Id. 66; 14 Id. 116. t-2 Greenl. Ev. § 28; 2 Parsons Contr. 199; 4 Mod. 88; 3 Bingh. (N. C.) 454: 10 M. & W. 367; 12 Price, 183: 1 Zabr. 391: 5 Gill. 189; 20 Conn. 559; 1 Met. (Mass.) 276; 27 Me. 362, 370: 39 Id. 203; 2 Strobh. 203: 15 B. Mon. 566. u-Cro. Eliz. 429; 3 M. & W. 651; 5 B. & Ald. 117: 1 Ad. & E. 106; 21 Vt. 223; 23 Id. 561: 4 Gill, 406; 4 Denio, 166: 2 Duer, 302; 12 Met. (Mass.) 551. v-14 B. Mon. 451. w-15 M. & W. 23. x-2 Met. (Mass.) 283; 20 Johns. 76: 1 Wend. 164; 14 Id. 116: 13 Ala. 353; 11 East. 390; 4 B. & C. 506. y-3 Hawks, 580; 29 Miss. 139. z-18 Pick. 414. a-30 Vt. 424; 26 Conn. 392; 27 Barb. 485; 4 Jones, 518; 4 Iowa, 219. b-19 Pick. 273; 5 Day, 360. c-1 Wash. C. C. 328; 3 Blackf. 354; 1 Dev. & B. 565: 8 Penn. St. 106; 16 Id. 450; 4 Eng. L. & Eq. 185. d-5 East. 231; 1 Taunt. 526: 1 Str. 426. e-4 Mod. 88. f-5 East. 230. g-3 Lev. 189; Yel. 184. h-T. Raym. 203; 2 Keble, 690, 332, 851, 534; 9 Rep. 79 B.; Cro. Eliz. 40; T. Raym. 450; 2 Iowa, 553; 3 Johns. Cas. 243; 5 Johns. 386; 8 Ohio, 393; 7 Blackf. 582; 2 Pike, 45; 23 Wend. 342; 14 B. Mon. 457; 1 Gray, 245. i-23 Vt. 426. j-Com. Dig. Accord B. 4; 2 B. & Ad. 328; 3 Id. 701; 1 Exch. 907: 3 Bing. (N. C.) 621; 9 B. & C. 850; 2 Pike, 209. k-19 Wend. 516. l-Com. Dig. Accord B. 4. m-Id. n-23 Vt. 561; 8 Id. 141; 2 B. & Ad. 328; 1 M. & W. 323; 1 Exch. 601; 5 M. & W. 289; 7 Q. B. 71; 5 C. B. 622; 29 Eng. L. & Eq. 266; 3 Bing. (N. C.) 920; 5 T. R. 141; 5 Tyr. 1079; 2 Cromp. M. & R. 704; 5 T. R. 513; 13 M. & W. 63. o-2 Cromp. & J. 405; 5 Beav. 415; 2 Cromp. M. & R. 187. p-8 Pick. 522; 10 Id. 525; 6 Mass. 143; 12 Pick. 268; 2 Met. 168; 9 Id. 328; 22 Pick. 18; 5 Cush. 158; 2 Greenl. 121; 8 Id. 298; 18 Me. 249; 34 Id. 324; Id. 455; Id. 560; 23 Id. 302; 37 Id. 419; 3 Fairf. 418; 31 Vt. 516; Id. 450. q-1 Denio, 257; 12 Johns. 456; 10 Exch. 569; 20 Eng. L. & Eq. 429. r-1 Wash. C. C. 328; 3 Blackf. 354; 16 Q. B. 439; 4 Eng. L. & Eq. 185; 1 Dev. & Bat. 565; 9 M. & W. 600; 8 Penn. St. 106; 16 Id. 450; 38 Id. 147. s-C. B. 142. t-20 Conn. 559; 1 N. J. 391; 4 Mod. 88; 3 Bing. (N. C.) 454; 1 Met. 276: 10 M. & W. 367; 12 Price, 183; 27 Me. 362; Id. 370; 2 Strobh. 203; 5 B. & Ald. 117: 1 A. & E. 106: 3 M. & W. 651; Cro. Eliz. 429; 21 Vt. 223; 4 Gill. 406; 4 Denio. 166; 12 Met. 551; 18 Pick 414; 3 Hawks, 580. u-Preceding note; 2 Watts, 424; J. J. Marsh. 497; 1 Stew. 476. v-3 C. B. 157; Peakes Cas. 13; 21 Cal. 47.

sufficient if the actual debtor look upon it as such.[w]

An accord and satisfaction made *before* breach of contract is not a bar to an action for a subsequent breach.[x]

ACQUITTANCES differ from releases in this, that the latter must be under seal.[y] An acquittance being a receipt in full, a discharge or release from a debt—a writing which is evidence of the discharge—bars all further demand, discharges the party from the engagement to pay, and is evidence of payment. See RECEIPTS, below.

ACTS OR OMISSIONS. In all cases whatever, a promisor will be discharged from all liability when the non-performance of his obligation is caused by the acts or the fault of the other contracting party.[z]

AFFIRMANCE is the confirmation of a voidable act by the party who is to be bound thereby.[a] It is express when the party declares his determination to fulfil the contract,[b] and implied from the acts of the party without any express declaration.[c] A mere acknowledgment that the debt existed, or that the contract was made, is not an affirmance.[d] There must be a direct and unequivocal affirmance and substantially (though not in form) a promise to pay the debt, or fulfil the contract,[e] in order to bind the party.

AFFREIGHTMENT. See MARITIME LAW.

ALTERATION (a change in the language) of a contract operates as a discharge of it. If the alteration be by a stranger, it avoids an instrument, if it be material and the original words cannot be certainly restored, on the ground that it is no longer the instrument of the parties.[f] If the alteration be made by a party, it so far avoids the instrument that he cannot set it up, even if the alteration be in words not material.[g] But if the alteration does not vary the meaning of the instrument, or does not affect its operation, and this can be certainly shown, it will not render the instrument void.[h] Whether the alteration is material, is not a question of fact for a jury, but of law for the court,[i] and the burden of proof of the fact of alteration rests on the party alleging it;[j] the alteration being shown, the party claiming under the instrument is bound to explain the alteration.[k] See ERASURE, INTERLINEATION, below.

APPRENTICESHIP. See that title.

ALTERNATIVE. In contracts a party frequently has the choice of which of several things, of different times, modes, qualities, quantities, etc., and other options in performance. As to the effect of alternative stipulations see PAYMENT, PERFORMANCE, TENDER, TIME, etc., below.

AMBIGUITY, duplicity, indistinctness, and uncertainty of meaning in the expression and terms in a written instrument should always be avoided; and it may be stated as a general rule that simplicity and clearness are the best evidences of the honesty, fairness, and skill of the contracting parties.

Latent ambiguities are those which arise from some collateral circumstance or extrinsic matter in cases where the instrument itself is sufficiently certain and intelligible, and as such they may be explained by extrinsic evidence.[l] Patent ambiguities are those which appear on the face of the instrument: that which occurs when the expression of a writing is so defective that a court, being obliged to put a construction upon it, placing itself in the situation of the parties, cannot ascertain therefrom the parties' intention.[m] Also such expressions as would be found of uncertain meaning by persons of competent skill and information. Patent ambiguities cannot be explained by extrinsic evidence, but renders the instrument inoperative as far as they extend.[n]

ANTICIPATORY AGREEMENT. See DAMAGES, below.

APPORTIONMENT. A contract is apportionable when the amount of consideration to be paid by the one party depends upon the extent of performance by the other.

When parties enter into a contract by which the amount to be performed by the one, and the consideration to be paid by the other, are made certain and fixed, such contract cannot be apportioned. Thus, if A. and B. agree together that A. shall enter into the service of B. and continue for one year, and that B. shall pay him therefor the sum of one hundred dollars; and A. enters the service accordingly, and continues half the year, and then leaves, he will not be entitled to recover anything *on the contract*.[o] But if one party is prevented from fully performing his part of the contract by the fault of the other party, the party thus in fault cannot be allowed to take advantage of his own wrong

w-3 Wend 66; 1 Stew. 184 x-8 Exch. 668; 2 Eng. L. & Eq. 476; 1 El & Bl 295; 16 Eng. L & Eq. 236, 1 Lutw. 358; Cro. Jac 99; Id. 254; 1 Harris & J. 673; 1 Taunt. 428; 13 Hawks, 580. y-5 Poth. Ob. 781. z-5 Mass 67; Com Dig. Conditions: L. (6) 4 Wend. 377; 4 Cowen, 36; 3 Hill, 570; 2 Jones L. 142; Id. 46. a-As distinguished from ratification and confirmation, see 1 Parsons Contra. 243. b-Dudl 203. c-15 Mass. 220; see 10 N. H. 194; 11 S. & R. 305; 1 Parsons Contr. 243; Sharsw. Bl. Comm. 466, n. 10. d-10 N. H. 561; 2 Esp 628; 1 Bailey, 28; 9 Conn. 330; Dudl. 203. e-3 Wend. 479; 4 Day, 57; 12 Conn. 550; 8 N. H 374; 2 Hill, N. Y. 120; 19 Wend. 301; 1 Parsons Contr. 243. Bing. Inf. 69. f-Pigott's Case, 11 Rep. 27; Cro. Eliz 626. 11 M. & W. 778; 13 Id 343; 4 T. R. 320, 2 H. Bl 141; 3 Ellis & B. 683; 25 Eng L. & Eq 123; 5 Ellis & B 82; 32 Eng. L. & Eq 162. 15 East 29; 5 C. B. 181; 6 East. 309; 2 M. & W. 809; 1 Jones, 109; 10 Conn. 192; 6 Cowen, 746; 8 Id. 71; 8 Mo 235; 6 Ala. 707; 2 Barb. Ch. 119; 3 Barb. 404; 15 Johns. 293, 18 Cush. 61; 39 Penn. St. 388. g-Pigott's Case, 11 Rep. 27; 8 Cowen, 71; 2 Halst. 175; 2 C. B. 181; 13 Ohio St. 364; 8 N. H. 139; 2 Id. 543; 10 Cowen, 192; 11 Iowa, 465. h-9 M. & W. 469; 5 Mass. 540; 6 Id. 519; 15 Pick. 239; 20 Vt 217; 3 Ohio St 445, 13 Id 364; 11 Iowa, 465; 10 Conn. 192; 8 N. H. 139; 2 Id. 543; 2 Halst 175; 8 Cowen, 71; Pigott's Case, 11 Rep. 27. i-4 How. (Miss.) 231; 2 N. H. 543; 1 Id. 95; 13 Pick. 165; 2 Fairf. 115; 35 Penn. St. 80. j-Davis *vs.* Jenny, 1 Met. 221. k-6 Cush. 314; 9 Penn. St. 186; 11 N. H. 395; 13 Id. 385; 2 La. 290; 3 Harr. Del. 404; 8 Miss. 414; 17 Id. 375; 7 Barb 564; 6 C. & P. 273; 7 Ad. & E 444. 8 Id. 215; 2 Man. & G. 890, 909. l-1 Greenl. Ev. § 301. m-4 Mass 205; 4 Cranch, 167; 1 Greenl. Ev. §§ 292-300. n-4 Mass. 205; 7 Cranch, 167; Jarman Wills, 367. o-1 Swanst. 337.

and screen himself from the payment of what has been done under the contract.[p] So, too, if one party, without the fault of the other, fails to perform his side of the contract in such a manner as to enable him to sue upon it; still, if the other party has derived a benefit from the part performed, it would be unjust to allow him to retain that without paying anything.[q]

ARRANGEMENTS *between creditors and debtors* not tainted by fraud, agreed to by all parties, and carried out in good faith, will be binding. It must have been assented to by all parties. Settlements of this kind, where it is sought to avoid litigation and loss, are favored by the law, and result more satisfactorily than the usual forms of assignment.

The prevention of litigation is not only a sufficient but a highly-favored consideration,[r] and no investigation into the character or value of the different claims submitted will be entered into for the purpose of setting aside a compromise, it being sufficient if the parties entering into the compromise thought at the time that there was a question between them.[s]

Arrangements between partners themselves cannot limit or prevent their ordinary responsibilities to third persons, unless the latter assent to such arrangements.[t] But where the creditor has express notice of a private arrangement between the partners, by which either the power of one to bind the firm, or his liability on partnership contracts, is qualified or defeated, such creditor will be bound by the arrangement.[u] The act or contract of one partner, even in a transaction purely of a partnership nature, does not bind the firm, if the creditor has express notice from the other partners that they will not consider themselves responsible,[v] for the authority of one partner to bind the firm is only implied; and no one can become the creditor of another against his express and declared will.[w]

ARTIFICES, cheats, finesse, frauds, stratagems, and tricks, though in their very nature false, must also be *fraudulent* in order to render the party guilty of them responsible to the other for damages. See CONCEALMENT, FRAUD, MISREPRESENTATION.

ASSENT. There is no contract unless the parties thereto assent; and they must assent to the same thing, in the same sense.[x] "There must be a request on the one side and an assent on the other;[y] nor is this any more a contract if it be in writing than if spoken only.[z] The assent must comprehend the whole of the proposition; it must be exactly equal in its extent and provisions, and must not qualify them by any new matter. Thus, an offer to sell a certain thing on certain terms, may be met by the answer, "I will take that thing on those terms;" and, if the proposition be in the form of a question, as "I will sell you so and so; will you buy?" the whole of this meaning may be conveyed by the word "yes," or any other simple affirmative answer. And thus a legal contract is completed. But where the answer, either in words or effect, departs from the proposition, or varies the terms of the offer, or substitutes for the contract tendered one more satisfactory to the respondent, in these cases there is no assent, and no contract.

In general, some time must elapse between an offer and its acceptance. But the proposer may himself determine how long the offer shall continue. He may say, I will give you an hour, or, until this time to-morrow, or next week, to make up your mind. Then the party to whom the proposition is made knows how long the offer is to continue. He may avail himself of the hour, the day, or the week given, for inquiry or consideration, or making the necessary arrangements; and if, within the prescribed time, he expresses his assent (supposing the proposition not in the meantime withdrawn), he completes the contract as effectually as if he had answered in the same way at the first moment after the offer was made.[a] If an offerer gives a day for acceptance, without consideration for the delay, he may at any time, within that day, before acceptance, recall his offer. So he may if he gives no time. If he makes an offer, and instantly recalls it before acceptance, although the other party was prepared to accept it the next instant, the offer is effectually withdrawn. But acceptance before withdrawal binds the parties, if made while the offer continues; and the offer does continue in all cases, either a reasonable time (and that only), or the time fixed by the party himself. So, also, where the proposition and reply are both made by letter.[b] Thus, if A., in Boston, on the first

[p]-8 Bing. 14; 15 Q. B. 576; 10 Barr, 231; 9 Met. 577; 2 Blackf. 167; 1 Gillman, 92; 4 Id. 319; 5 Id. 298; 21 Vt. 17; 1 Denio, 317. [q]-9 B. & C. 386; 10 Id. 441; 5 Id. 378; 18 Pick. 555; 7 Pick. 181; 8 Id. 178; 14 Mass. 282; 19 Pick. 528; 13 Met. 42; 1 Gray, 282; 7 Greenl. 76; 13 Johns. 94; 21 Vt. 301; 4 Taunt. 745; 2 Cromp. & M. 214; 1 Moody & R. 218; 3 Taunt. 52; 9 B. & C. 92; 2 S. & Marsh, 585. [r]-1 Ves. Sen. 444; 1 Chanc. 158; 1 Atk. 3; 17 Pick. 470; 4 Id. 507; Co. 29; E. L. & E. 429, S. C.; 10 Exch. 569; Com. Dig. A. 1, B. 1; 2 Strob. Eq. 258; 2 Mich. 145; 1 Watts, 216; Add. 56; 2 Penn. St. 531; 6 Munf. 406; 1 Bibb, 168; 2 Id. 448; 4 Hawks. 178; 6 Watts, 321; 14 Conn. 12; 1 W. & S. 456; 4 Met. 270. [s]-21 E. L. & E. 199; 6 Monr. 91; 2 Rand. (Va.) 442; 5 Watts, 259; 21 Cal. 122. [t]-Collyer Partn. § 386; 2 B. & Ald. 679; 3 Kent Comm. 41; 5 Mass. C. C. 187, 188; 5 Pet. 129; 3 B. & C. 427. [u]-Collyer Partn. § 387; 12 N. H. 275; 4 Ired. 129; 38 N. H. 287; 6 Pick. 372; 4 Johns. 251; 5 Conn. 597, 598; 1 Camp. 404; 5 Brown Parl. Cas. 489; 1 Lindley Partn. 260 *et seq.* 267–269. [v]-1 Salk. 292; 10 East. 264; 1 Stark. 164; 1 Younge & J. 227. [w]-Chitty Contr. (Ed. 1860) 284; Collyer Partn. § 387. [x]-1 Sumn. 218; 3 Johns. 534; 2 Woodb. & M. 359; 7 Johns. 470, 4 Wheat. 225; 9 Port. (Ala.) 605; 3 Cal. 147; 5 M. & W. 535; 10 E. L. & E. 473, S. C.; 11 C. B. 954; 24 N. Y. (10 Smith) 40; 3 Met. (Ky.) 80; 3 T. R. 148; 23 Penn. St. 308. As sales at auction are clearly within the Statute of Frauds, 7 East. 568; 2 B. & C. 945; 6 Leigh. 16; the assent would not be binding unless in writing, if the case come within the terms of that statute. [y]-5 Bing. N. C. 75. [z]-12 Johns. 190; 3 Id. 534; 7 Id. 470; Noy. 11 Rol. Abr. 6 (M.) pl. 1; 4 Watts. 48; 7 Cush. 599; 31 E. L. & E. 475; 16 E. L. & E. 470, S. C.; 8 Exch. 185; 28 E. L. & E. 470, S. C.; 10 Exch. 610. [a]-Wright *vs.* Bigg; 21 E. L. & E. 591. [b]-1 B. & Ald. 681, 3 Meriw. 441; 6 Hare, 1; 1 H. L. Cas. 381; 7 M. & W. 515; 1 Foster (N. H.) 41; 4 Paige, 17; 12 Conn. 436; 6 Wend. 103; 14 Barb. 341, S. C.; 1 Kern. 441; 20 Barb. 42; 4 Geo. 1; 4 Wheat. 228; 7 Dana. 281; 9 Port. (Ala.) 605; 5 Penn. St. 339; 9 How. 390; 8 C B. 225.

day in January, writes to B., in Baltimore, making an offer, and this letter reaches Baltimore on the third, and B. forthwith answers the letter, accepting the offer, putting the letter into the mail that day; and on the second of January A. writes, withdrawing the offer, and his letter of withdrawal reaches B. on the fourth, there is, nevertheless, a contract made between the parties. If the offer was to sell goods, B., on tendering the price, may claim the goods; if the offer was to insure B.'s ship, B. may tender the premium and demand the policy, and hold A. as an insurer of his ship. And so of any other offer or proposition.[e]

ASSIGNMENT. See that title.

ATTESTATION is the witnessing of an instrument in writing at the request of the party making the same, and subscribing it as a witness[d] in order to prove the instrument if necessary, and for the purpose of identification.[e] In some cases instruments in writing, as assignments, conveyances, etc., require attestation by one or two witnesses.

AUCTIONS. See AGENCY; AUCTIONEERS; SALES.

AUTHORITY. See AGENCY; AUTHORITY.

AWARD. See AGENCY; ARBITRATORS.

BAILMENTS. See that title.

BARGAIN CATCHING. A merely hard bargain is not a ground for relief in law. But see CONCEALMENT; CONSIDERATION; FRAUD; INADEQUACY; MISREPRESENTATION; below.

BARTER is a contract by which parties exchange goods for goods. It differs from a sale; a barter being always goods for goods, while a sale is of goods for money, or for money and goods. In a sale there is a fixed price, in a barter there is not.

BILL OF EXCHANGE, ETC. See that title.

BILL OF LADING. See BAILMENTS; CARRIERS; NOTICE.

BILL OF SALE. See SALES.

BINDING OUT. See APPRENTICESHIP.

BIPARTITE is of two parts. It is a term used in CONVEYANCING, which see.

BLANKS. When a blank (a space left in a writing which is to be filled up with one or more words to complete the sense) is left in a written agreement which need not have been reduced to writing, and would have been equally binding whether written or not, it is presumed in an action for the non-performance of the contract that parol evidence may be admitted to explain the blank. A blank may be filled by consent of parties, and the instrument will remain valid,[f] though not where the blank is in a part material to the operation of the instrument as an instrument of the character which it purports to be,[g] at least without a new execution.[h]

BONA FIDE. The law requires all persons in their transactions to act in good faith; and a contract where the parties have not acted *bona fide* (in good faith, honesty, purity of intention, as distinguished from *mala fide*, or bad faith) is void at the pleasure of the innocent party.[i] If a contract be made with good faith, subsequent fraudulent acts will not vitiate it, although such acts may raise a presumption of antecedent fraud, and thus become a means of proving the want of good faith in making the contract.[j]

BREACH of contract, or the violation of an obligation, engagement, or duty, may be of any of the terms, or of the entire contract. A continuing breach is either where the condition of things constituting the breach continues during a period of time, or where the acts constituting the breach are at brief intervals repeated.[k] See PLEADING.

CARRIAGE. See BAILMENTS; CARRIERS.

CATCHING. See BARGAIN, above.

CERTAINTY, accuracy, and distinctness of statement should be observed in every contract. If a contract be so vague in its terms that its meaning cannot be certainly collected, and the statute of frauds precludes the admissibility of parol evidence to clear up the difficulty,[l] or parol evidence cannot supply the defect, the contract will be of no effect.[m] But it is a maxim of law that "that is certain which may be made certain."[n] For example, if a man sells the oil in his store at a certain price per gallon, although there is uncertainty as to the quantity of the oil, yet inasmuch as it can be ascertained, the maxim applies, and the sale is good.[o]

CHAMPERTY AND MAINTENANCE. Champerty is a bargain with the plaintiff or defendant in a suit for a portion of the land or other matter sued for, or claimed, in case of a successful termination in favor of the party for whom the champertor undertakes to carry on the suit at his own expense. A common instance of champerty is where an attorney agrees with his client to collect or enforce by suit a particular claim or claims in general, receiving a certain proportion thereof,[p] or a percentage thereon.[q]

Maintenance is the intermeddling of a stranger in a suit for the purpose of stirring up strife, and continuing the litigation. There are, however, many acts in the nature of maintenance which are justifiable from the circumstances under which they are done. 1. Because the party has an interest in the matter or thing in variance.[r] 2. Because the party is of kindred or affinity, as father, son, husband, wife, heir

c-Hutcheson *vs.* Blakeman, 3 Met. (Ky.) 80. d-3 P. Wms. 254; 2 Ves. Ch. 454; 1 Ves. & B. Ch. Sr. 362; 1 A. K. Marsh. 146; 17 Pick. 373. e-3 Campb. 232. f-Cro. Eliz. 626; 1 Ventr. 185; 11 M. & W. 468; 1 Me. 34; 5 Mass. 538; 19 Johns. 396. g-6 M. & W. 200; 2 Dev. (N. C.) 379; 1 Yerg. 69; 2 Nott & M'C. 125; 1 Ohio, 365; 6 Gill. & J. 250; 2 Brock. C. C. 64. h-Parsons' Contr. 229. i-8 Johns. 446; 12 Id. 320; 2 Johns. Ch. 35. j-2 Miles, 229. k-5 Moore, 242; 1 Leon. 62; 1 Salk. 141; Holt. 178; 2 Ld. Raym. 1125. l-5 B. & C. 583. m-1 Russ. & M. 116; 1 Ch. Pr. 123. n-Co Litt 43. o-Story Eq. §§ 240–256; Mitf. Eq. Pl. (Jerem. Ed.) 41; Cooper Eq. Pl. 5; Wigram Disc. 77. p-9 Ala. (N. S.) 755; 17 Id. 305; 1 Ohio, 132; 4 Dowl. Pl. Cr. 304. q-4 T. R. 340; 4 Q. B. 883; 5 B. & C. 188; 6 Bing. 299; 4 Dowl. 18; 2 Mylne & K. 590; 11 M. & W. 675; 13 Met. 362; 3 Johns. Ch. 548; 3 Cowen. 647; 1 Ohio, 132; 13 Id. 167; 15 Id. 156, 715. r-17 Ala. (N S.) 206; 9 Met. Mass. 489; 2 Bish. Cr. L. 112.

apparent, etc.[s] 3. Because the relation of landlord, tenant, master, servant, etc., subsists between the party to the suit and the person assisting him. 4. Because the money is given in charity.[t] 5. Because the person assisting the party to the suit is an attorney or counsellor, and the assistance strictly professional—for a lawyer is no more justified in giving his client money than another man.[u] Contracts growing out of maintenance are void.[v]

Champerty differs from maintenance chiefly in this, that in champerty the compensation to be given is a part of the matter in suit, or some profit growing out of it,[w] while in simple maintenance the question of compensation does not enter into the account.[x]

Champerty is treated as the worse offence; for by this a stranger supplies money to carry on a suit on condition of sharing in the land or other property gained by it. Contracts of this sort are set aside both in law and equity.[y]

CHANGE. See DEVIATION, below.

CHARTER PARTIES. See FORMS, below.

CHECK. See BILLS OF EXCHANGE, BONDS AND PROMISSORY NOTES, above.

CHOICE. See ELECTION, below.

CLAUSES are parts of an instrument of writing. In the forms hereafter given they are so framed that they may be readily shifted from one form to another without change. Being separate paragraphs, each containing a single, certain, and material part of the agreement, they will assist greatly the precision and clearness of the instrument, and render it less liable to confusion, doubt, and misconstruction.

COERCION. Direct or positive coercion takes place when a man is by physical force compelled to do an act contrary to his will. Implied coercion exists where a person is legally under subjection to another, and is induced in consequence of such subjection to do an act contrary to his will.

As will is necessary to the commission of a crime, or the making of a contract, a person coerced into either has no will on the subject, and is not responsible.[z] The command of a superior to an inferior,[a] of a parent to a child,[b] of a master to his servant, or a principal to his agent,[c] may amount to coercion.

COLLUSION and fraud of every kind vitiate and render void all acts which are infected with them,[d] and any agreement between two or more persons to defraud another of his rights by the forms of law, or to obtain any object forbidden by law, falls within this rule.

COMMISSION is the compensation allowed agents, factors, executors, guardians, receivers, trustees, etc., and such persons as manage the affairs of others, in recompense for their services. The right to such allowance may either be the subject of a special contract, may rest in an implied contract to pay as much as the services are worth, or may depend upon statutory provisions.[e] The right does not generally accrue till the completion of the services, and does not then exist unless proper care, skill, and perfect fidelity have been employed,[f] and the services are such as have not been illegal or against public policy.[h] The amount of such commissions is generally a percentage on the sums paid out or received. When there is a usage of trade at the particular place or in the particular business in which the agent is engaged, the amount of commission allowed to auctioneers, brokers, and factors is regulated by such usage.[i] In case a factor guarantees the payment of the debt he is entitled to a larger compensation (called a *del credere* commission) than is ordinarily given for the transaction of similar business, where no such guaranty is made.[j] The amount which executors, etc., receive is, in general, fixed by statute, subject to modification in special cases by the proper tribunal.[k]

COMPROMISES (agreements made between two or more parties, as a settlement of matters in dispute between them) and settlements are sustained by the law;[l] they are also highly favored.[m] The amount in controversy must, however, be uncertain.[n] There can be no compromise of a criminal offence.[o]

COMPULSION. Acts done under compulsion are not, in general, binding upon a party; but when a man is compelled by lawful authority to do that which he ought to do, that compulsion does not affect the validity of the act; as, for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of compulsion. But if the court compelled a party to do an act forbidden by law, or had not jurisdiction over the parties, or the subject-matter, the act done by such compulsion would be void.

s-Bac. Abr. *Maintenance;* see 11 M. & W. 675; 9 Met. Mass. 489: 13 Id. 262; 1 Me. 292; 6 Id. 361; 11 Id. 111. t-1 Bail. (S. C.) 401. u-Russ. Cr. 179; Bac. Abr. *Maintenance;* Broke. Abr. *Maint.* v-11 Mass. 549; 5 Humph. 379; 20 Ala. N. S. 521; 5 B. Mon. 413; 5 Johns. Ch. 44; 4 Q. B. 883. w-16 Ala. 488; 24 Ala. (N. S.) 472; 9 Met. Mass. 489; 1 Jones Eq. 100; 5 Johns. Ch. 44; 4 Litt. 117. x-Bishop Cr. L. § 111. y-7 Bing. 369; 1 Pick. 415; 9 Met. 489; 9 Ala. 755; 2 Sanf. 141; 7 Porter, 488; 1 Ham. 58; 4 Litt. 417; 6 Dana. 479; 4 Id. 172. z-1 East. Pl. Cr. 225; 5 Blackf. 73; 2 Dall. 86; 5 Q. B. 279; 1 Dav. & M. 367. The law upon the responsibility of married women for crime is fully stated in 1 Bennett & H. Lead. Cr. Cas. 76-87. a-1 Wash. C. C. 209, 220; 12 Met. (Mass.) 56; 1 Blatch. C. C. 549; 13 How. 115. b-Broom. Max. (2d Ed.) 11. c-13 Mo. 246; 14 Id. 137, 340; 3 Cush. 279; 11 Met. (Mass.) 66; 5 Miss. 304: 14 Ala. 365; 22 Vt. 32; 2 Denio, 341; 14 Johns. 119. d-See Shelf. Marr. & D. 415, 450; 3 Hagg. Eccl. 130, 133; 2 Greenl. Ev. § 51; Bosq. *Abordage.* e-7 C. & P. 584; 9 Id. 559; 8 Smith. 440; Sugd. Vend. *Auctioneer.* f-1 C. & P. 384; 4 Id. 289; 7 Bingh. 99; see 10 B. & C. 438. g-3 Camp. 451; 1 Stark. 113; 9 Bingh. 287; 12 Pick. 328. h-1 Campb. 547; 4 Esp 179; 5 Taunt. 521; 3 B. & C. 639; 11 Wheat. 258. i-3 Chitty Comm. L. 221; 1 Parsons Contr. 84, 85; Story Ag. 326. j-Paley Ag. 88, *et seq.*; see title AGENCY. k-12 Barb. 671; Edw. Receivers, 176, 302, 643. l-2 Strobh. Eq. 258; 2 Mich. 145; 1 Watts. 216; 2 Penn. St. 531. m-6 Munf. 406; 1 Bibb. 168; 2 Id. 448; 4 Hawks. 178; 6 Watts, 321; 14 Conn. 12; 4 Met. (Mass.) 270; see also 21 Eng. L. & Eq. 199; 6 Mc nr. 91; 2 Rand. 442; 5 Watts, 259. n-2 B. & Ad 889; 1 Ad. & E. 106, and see 5 Pet. 114; 21 Penn. St. 237; 20 Mo. 102; 13 Pick. 284; 6 Bing. (N. C.) 62; 3 M. & W. 648; 1 Bouv. Inst. 798. o-1 Chitty. Pr. 17.

CONCEALMENT is the improper concealment of any fact or circumstance by one of the parties to a contract from the other, which in justice ought to be known. Concealment when fraudulent avoids the contract, or renders the party using it liable to the damage arising in consequence thereof.[p] But it must have been such facts as the party is bound to communicate.[q] A concealment of extrinsic facts is not, in general, fraudulent, although peculiarly within the knowledge of the party possessing them.[r] And the rule against the concealment of latent defects is stricter in the case of personal than of real property.[s] Where there is confidence reposed concealment becomes more fraudulent.[t]

CONDITIONS, limitations, qualifications, or restrictions which modify or destroy the original act or contract with which it is connected, and clauses having for their object the suspension, recission, or modification of the original agreement, should always be included and appear in the contract, for when the parties at last reduce their agreement to writing, it is looked upon as the final consummation of their negotiations, and the exact expression of their purpose, and that which is not incorporated in their written contract will be considered as intentionally rejected.[u]

Conditions are affirmative where they are positive; collateral where they require the doing of a collateral act;[v] compulsory where they expressly command a thing to be done; consistent when they agree with the other parts of the contract; copulative when composed of distinct parts or separate conditions, all of which must be performed—they are generally conditions precedent, but may be conditions subsequent;[w] covert when implied; disjunctive when they require the doing of several things—if a condition become impossible in the copulative it may be taken in the disjunctive;[x] express when created by express words;[y] implied when the law supposes the parties to have had them in mind at the time the transaction was entered into, though no condition was expressed;[z] impossible wherein they cannot be performed by natural means; lawful when allowed by law; positive when the event or act contemplated is required to happen; possible when they may be performed; precedent when they must be performed before the act or obligation takes effect—they are to be distinguished from subsequent conditions;[a] repugnant when inconsistent with, and contrary to, the original act; restrictive when they impose a restraint;[b] single when they require the doing only of a single thing; subsequent when their effect is not produced until after the commencement or completion of the obligation—the condition in a mortgage defeating the conveyance is a common example; unlawful when forbidden by law; void when of no validity or effect; voidable when they require the confirmation or ratification of one or more of the parties.

Conditions must be made simultaneously with the original contract or conveyance, though, in the absence of a statute to the contrary, they may be by a separate instrument of writing. They are then considered as constituting one transaction with the original.[c] Unlawful conditions are void. Any words suitable to indicate the intention of the parties may be used in the creation of a condition. "On condition" is the common form of commencement. The words of condition need be in no particular place in the instrument.[d]

Conditions which defeat or destroy are strictly construed, while those which limit, extend or vest are liberally construed.[e] The condition of an obligation is said to be the language of the obligee, and for that reason is construed liberally in favor of the obligor.[f] But whenever an obligation is imposed by a condition the construction is to be favorable to the obligee.[g]

Where conditions are liberally construed a strict performance is required, and a less exact or strict performance is allowed where there is a strict construction of the condition. Performance should be complete and effectual.[h] An inconsiderable casual failure to perform is not non-performance.[i] Any one who has an interest in the matter may perform the condition, but a stranger will derive no benefit from performing it.[j] Conditions precedent can generally be exactly performed; and equity will not generally interfere to avoid the consequences of non-performance.[k] But in cases of conditions subsequent equity will interfere where there is even a partial performance, or where there is only a delay of performance.[l] Generally, where no time of performance is limited, he who has the benefit of the contract may perform the condition when he pleases, at any time during his life,[m] and need not do it when requested.[n] But if a prompt performance be necessary to carry out the will of a testator, the beneficiary will not have a lifetime in which to perform the condition.[n] In this case no previous demand is

p-7 Met. (Mass.) 252; 16 Me. 30; 2 Ill. 344; 3 Barnew. & C. 605; 10 Clark & F. Ho. L. 934. q-3 Eng. L. & Eq. 17; 3 Conn. 413; 5 Ala. (N. S.) 596; 1 Yeates, 307; 5 Penn. St. 467; 8 N. H. 463; 1 Dev. 351; 18 Johns, 403; 6 Humph. 36. r-2 Wheat. 195; 1 Baldw. C. C. 331; 14 Barb. 72; 2 Ala. (N. S.) 181; but see 1 Miss. 72. 1 Swanst. 54; 4 M'Cord, 169. s-6 Woodb. & M. C. C. 358; 3 Campb. 508; 3 T. R. 759. t-9 B. & C. 577; 4 Met. (Mass.) 381; see generally 2 Kent Comm. 482. u-2 W. Bl. 1249; 15 C. B. 667; 29 Eng. L. & Eq. 226; 11 Barb. 147; 1 Blatch. C. C. 467; 3 Wilson, 275; 23 Vt. 231; Id. 681; 2 B. & C. 634; 2 Caines, 155; 1 Johns. 414; 4 Taunt. 786. v-Shepp. Touchst. 117. w-Powell Dev. C. 75. x-Viner Abr. *Cond.* (S. b.) (Y. b. 2.) y-Co. Litt. 328. z-Shepp. Touchst. 117. a-All conditions must be precedent or subsequent. b-Shepp. Touchst. 118. c-5 S. & R. 375; 7 Watts & S. 335; 3 Hill, 95; 3 Wend. 208; 10 Ohio, 433; 10 N. H. 64; 2 Me. 132; 7 Pick. 157; 6 Blackf. 113. d-1 T. R. 645; 6 Id. 668. e-Crabbe R. Prop. § 2130; 17 N. Y. 34; 4 Gray, 140; 35 N. H. 445; 18 Ill. 431; 15 How. 323. f-Co. Litt. 42, a., 183, a.; 2 Parsons Contr. 22; Shepp. Touchst. 375; 6 Dyer, 14 b., 17 a.; 1 Johns. 267. g-1 Sumn. C. C. 440. h-1 Rolle Abr. 425. i-6 Dana, 44; 17 N. Y. 34. j-10 S. & R. 186. k-3 Ves. Ch. 89; 1 Atk. Ch. 361; 3 Id. 330; West, 350; 2 Brown Ch. 431. l-Crabb, R. Rop. § 2160; 4 Ind. 428; 26 Me. 525. m-Plowd. 16 Co. Litt. 208, b. n-5 S. & R. 384.

necessary.[o] But even then a reasonable time is allowed.[p]

If a place be agreed upon, neither party alone can change it, but either may with the consent of the other.[q]

Non-performance of a condition which was possible at the time of its making, but which has since become impossible, is excused if the impossibility is caused by act of God,[r] or by act of law, if it was lawful at its creation;[s] or by act of the party, as when the one imposing the obligation accepts another thing in satisfaction, or renders the performance impossible by his own default.[t] If the performance of one part becomes impossible by act of God, the whole will, in general, be excused.[u]

CONFIDENCE. See TRUST, etc., below.

CONFIRMATION is a contract making firm and unavoidable that which was before voidable. When a party, acting for himself or by a previously authorized agent, has attempted to enter into a contract, but has done so in an informal or invalid manner, he may confirm the act and thus render it valid. It will then take effect as between the parties from the making of the original contract.[v] To make a valid confirmation the party must be apprized of his rights, and where there has been a fraud in the transaction he must be aware of it, and intend to confirm his contract.[w] A confirmation may make a defeasible or voidable contract good, but cannot strengthen or make valid a void contract.[x] See INFANTS, PERSONAL RELATIONS.

CONSENT. See ASSENT, above; SALES, below.

CONSIDERATION is the material *cause* which moves a contracting party to enter into a contract.[y] The price, motive, or matter of inducement to the contract, a compensation or equivalent—whether it be that which is paid or otherwise—or the inconvenience suffered by the party from whom it proceeds.

Consideration is concurrent where it arises at the same—or when the promises are simultaneous; continuing when it is executed only in part; equitable when a moral consideration; executed when received before the obligor made the promise; executory when the undertaking is for future performance; good when of blood (kinship), natural affection, natural duty, generosity, prudence, and the like;[z] gratuitous when not founded on such a deprivation or injury to the promisee as to make the consideration valid in law;[a] impossible when it cannot be performed; moral when sufficient to support an executed contract, and valuable when it confers some benefit upon the party by whom the promise is made, or upon a third party at his instance or request; or some detriment sustained at the instance of the party promising by the party in whose favor the promise is made.[b]

Consideration is the very life and essence of a contract; and a contract or promise for which there is no consideration cannot be enforced at law.[c] The consideration is the *cause* of the contract,[d] and a consideration must be provided, where the contract is in writing, but not under seal, as much as if the contract were oral only.[e] The exception to this rule in case of mercantile negotiable paper is considered elsewhere. Where the consideration is expressed in a written contract, no other can be proved[f] unless there are words to indicate other considerations.[g] Where the consideration is not expressed, it may be proved.[h] And where the contract declares it was made for a valuable consideration, this is *prima facie* evidence of such consideration.[i]

ADEQUACY. If the consideration is valuable, it need not be *adequate;* that is, the court will not inquire into the exact proportion between the value of the consideration and that of the thing to be done for it.[j] But it must have some real value; and if this be very small, this circumstance may, even by itself, and still more when connected by other indications, imply or sustain a charge of fraud.[k] Mere folly or want of judgment will not defeat a contract.[l] The courts refuse to disturb contracts on questions of mere adequacy. When adequacy of consideration becomes material, whether it exists is a question for the court.[m]

AFFECTION. Natural affection—the affection which a husband, father, brother, a wife, mother, sister, or other near relative naturally feels towards those who are so nearly allied to him—sometimes supplies the place of a valuable consideration in contracts. Natural affection is a good consideration in a conveyance of land.

o-5 S. & R. 385. p-1 Rolle Abr. 449. q-1 Rolle, 444; 11 Vt. 612; 3 Leon, 260; see PERFORMANCE, below. r-10 Pick. 507. s-4 Monr. 158; 1 Penn. St. 495. t-21 Pick. 389; 1 Paine C. C. 652; 6 Pet. 745; 1 Cow. 339. u-1 B. & P. 242; Cro. Eliz. 280; 5 Co. 21; 1 Ld. Raym. 279. v-See Bouv. Inst. n. n., 2067–2069. w-See 1 B. & B. Ch. Ir. 353; 2 Sch. & L. 486; 12 Ves. Ch. 373; 1 Id. 215; 1 Atk. Ch. 301; 8 Watts, 280. x-Co. Litt. 295. y-2 Bl. Com. 443. z-2 Johns. 52; 7 Id. 26; 10 Id. 293; 2 Bail. 588; 1 M'Cord, 504; 2 Leigh. 337; 20 Vt. 595; 19 Penn. St. 248; 1 C. & P. 401. a-2 Mich. 381. b-Chitty Contr. 7; Doct. & S. 179; 1 S. N. P. 39, 40; 2 Pet. 182; 5 Cranch. 142, 150; 1 Litt. 183; 3 Johns. 100; 14 Id. 466; 8 N. Y. 207; 6 Mass. 58; 2 Bibb. 30; 2 J. J. Marsh, 222; 2 N. H. 97; Wright, 660; 5 W. & S. 427; 13 S. & R. 29; 12 Ga. 52; 24 Miss. 9; 4 Ill. 33; 5 Humph. 19; 4 Blackf. 388; 3 C. B. 321; 4 East. 55. c-See on the subject of consideration, articles by "E. L. P.," Am. L. Reg. for March, May, and July, 1854, where cases on the whole topic are collected. d-2 Q. B. 851; 5 A. & E. 548; Smith Cont. p. 88, n.; 1 La. An. 192. e-7 Conn. 57; 13 Id. 170; 16 Me. 458; 4 Munt. 95; 1 Stew. (Ala.) 51; 4 Johns. 235; 9 Cowen, 778; Cooke, 499; 6 Yerg. 418; 6 Hals. 174. The consideration, however, need not be expressed in the writing. It may be proved otherwise. 7 Conn. 291; 4 Pick. 71; 26 Me. 397; 1 La. An. 192; Comst. 335; 21 Vt. 292. The admission of a consideration in the writing is, of course, *prima facie* evidence of its existence, 16 Me. 394. f-1 Johns. 129; Gilpin, 329; 5 Greenl. 232; 3 Johns. 506; 8 B. Mon. 596; 6 Md. 210. g-7 Johns. 341. h-4 Pick. 71; 7 Conn. 291. i-16 Me. 394; 4 Mo. 33; see 20 Barb. 298. j-11 A. & E. 983; 6 Id. 438–456; 1 Met. 84; 23 Vt. 532; 2 Foster, (N. H.) 246; 16 East. 372; 2 Cr. & M. 623; 9 Ves. 246; Ambl. 18; 2 Sch. & L. 395. n. (*a.*); 8 Ves. 133; 3 Anst. 732; 20 Penn. St. 303; 22 Id. 245. k-15 E. L. & E. 101, S. C.; 15 Beav. 103; Id. 435, S. C.; 2 De G. M. & G. 55; 7 Gill, 269; 9 Ga. 60; 19 Ala. 765; 8 Price, 620; 1 Swanst. 329; 6 Md. 235. l-1 Lev. 111, S. C.; 1 Keb. 569; see Chitty Cont. 32; 2 Ld. Raym. 2164; 2 Head. 289. m-3 Bing. 327.

ASSIGNMENT OF A DEBT or right is a good consideration for a promise by the assignee.[l] So the assignment of a debt or chose in action with the consent of the debtor is a good consideration for the debtor's promise to pay the assignee. It is merely a promise to pay a debt due, and the consideration is the discharge of the debtor's liability to the assignor.[m] But if either transaction amounts to maintenance, which is illegal, the consideration fails, and the promise is void.

BILLS OF EXCHANGE, BONDS AND PROMISSORY NOTES carry with them *prima facie* evidence of consideration.[n] See this title above.

CONTRARY TO MORALS, ETC. Contracts which are incentive to crime, or of which the consideration is an engagement or obligation improperly prejudicial to the feelings of a third party, offensive to decency or morality, or which have a tendency to mischievous or pernicious consequences, are void, being against sound morals.[o]

DEPOSIT. See title BAILMENTS, DEPOSIT.

EQUITABLE. See MORAL, below.

EXECUTED considerations are those which are wholly past. An executed consideration will not generally be sufficient to support a contract. It is something done before the obligor makes his promise, and therefore cannot be a foundation for that promise unless it has been executed at the request (express or implied) of the promisor; such a request plainly implies a fair and reasonable compensation.[p]

EXPRESSING. The consideration in simple contracts if not expressed must be proved, and this may be done by extrinsic evidence.[q] If expressed, such expression is *prima facie* evidence of the consideration. Contracts, under seal, as bonds and deeds, judgments, and negotiable instruments, imply by their very nature a consideration, and in the absence of an expression of consideration none need be proved.

FAILURE OF —. A want or failure in the whole or in part, of the consideration of a written contract, may be shown as a defence, total or partial, as the case may be, in an action on such contract, brought by one who is not an innocent holder in good faith.

When the consideration appears to be valuable and sufficient, but turns out to be wholly false or a mere nullity, or where it may have been actually good, but before any part of the contract has been performed by either party, and before any benefit has been derived from it to the party paying or depositing money for such consideration, and the consideration wholly fails, the promise resting on such a consideration is no longer obligatory, and the party paying or depositing money upon it can recover it back,[r] but where the consideration fails only in *part*, the principles analogous to those which govern an inquiry into the adequacy of a consideration would be applied to it. If there were a substantial consideration left, although much diminished, it would still suffice to sustain the contract. But if the diminution of failure were such as in effect and reality to take away all the value of the consideration, it would be regarded as one that had wholly failed.

But where a person, with full knowledge of all the circumstances, pays money voluntarily, and without compulsion or duress of person or goods, he shall not afterward recover back the money so paid.[s]

FORBEARANCE. An agreement to forbear for a time proceedings to enforce a well-founded claim is a valid consideration for a promise.[t] But this consideration fails if it be shown that the claim is unsustainable at law or in equity,[u] but mere proof that it is doubtful will not invalidate the consideration.[v] Nor is it necessary that the forbearance should extend to an entire discharge; any delay, which is real and not merely colorable, is enough.[w] Nor is it material whether the proceedings to be forborne have been commenced or not.[x] Nor need the agreement to a delay be for a time certain; for it may be for a reasonable time only, and yet be sufficient consideration for a promise;[y] but the actual time of forbearance should be proved, and if this be judged by the court to be reasonable, the action will be sustained;[z] but where the stay of action is wholly uncertain, or such as can be of no benefit to the debtor or detriment to the creditor, it is not enough.[a]

l-1 Sid. 212; 2 W. Bl. 820; 4 B. & C. 525, S. C.; 7 Dow. & R. 14; 13 Q. B. 549; 23 Vt. 532; 7 Texas, 48; 2 Foster (N. H.) 185. m-1 Sid. 212; 2 W. Bl. 820; 4 B. & C. 525; 7 Dowl. & R. 14; 13 Q. B. 548; 23 Vt. 532; 7 Texas, 47; 22 N. H. 185; 10 J. B. Moore, 34; 2 Bingh. 437; 1 Cromp. M. & R. 430; Tyrwh. 116; 4 T. R. 690; 4 Taunt. 326; 22 Me. 484; 7 N. H. 549. n-4 Bl. Comm. 445. o-2 Wils. 447; Cowp. 729; 4 Campb. 152; 1 B. & Ald. 683; 16 East. 150. p-1 Parsons Contr. 391; 3 Bingh. (N. C.) 10; 6 M. & G. 153; 8 Id. 538; 2 B. & C. 833; 6 Id. 439; 8 T. R. 308; 2 Ill. 113; 14 Johns. 378; 22 Pick. 393; 2 Met. Mass. 180; 3 Id. 155; 4 Mass. 574; 12 Id. 328; 9 N. H. 195; 21 Id. 544; 7 Me. 76, 118; 20 Id. 275; 24 Id. 349, 374; 27 Id. 106; 1 Caines, 184; 7 Johns. 87; 7 Cow. 358; 2 Conn. 404. q-2 Ala. 51; 16 Id. 72; 21 Wend. 628; 9 Cow. 778; 3 N. Y. 335; 7 Conn. 57, 291; 13 Id. 170; 16 Me. 394, 458; 4 Munf. 95; Cooke, 499; 4 Pick. 71; 26 Me. 307; 1 La. An. 192; 21 Vt. 292; 4 Mo. 33. r-13 Mass. 216; 3 Burr. 1012; 10 Mass. 34; 1 Rep. Const. Ct. 467; 2 Nott & M'C. 65; 2 Robt. 258; 1 Overt. 438; 3 Call. 7[illegible]; 26 Me. 217; 2 Day, 437; 2 Denio. 139. The failure of consideration must be *total*, 5 Humph. 496; 4 Conn. 428. The measure of damages in such case is the sum paid, no allowance is to be made for plaintiff's loss and disappointment, 1 Nott & M'Cord, 210; 5 Allen, 306. s-5 Cush. 117; 12 Pick. 7; 4 Met. 181; 6 Esp. 26 n.; 5 Bing. 37; 1 Taunt. 359. t-Rol. Abr. 24 pl. 33; Com. Dig. B. 1; 3 Chitty Com. L. 66-67; 1 Bing. N. C. 444; 8 Id. 5; 7 A. & E. 19; 4 Greenl. 387; 4 Johns. 237; 21 Penn. St. 237; 2 Binn. 5d.; 1 Cush. 168; 9 Barr, 147; 3 W. & S. 420; 20 Wend. 201; Wright, 434; 5 Humph. 19; 6 Leigh. 85; 1 Dougl. (Mich.) 188; 20 Ala. 309; 13 Ill. 140. u-2 Hall, 266; 4 Dev. & B. 212; 4 East. 455; 1 B. & Ad. 604; 20 Ala. 309; 15 N. H. 119; 2 C. B. 548; 2 Leon. 105; Willes, 481; 1 Vent. 159; 2 Wm. Saund. 134; Palm. 394; Yelv. 26; March. 202; 1 Stra. 94; Latch. 141; Popk. 177; 12 Barb. 685. v-5 B. & Ald. 117; 6 Munf. 406; 11 Vt. 483; 4 Hawks. 178. w-6 Conn. 81.; here the delay was *one year*; 1 Bulst. 41.; here the delay was a *fortnight* or thereabouts; see ante, note *t*. x-Wade *vs.* Simeon, 2 C. B. 548; 2 Binn. 596. y-4 Wash. C. C. 148; 1 Penn. St. 385; 5 Rawle, 60, 79; 23 Vt. 235; see ante, note *c*. z-4 Greenl. 378; Hard. 5. a-4 East. 455; 4 M. & W. 795; 3 Penn. St. 282; 9 Vt. 233.

GOOD. A contract upon a *good* consideration is considered merely voluntary, but is good against the promisor or grantor when once executed,[b] but void against creditors and subsequent *bona fide* purchasers for value.[c] The term is sometimes used in the sense of a consideration valid in point of law, and it then includes a valuable as well as a meritorious consideration.[d] Generally, however, "good" is opposed to "valuable," wh ch see.

HIRE. See title BAILMENTS.

ILLEGAL considerations can be no foundation or cause for a contract. Violations of morality, decency, and policy, as contracts to commit, conceal, or compound crime, are in contravention of law. So, also, with a contract for future illicit intercourse, or in fraud of a third party, or the like. In general, if any part of the entire consideration for a promise, or any part of an entire promise, be illegal, the whole contract is void;[e] because public policy will not permit a party to enforce a promise which he has obtained by an illegal act or an illegal promise, although he may have connected with this act or promise another which is legal. But if one gives a good and valid consideration, and thereupon one promises to do two things, one legal and the other illegal, he shall be held to that which is legal,[f] unless the two are so mingled and bound together that they cannot be separated, in which case the whole promise is void. Where the consideration is altogether illegal, it is insufficient to sustain a promise, and the agreement is wholly void. See next paragraph.

IMMORAL. Contracts for an immoral consideration are generally void. An agreement in consideration of future illicit cohabitation between the parties,[g] an agreement for the value of immoral and libellous pictures,[h] or for printing a libel,[i] or for an immoral wager,[j] cannot, therefore, be enforced; for whatever arises from an immoral or illegal consideration is void. It is a general *rule* that whenever an agreement appears to be illegal, immoral, or against public policy, a court of justice leaves the parties where it finds them. When the agreement has been executed the court will not rescind it; when executory the court will not aid its execution.[k]

IMPOSSIBLE considerations are wholly bad and insufficient, and a contract founded thereon is void. But this impossibility must be a natural or physical impossibility.[l] A consideration which one cannot perform without a breach of the law is bad, and so is one which cannot be performed at all.[m] The reason is obvious; from such consideration no possible benefit or advantage could be derived by the one party, nor detriment to the other. But a promise is not void merely because it is difficult or even improbable. And it seems that if the impossibility applies to the promisor, personally, there being neither natural impossibility in the thing, nor illegality nor immorality, then he is bound by his undertaking, and it is a good consideration for the promise of another,[n] because if a party binds himself to such an undertaking, he may either procure the thing to be done by those who can do it, or else pay damages for not doing it.

KINDS. Considerations are *good* or *valuable*. A good consideration is such as that of blood, or of natural love and affection, where a man grants an estate to a near relation, being founded on motives of generosity, prudence, and natural duty.[o] A valuable consideration is usually in some way pecuniary or convertible into money.[o] An equitable consideration is valid between parties, although it be not valuable; but only a valuable consideration is valid as against a third party as a subsequent purchaser,[p] whose debt existed when the contract was made; an attaching creditor, or the like. A mere moral consideration *is nothing*.[q]

LABOR. See WORK, etc., below.

LITIGATION. The prevention of litigation is not only a sufficient but a highly-favored consideration,[r] and no investigation into the character or value of the different claims submitted will be entered into for the purpose of setting aside a compromise, it being sufficient if the parties entering into the compromise thought at the time that there was a question between them.[s]

LOAN. See title BAILMENTS.

MANDATE. See title BAILMENTS.

MARRIAGE is a valuable consideration, though it be not convertible into money, nor of pecuniary value.[t]

MORAL OBLIGATIONS are often said to be a sufficient consideration. It is a rule, however, that such moral obligation must have once been valuable and enforcible by law, but has ceased to be so by the statute of limitations, or by the intervention of bankruptcy. The claim, in such case, remains equally as strong on

b-Fonbl. Eq. B. 1, C. 5, § 2: Chitty Cr. 28. c-Cowp. 705; 9 East. 55; 7 T. R. 475; 10 B. & C. 606. d-3 Cranch. 140; 1 Aik. 601; 24 N. H. 302: 2 Madd. Ch. 340; 3 Co. 81; Ambl. 598; 1 Ed. Ch. 167; Newland Contr. 386; Atherby Marr. Sett. 191. e-2 Wils. 347; 2 E. L. & E. 113; 6 Dana, 91; 3 Bibb. 500; 9 Vt. 23; 11 Wheat. 258; 11 Vt. 592; 26 Vt. 184; 22 Me. 483; 5 Barr. 452; 4 Pick. 314; 2 Gray, 258; 14 Sm. & M. 18; 2 Cart. (Ind.) 392; 7 Foster (N. H.) 230; 27 Miss. 13; 10 E. L. & E. 424, S. C.; 17 Q. B. 785; 19 Barb. 291. f-Ley. 79: 8 East. 236; Hob. 14; 3 Comst. 37; 6 E. F. Moore, 152; 18 Penn. St. 50. g-3 Burr. 1568; 1 Esp. 13; 1 B. & P. 340, 341. h-4 Esp. 97. i-2 Stark. 107. j-Inst. 3, 20, 24. k-4 Ohio, 419; 4 Johns. 419; 11 Id. 388; 12 Id. 306; 19 Id. 341; 3 Cow. 213; 2 Wils. 341. l-Platt Cor. 569; 3 Chitty C. L. 101; 3 B. & P. 296, n.; 6 T. R. 718; 7 Ad. & E. 798; 1 Pet. 91, 221; 5 Taunt. 249; 2 M. & S. 89; 8 Bingh. 68. m-5 Vin. Abr. 110, 111; C. a. D. a.; 1 Rol. Abr. 419; Co. Litt. 206, a.: 22 Am. Jur. 20–22; 3 T. R. 17; 2 B. & C. 474. n-Co. Litt. 206, a. n.; 1 Platt on Cov. 569; Chitty Com. Law, 101; 3 B. & P. 296, n.; 6 T. R. 718; 7 A. & E. 798; 1 Pet. C. C. 91; Id. 221. o-2 Bl. Com. 297, 3 J. J. Marsh, 473. p-10 B. & C. 606; Chitty on Cont. 28. q-9 M. & W. 501; 11 A. & E. 438. r-1 Ves. Sen. 444; 1 Chanc. 158; 1 Atk. 3; 17 Pick. 470; 4 Id. 507; Co. 29; E. L. & E. 429, S. C.; 10 Exch. 569: Com. Dig. A. 1, B. 1; 2 Strob. Eq. 258; 2 Mich. 145; 1 Watts, 216; Add. 56; 2 Penn. St. 531; 6 Munf. 406; 1 Bibb, 168; 2 Id. 448; 4 Hawks. 78; 6 Watts, 321; 14 Conn. 12; 1 W. & S. 456; 4 Met. Mass. 270. s-21 Eng. L. & E. 199; 6 Monr. 91; 2 Rand. (Va.) 442; 5 Watts, 259; 21 Cal. 122. t-3 Cow 537; 1 Johns. Ch. 261; Addis. 276; 11 Leigh. 136; 7 Pet. 348; 6 Dana, 89; 22 Me. 374.

the conscience of the debtor. The rule amounts only to a permission to waive certain positive rules of law as to remedy.[u] If the moral duty were once a legal one which could have been made available in defence, it is equally within the rule.[v]

PROMISES. Mutual promises made at the same time are concurrent considerations, and will support each other if both be legal and binding.[w] And it is so previous to performance and without performance. As, if one promises to become a partner, and another promises to receive him into the firm, both of these promises are binding, each being sufficient consideration for the other.[x] If one promise to teach a certain trade, this is a consideration for a promise to remain with the party a certain length of time to learn, and serve him during that time; but without such promise to teach, the promise to remain and serve, though it be made in expectation of instruction, is void.[y] The reason of this is, that a promise is not a good consideration for a promise unless there is an absolute mutuality of obligation, so that each party has the right at once to hold the other to a positive agreement.[z] A promise to *accept* and *pay* for goods is a good consideration for a promise to *deliver* them,[a] for the buyer may tender the price and demand the goods; and the seller may tender the goods and demand the price.[b] The exception to this rule is in case of contracts between infants and persons of full age; the promise of an infant is a consideration for the promise of an adult, though the infant may avoid his contract, while the adult cannot.[c]

SERVICES. See WORK, etc., below.

STRANGERS' RIGHTS. A third party may maintain an action on a promise made to another for his benefit,[d] for such promise is to be deemed made to the third party, if adopted by him, though he was not cognizant of it when made.[e]

SUBSCRIPTIONS for shares in a chartered company rest upon a sufficient consideration, for the company is obliged to give the subscriber his shares, and he must pay for them.[f] Concerning voluntary subscriptions for charitable purposes, there is much confusion of authorities.[g] Subscriptions to a common object are not usually mutual nor really concurrent, and can be held and enforced only on the grounds of public policy.[h] A subscription to be binding ought to be a promise to some particular person or committee. There should be an agreement on the part of such person or committee to do something on their part, as to provide material to erect, extend, or repair a building, or the like.[i] If advances were fairly authorized and have been made on the strength of the subscriptions, it is sufficient to make them obligatory.[j] Where several promise to contribute to a common object, desired by all, the promise of each may be a good consideration for the promise of others.[k] In general, the subscriptions on certain conditions in favor of the party subscribing are binding when the acts stipulated are performed.[l]

TIME. Considerations may be of the past, of the present, or of the future. When the consideration and the promise founded upon it are simultaneous, then the consideration is of the present time; the whole agreement is completed at once. When a consideration is to do a thing hereafter, it is of the future, and is said to be executory; when the promise to do this is accepted, the latter promise rests on a sufficient foundation, and is obligatory.[m] When a consideration is wholly past, it is said to be executed.

Generally, a past or executed consideration is not sufficient to sustain a promise founded upon it, unless there was a request for the consideration previous to its being made. Without such previous request a subsequent promise has no force. But this previous request need not always be express, or proved, because it is often implied. As where one accepts or retains the beneficial result of such voluntary service. And where one is compelled to do for another what that other should do, and was compellable to do; here, also, the law implies, not only a previous request that the thing should be done, but also a promise to compensate for the doing of it;[n] as where one is surety for another, and pays the debt which the other owes. And where one does voluntarily that which he is not

u-2 Bl. Comm. 445; Cowp. 290; 3 B. & P. 249, n.; 2 East. 506; 3 Taunt. 312; 5 Id. 36; Yelv. 41, b. n.: 8 Mass. 127; 3 Pick. 207; 19 Id. 429: 6 Cush. 238; 20 Ohio, 332; 5 Id. 58; 24 Wend. 97; 24 Me. 561; 2 Bail. 420; 13 Johns. 259; 19 Id. 147; 14 Id. 178–378; 1 Cow. 249; 7 Conn. 57; 1 Vt. 420; 5 Id. 173; 3 Penn. 172; 5 Penn. 33: 12 S. & R. 177; 17 Id. 126; 14 Ark. 267; 1 Wis. 131; 21 N. H. 129; 4 Md. 476. v-5 Barb. 556; 2 Sandf. 311; 25 Wend. 389; 10 B. Mon. 382: 8 Tex. 397. w-Hob. 88; 1 Sid. 180; 4 Leon. 3; Cro. E. 543; 9 B. & C. 840; 3 B. & Ad 703; 1 Caines, 45: 8 Rich. L. 416; 5 Texas, 512; 37 Maine, 442; 19 Barb. 428; 25 Penn. St. 481: 2 Hall, 405; 1 Murphy, 287 x-2 M. & Scott. 89, S. C.; 9 Bing. 68. y-2 Mo & P. 86, S. C.; 5 Bing. 34; 9 A. & E. 693, S. C.; 1 Per. & D. 463; 3 Dow. & R. 676: 5 B. & Add. 1019. z-4 Kas. 379; 2 Id. 135; 13 Ill. 140; 12 Barb. 502; Hob. 88; Peake, 227; 6 B. & C. 255; 5 M. & W. 241; 25 E. L. & E. 478, S. C.; 9 Exch. 507; 12 How. 126; 3 E. L. & E. 420, S. C.; 16 Q. B. 239; 28 E. L. & E. 579, S. C.; 10 Exch. 283; 5 Man. & G. 131; 8 Pick. 392; 7 How. (Miss.) 508. a-2 Hall, 405. b-2 Hall, 405; 17 Me. 372; 19 Id. 74. c-9 Met. Mass. 519; 7 Watts, 412; 5 Cow. 475; 7 Id. 22; 1 D. Chip. 252; 1 A. K. Marsh, 76; 2 Bail. 497; 3 M. & S. 205; 2 Str. 937; see tit. INFANTS. d-22 Am. Jur. 16–50; 2 Watts, 104; 17 Mass. 400; 1 Hall, 247; 11 Mass. 152, n. (a.); 15 Me. 285; 17 Mass. 575; 10 Id. 287; 4 Denio, 97; 9 Penn. St. 229; 2 Met. 381; 1 Vent. 318; 7 Cush. 337; 3 Pick. 83; 2 A. K. Marsh, 496; 7 Com. 347; 1 Caines, 45; 16 Barb. 561. e-20 N. Y. (6 Smith) 268; 42 Penn. St. 49. f-Parsons Contr. 377; 16 Mass. 94; 8 Id. 138; 21 N. H. 247; 34 Me. 360; 15 Barb. 249; 5 Ala. (N. S.) 787; 22 Me. 84; 9 Vt. 289. g-6 Met. Mass. 310. h-See 4 N. H. 533; 6 Id. 164; 7 Id. 435: 5 Pick. 506; 2 Vt. 48; 9 Id. 289; 5 Ohio, 58. i-11 Mass. 114; 2 Pick. 579; 24 Vt. 189; 9 Barb. 202; 10 Id. 309; 9 Gratt. 633; 42 Am. Jur. 281–283; 4 Me. 382; 2 Denio, 403; 1 N. Y. 581; 2 Cart. Ind. 555; 12 Pick. 541. j-12 Mass 190; 14 Id. 172; 1 Met. Mass. 570: 5 Pick. 228; 19 Id. 73; 4 Ill. 19; 2 Humph. 335; 2 Vt. 48; 5 Ohio, 58; 9 Barb. 202. k-6 N. H. 164; 4 Id. 533; 5 Pick. 506; 9 Vt. 289: 4 Id. 48; 5 Hamm. 58; 11 Mass. 114; 2 Pick. 579; 24 Vt. 189; 6 Md. 113; 20 Penn. St. 260: 9 Barb. 202; 10 Id. 309; 9 Gratt. 633: 3 Seld. 349; 2 Denio, 403, S. C.; 1 Comst. 581; 2 Cart. (Ind.) 555; 37 Penn. St. 210. l-12 Pick. 541. m-3 Md. 67; 17 Me. 303; 24 Wend. 285; 17 Pick. 407; 1 Speers, 368. n-2 B. & Ad 833; 6 B. & C. 439; 8 T. R. 308; 3 Bing. N. C. 10; 6 M. & W. 153.

compellable to do, for another who is compellable to do it; as if one who is not surety, nor bound in any way, pays a debt due from another, he has not the same claim and right as if he had been compellable to pay this debt; for now the law, if there be a subsequent promise to repay the money, will indeed imply a previous request;[o] the reason is, that the debtor shall not be obliged to accept another party as his creditor without his consent, for he may have partial defences, or other reasons for arranging the debt with him to whom it is due, and not with another; but if the debtor choose to promise him repayment he is held to such promise and the consideration, though executed, is sufficient.

TRUST AND CONFIDENCE. If one intrusts money, goods, or property of any kind, to any person, on the faith of that person's promise to act in a certain way in reference to such money, goods, or property, such person having accepted the trust will be held to his promise, because the trust is itself a sufficient consideration for a promise to discharge and execute the trust faithfully.[p] For if a person makes a mere gratuitous promise, and then enters upon the performance of it, he is held to a full execution of all he has undertaken.[q]

VALUABLE considerations are the only ones which are good against subsequent purchasers and attaching creditors, and these are always sufficient if rendered at the request, express or implied, of the promisor.[r] A valuable consideration is usually in some way pecuniary or convertible into money; and a very slight consideration, provided it be valuable and free from fraud, will support a contract.[s] The civilians divided it into four classes, viz.: 1. "I give that you may give." 2. "I do that you may do." 3. "I do that you may give." 4. "I give that you do." See GOOD; KINDS; and the various paragraphs on the subject of consideration, above and below.

VOID IN PART. If one or more of several considerations, which are recited as the ground of a promise, be only frivolous and insufficient, but not illegal, and the others are good and sufficient, then the consideration may be severed, and those which are void disregarded, while those which are valid will sustain the promise.[t] But where the consideration is entire and incapable of severance, it must be wholly good or wholly bad. If the promise be entire, and not in writing, and a part of it relate to a matter which, by the statute of frauds, should be promised in writing, such part being void avoids the whole contract;[u] but if it be such in its nature that it may be divided, and the part not required to be in writing by the statute may be enforced without injustice to the promisor, that portion of the agreement will be binding.[v]

WORK, SERVICES, AND LABOR. Work and service are a very common consideration for a promise, and always sufficient, if rendered at the request of the party promising.[w] This request may often be implied; it is so, generally, from the fact that the party making the promise accepts and holds the benefit resulting from the work or service.[x] And it is an equally sufficient consideration for a promise if the work or service be rendered to a third party at the request of the promisor.[y]

If the work and service rendered are merely gratuitous, and performed for the defendant without his request or privity, however meritorious or beneficial they may be, they afford no cause of action.[z] So, if a workman employed and directed to do a particular thing chose to do some other thing, without the direction or assent of his employer, the implied promise of the employer to pay for his labor will not extend to the new work;[a] but if the work is accepted by the employer, it would be a sufficient consideration for a promise to pay for it, and such acceptance might imply such promise.

CONSTRUCTION is determination of the meaning and application as to the matter in question of the provisions of a written instrument—drawing conclusions respecting subjects that lie beyond the direct expressions of the term.[b] A strict (or literal) construction is one which limits the application of the provisions of the instrument or agreement to cases clearly described by the words used. A liberal (or equitable) is one by which the letter is enlarged or restrained so as to more effectually accomplish the end in view.

A leading principle of construction is to carry out the intention of the authors of or parties to the instrument or agreement, so far as can be done without infringing upon any law of superior binding force. In regard to cases where this intention is clearly expressed, there is little room for variety of construction; it is mainly in cases where the intention is indistinctly disclosed, though fairly presumed to exist in the minds of the parties, that any liberty of construction exists.

What a contract means is a question of law. It is the court therefore that determines the construction of the contract.[c] If there are

o-1 B. & Ald. 104; 1 Cr. & M. 819; 14 Johns. 373; 22 Pick. 393; 3 Met. 155. p-Dial. 2 c. 24: 2 Ld. Raym. 919: 2 A. & E. 256; 10 Moore, 182; 2 Bing. 464; McClel. & Y. 205; 6 Dow & R. 443, S. C.; 4 B. & C. 345; 2 M. & W. 143; Cro. J. 668; 13 Ired. 39; 1 Pet. & D. 3; Smith L. Cas. 1 p. 99, ed. 1841. q-See title BAILMENTS. r-Dyer, 172, n.; 1 Rolle Abr. 11; Pl. 2, 3; 1 Ld. Raym. 312; 1 Wms. Saund. 264, n. l.; 3 Bingh. (N. C.) 710; 6 Ad. & E. 718; 3 C. & P. 36; 6 M. & W. 485; 2 Stark. 201; 2 Str. 933; 3 Q. B. 234; Cro. Eliz. 442; F. Moore, 643; 5 Johns. 273; 2 Id. 442; 1 M'Cord, 22. s-2 How. 426; 1 Met. Mass. 84; 12 Mass. 365; 12 Vt. 259; 23 Id. 532; 29 Ala. (N. S.) 188; 20 Penn. St. 803; 22 N. H. 246; 11 Ad. & E. 983; 6 Id. 438, 456; 16 East. 372; 9 Ves. Ch. 246; 2 Crompt. & M. 623; Ambl. 18; 2 Sch. & L. 395, n. *a*; 3 Anstr. 732. t-14 Pick. 198; 2 C. M. & R. 48; 5 Bing. N. C. 341; 11 A. & E. 1027; 1 Sid. 38; 1 Rol. Abr. 30; pl. 2; Cro. E. 149; Id. 848; Cro. J. 127; 2 Bing. N. C. 646. u-7 A. & E. 49, S. C.; 2 Nev. & P. 224; 7 T. R. 203; 2 Vent. 223; 10 B. & C. 664; 2 Tyr. 93; 2 B. & C. 357; 16 E. L. & E. 466, S. C.; 7 Exch. 870; 6 Cush. 503; 11 Gratt. 636; 2 Met. (Ky.) 163. v-6 Cush. 508; 11 Id. 1; 2 Tyr. 93. w-Dyer, 272, n.; 1 Rol. Abr. 11 pl. 2, 3; 1 Ld. Raym. 312. x-1 Wm. Saund. 264, n. 1; 3 Bing. N. C. 710; 20 Barb. 387. y-Dyer, 272, n.; 1 Rol. Abr. 11 pl. 2-3; 1 Ld. Raym. 312. z-Dyer, 272, a.; 1 Rol. Abr. 11 p. 1; 3 Q. B. 234; Cro. E. 442; Moore, 643; 3 Ired. Eq. 307; 5 Johns. 273; Bartholomew *vs.* Jackson, 20 Johns. 28. a-1 M'Cord, 22; 2 Johns. 442. b-Liebre Leg. & Pol. Herm. 20. c-8 M. & W. 806-823.

peculiar expressions used in it, which have, in particular places or trades, a known meaning attached to them, it is for the jury to say what the meaning of these expressions was, but for the court to decide what the meaning of the contract was.[d]

Words, if of common use, are to be taken in their natural, plain, obvious, and ordinary significations; but if technical words are used they are to be taken in a technical sense, unless the contrary intention clearly appear in either case from the context.

All instruments and agreements are to be so construed as to give effect to the whole, or as large a portion thereof as possible.

AMBIGUITY. See above.

CUSTOM OR USAGE. An established custom may add to a contract stipulations not contained in it, on the ground that parties may be supposed to have had these stipulations in their minds as a part of their agreement, when they put upon paper or express in words the other part of it.[e] So, custom may control and vary the meaning of words.[f] For this purpose the custom must be established and not casual, uniform and not varying, general and not personal, and known to the parties.[g] Nor is it necessary that the word sought to be interpreted by the custom should be, of itself, ambiguous.[h] Custom is the thing to be proved, and usage is the evidence of the custom.[i] Whether a custom exists is a question of fact. The custom must be established by the evidence of witnesses who speak directly from the fact of the existence of the custom.[j] Generally, the knowledge of a custom must be brought home to the party who is to be affected by it. But if it be shown that the custom is ancient, very general and well known, it will often be a presumption of law that the party had knowledge of it.[k] No custom can be proved, or permitted to influence the construction of a contract, or vary the rights of parties, if the custom itself be illegal;[l] neither will courts sanction a custom by permitting its operation upon the rights of parties, which is of itself wholly unreasonable.[m] So a usage among plasterers to charge half the size of the windows at the price agreed on for work and materials is unreasonable and void.[n] No custom, however universal, or old, or known, unless it has actually passed into law, has any force over parties against their will;[o] and no usage can be incorporated into a contract, which is inconsistent with the terms of the contract.[p] Where the terms of the contract are plain, usage, even under that very contract, cannot be permitted to affect materially the construction to be placed upon it.[q] See CUSTOM, below.

EXTRINSIC EVIDENCE. It is very common for parties to offer evidence external to the contract, in aid of the interpretation of its language. But "writing cannot be cut down or taken away by the evidence of witnesses;"[r] such evidence cannot be admitted to "contradict or vary" the terms of a valid written contract.[s] For when parties at last reduce their agreement to writing, it is looked upon as the final consummation of their negotiation, and the exact expression of their purpose; and that which is not now incorporated into their written contract may be considered as intentionally rejected.[t] As to *parties* or the *subject-matter* of a contract, extrinsic evidence may and must be received and used to make them certain, if necessary for that purpose. Thus, upon a bequest to my cousin, T. S., if I have two cousins of that name, evidence may be adduced to show which of the two the testator intended,[u] and whether parcel or not of the thing demised is always a subject of parol evidence.[v] A devise simply to John Smith would necessarily create some uncertainty.[w] Where the language of an instrument has a settled legal meaning, its construction is not open to evidence. Thus, a promise to pay money, no time being expressed, means a promise to pay it on demand; and evidence that a payment at a future day was intended, is not admissible.[x] But a promise to do something other than pay money, no time being expressed, means a promise to do it within a reasonable time.[y]

The date of an instrument,[z] or if there be no date, the time when it was to take effect, which

d-5 M. & W. 535; 1 N. J. 659; Id. 24; 9 Ired. 319; 16 Vt. 525; 20 Pick. 150; 5 C. B. 515; 3 M. & W. 402; C. B. 1855; 30 Eng. L. & Eq. 508; 6 Penn. St. 45; 16 Id. 43; 5 Whart. 398; 3 M. & W. 404; 6 Id. 108; 13 N. H. 536–562; 2 East. P. C. 1120; 1 Leach's Crown cases, 169; 1 Gray, 496. e-1 M. & W. 475; 3 Greenl. 276; 2 Exch. 111; 2 Camp. 530; 5 Q. B. 303; 2 Hill (S. C.) 354; 2 Bing. (N. C.) 359; 3 Cush. 384; 13 Met. 317; 3 Gratt. 262; 1 M. & W. 476; 4 East. 154; Doug. 601; 2 Pet. 137. f-3 Camp. 16; Ryan & Moody, 75; 1 Bing. 445. g-1 Caines, 43; Doug. 510; 2 N. J. 165; 1 Cush. 177; 2 C. & P. 525; 2 C. B. 412; 1 Strob. 203; 7 Man. & G. 729; 3 M'Cord, 121; 3 Watts, 178; 1 C. & P. 59; Wright, 193; Ware, 322; 7 East. 224; 1 Gallis. 443; 2 Wash. C. C. 254; 13 Penn. St. 23; 8 How. 83–102; 10 B. & C. 760–770; 3 Id. 793; 1 B. & Ad. 605; 9 Pick. 98; 5 A. & E. 302; 1 Blatch. C. C. 526; 9 Met. 354–365; 1 C. & P. 59; 23 How. 49. h-1 Duer on Jus. 254; Doug. 510; 1 Camp. 508, n.; 2 N. J. 165; 3 Camp. 200. i-10 B. & C. 440. j-7 Man. & G. 729; 22 Wend. 322; 2 Barr. 1228; Doug. 527–530; 7 C. & P. 597; 2 Wash. C. C. 7; 1 Story, 603–607; Duer on Jus. 183; 1 Seld. 155; 13 Penn. St. 33; 9 Gill & Johns. 31. k-5 A. & E. 302; 1 B. & Ad. 605; 9 Pick. 198; 4 M. & W. 211. l-1 Duer on Jus. 272; 27 Miss. 266. m-10 Met. 375.

m-3 Yeates, 318; 1 Const. R. 308; 23 Vt. 159; 6 Piek. 131; 11 Met. 186; 1 Const. R. 303; 3 Greenl. 276; 19 Conn. 136; 2 Hill, S. C. 354; 11 Exch. 405; 30 Eng. L. & Eq. 604; 1 Duer on Jus. 269; 5 Bing. N. C. 127; 1 Camp. 505, n. (a.) o-Crabbe, 534, see next note. p-2 Sumn. 567; 2 Cromp. & J. 244; 4 Ellis & B. 500; 20 Eng. L. & Eq. 111; 6 Md. 37; 5 Hill, 437; 15 M. & W. 737; 6 Taunt. 446; 2 Barr, 237; 1 Wash. C. C. 39; 1 R. I. 147; 26 Vt. 123; 23 How. 520; 1 Cromp. & M. 808; 2 B. & Ald. 746; 1 M. & W. 466; N. P. 197; 2 Exch. 111; 3 B. & Ald. 728; 11 B. Mon. 64; 1 Smith's L. Cas. 308, b. q-26 Beav. 316. r-Tait on Ev. 326; 1 Gray, 134; 2 Kernan, 561. s-18 C. B. 213; 36 Eng. L. & Eq. 332. t-2 W. Bl. 1249; 15 C. B. 667; 29 Eng. L. & Eq. 226; 11 Barb. 147; 1 Blatch. C. C. 467; 3 Wilson, 275; 23 Vt. 231; Id. 681; 2 B. & C. 634; 2 Caines, 155; 1 Johns. 414; 4 Taunt. 786. u-1 W. Bl. 50; 4 Dow. 93. v-1 T. R. 701; 2 Stark. 508; 1 B. & A. 247; 1 Merriw. 653; 4 Wend. 659; 3 Ves. 148; 14 Penn. St. 171; 6 Sim. 54; 11 Johns. 211. w-13 M. & W. 307; 3 Mylne & K. 353; 12 A. & E. 442; 13 Pick. 261; 13 Pet. 89–97; M. & S 301; Harp. Eq. 56. x-8 Met. 97; 16 Pick. 227; 13 Met. 520; 8 Johns. 189; 2 Kernan, 462. y-8 Met. 97; 16 Pick. 231; 3 Stewart, 201; Moody & M. 300. z-4 Sanf. 79; 13 Ill. 33; 4 East 477; 4 Cush. 8e.

may be other than the day of delivery,[a] or the amount of the consideration paid,[b] may be varied by testimony. And an instrument may be shown to be void and without legal existence or efficacy, as for want of consideration,[c] or for fraud,[d] or duress, or any incapacity of the parties,[e] or any illegality in the agreement.[f] In the same way extrinsic evidence may show a total discharge of the obligations of the contract; or a new agreement substituted for the former, which it sets aside;[g] or that the time when,[h] or the place where,[i] certain things were to be done had been changed by the parties; or that a new contract, which was additional and supplementary to the original contract, had been made;[j] or that damages had been waived;[k] or that a new consideration, in addition to the one mentioned, had been given, if it be not adverse to that mentioned in the deed.[l] And if no consideration be named, one may be proved.[m]

A receipt for money is peculiarly open to evidence. It is only *prima facie* evidence either that the sum stated has been paid, or that any sum whatever was paid.[n] If a contract refer to principles of science or art, or use the technical phraseology of some profession or occupation, or common words in a technical sense, or the words of a foreign language, their exact meaning may be shown by the testimony of "experts," that is, persons possessing the peculiar knowledge and skill requisite for the interpretation of the contract.[o]

The law will not make, nor permit to be made for parties, a contract other than they would have made for themselves. If the contract which the parties have made is incurably uncertain, the law cannot enforce it; it will only declare such supposed contract no contract at all, and leave the parties to the mutual rights and obligations which may then exist between them. But the law will not pronounce a contract incurably uncertain, and therefore null, until it has cast upon it all the light that can be gathered, either from a collation of all the words used, or from all cotemporaneous facts which extrinsic testimony establishes.[p]

GENERAL RULES. The subject-matter of the contract is to be fully considered.[q] The construction which would make the contract legal is preferred to one that would have the opposite effect.[r] The presumption is—of greater or less strength, according to the language used, or the circumstances of the case—in favor of the comprehensive over the restricted, the general over the particular, and the common over the unusual sense.[s] The whole contract should be considered in determining the meaning of any or all its parts.[t] The contract should be supported rather than defeated.[u] All instruments should be construed against him who gives or undertakes, or enters into an obligation.[v] A lease to one to hold for seven, fourteen, or twenty-one years gave to the lessee, and him alone, the option at which of the periods named in the lease should determine.[w] No precise form of words is necessary even in a specialty.[x] On the contrary, it is so far immaterial in what part of an instrument any clause is written, that it will be read as of any place and with any context, and, if necessary, transposed in order to give effect to the certain meaning and purpose of the parties.[y] Where clauses are repugnant and incompatible, the earlier prevails, if the inconsistency be not so great as to avoid the instrument for uncertainty.[z] The law frequently supplies by its implications the wants of express agreements between the parties; but it never overcomes by its implications the express provisions of parties.[a] If these are illegal, the law avoids them. If they are legal, it yields to them. Preference should be given to the written part of the instruments which are in part printed and in part written;[b] but if the whole contract can be construed together so that the written words and those printed make an intelligible contract, this construction should be adopted.[c]

INTENTION. The first point is, to ascertain what the parties themselves meant and understood. But courts cannot adopt a construction of any legal instrument that shall do violence to the rules of language, or to the

a-17 C. B. 625. **b**-1 Young & C. Cas. in Ch. 136; 3 T. R. 474; 8 Conn. 304; 1 Greenl. Ev. § 26 n. (l). **c**-1 Cowen, 249; 1 Cromp. M. & R. 703; 10 Mass. 427; 5 Pick. 391; 14 Id. 198. **d**-1 Cowen, 249; 12 Johns. 337. **e**-5 Pick. 431; 40 Penn. St. 474. **f**-2 Wilson, 347. **g**-9 Pick. 298; 5 B. & Ad. 58; 2 Kern. 184. **h**-1 Johns. Cas. 22; 7 Cowen, 48; 1 Bailey, 537; 1 M. & S. 21. **i**-4 N. H. 40. **j**-1 Stark. 267; 22 How. 28. **k**-3 Johns. 528. **l**-1 Young & C. Cas. in Ch. 138; Bedell's Case, 7 Rep. 133, n.; Sanf. Ch. 163, 173; Dyer, 146, a.; Willes, 667. **m**-2 Collyer, 76. **n**-13 Penn. St. 46; 12 Id. 235; 10 Humph. 88; 2 N. J. 59; 2 T. R. 366; 6 Foster, 12. **o**-1 Sim. 24; Wigram on Wills, App. No. 1, 4 Ves. 769; 9 Clark & F. 511; 17 Penn. St. 514; 9 Clark & F. 568; 1 Anst. 39–44. **p**-12 A. & E. 431; 2 Dall. 70; 1 Ves. Sen 231; 19 Ves. 601; 13 Pick. 523; 15 Conn. 274–296; 3 McN. & G. 692; 12 Eng. L. & Eq. 52; 11 Juris. 113; 2 Ves. 162. **q**-1 Nev. & P. 326, 327; 4 Taunt. 844; 1 T. R. 674; 19 Me. 394–398; 8 Mass. 162–214; 25 Me. 401; 37 Id. 137. **r**-Co. Litt. 42–83; 10 Rep. 67. b.; 3 Cowen, 284; 4 How. (Miss.) 428; 9 Paige, 188; 9 Clark & F. 397; 4 De G. M. & G. 591; 31 Eng. L. & Eq. 142; 18 Beav. 478; 31 Eng. L. & Eq. 504. **s**-4 East. 135; 2 Whart. 491; 4 A. & E. 322; 2 Cromp. M. & R. 617; 1 Taunt. 417; 10 B. & C. 66; 4 Q. B. 419; 1 Exch. 519; 2 Sanf. 202; 2 Hill, 220; 36 Me. 28; Id. 102; Younge, 354; 1 Ves. & B. 422; 1 Russ. & M. 336. **t**-Winch. 93; 6 M. & S. 9; 3 Story, 122; 26 Me. 531; 29 Id. 346; 10 Pick. 288; 11 Vt. 583; 8 Met. 96; 1 Sneed. 141; 15 East. 541; 5 T. R. 522; 1 Show. 150–155; 4 M. & S. 426; 2 Ves. 210; 5 B. & Ald. 606; 3 Id. 175; 9 Mass. 235; 18 Pick. 325; 1 Cow. 122; 1 Edw. Ch. 134; Cowp. 9; 1 How. 169–184; 2 Id. 426–449; 2 B. & P. 13; 3 B. & P. 565; 3 J. B. Moore, 703; Dyer, 240, a.; 2 Johns. Cas. 205; 19 Johns. 97; 15 East. 530; 10 J. B. Moore, 55; 1 Barb. 311; 22 Vt. 98; 8 Q. B. 452. **u**-3 Atk. 135; 9 Q. B. 1033; Cowp. 714; 1 H. & N. 255. **v**-5 Rep. 7 b; Plowd. 289; Davies, 407; 19 Vt 202; 6 M. & W. 612. **w**-3 B. & P. 399; 9 East. 15; Plowd. 154–161; 1 H. Bl. 25; 11 Pet. 420–589; 16 Johns. 172; 5 Met. 15–27; 10 N. H. 305; 29 Me. 169; 34 Id. 25; 36 Id. 309; 22 Vt. 98. **x**-Plowd. 140; 6 De G M. & G. 453; 31 Eng. L. & Eq. 392–397. **y**-5 T. R. 526; Co. Litt. 217, b.; 1 Jarman on Wills, 437, *et seq.* **z**-Shep. Touch. 88; Hardw. 94; Owen, 84; 2 Taunt. 109; 15 Sim. 118; 2 C. B. 830; Cro. Eliz. 886; 13 M. & W. 534; 1 Freem. 247; 3 Wend. 99; 23 Am. Jur. 277–278; 2 Mod. 285; 1 Lev. 77; Sid. 105; 1 Hawks, 20; 7 J. J. Marsh, 192; 5 Tyrw. 1013. **a**-Co. Litt. 210; Goodall's case, 5 Rep. 97. **b**-4 East. 130–136; 3 Sanf. 318. **c**-14 M. & W. 794–799; N. P. 46; 17 N. Y. 294; 34 Me. 487; 4 La. 289; 8 Martin, 51–55; 11 La. An. 139.

rules of law.[d] Words must not be forced away from their proper signification to one entirely different, although it might be obvious that the words used, either through ignorance or inadvertence, expressed a very different meaning from that intended. Thus, if a contract spoke of "horses," it would not be possible for the court to read this word "oxen," although it might be made certain by extrinsic evidence that it was so intended. This is a rule which should be constantly borne in mind in putting a construction upon any legal instrument.[e] So if parties used in a contract technical words, these words could not be wrested from their customary and established meaning, on the ground that the parties used them in a sense which had never before been given to them.[f] So, too, if a manufacturer agrees to make and finish certain goods "as soon as possible," this means within a *reasonable time*, due regard being had to the manufacturer's means, his engagements, and the nature of the articles.[g]

PRESUMPTIONS OF LAW. It is a presumption of law that parties to a simple contract intended not only to bind themselves, but their personal representatives; and such parties may sue on a contract although not named therein.[h] It is also a legal presumption, that every grant carries with it whatever is essential to the use and enjoyment of the grant.[i] Where anything is to be done, as goods to be delivered, or the like, and no time is specified in the contract, it is then a presumption of the law that the parties intended and agreed that the thing should be done in a reasonable time.[j]

CONTRA BONA MORES. See CONSIDERATION, above.

CONVEYANCES. See that title.

CO-OBLIGOR is one who is bound together with one or more others to fulfil an agreement, contract, or obligation. See PARTIES.

COVENANTS. See title CONVEYANCES.

CUSTOM is such a usage as, by common consent and uniform practice, has become the law of the place, or of the subject-matter to which it relates. General customs are such as constitute a part of the common law, and extend to the whole country. Particular customs are those which are confined to a particular locality. In general, when a contract is made in relation to another, about which there is an established custom, such custom is to be understood as forming a part of the contract, and may always be referred to for the purpose of showing the intention of the party in all those particulars which are not expressed in the contract.[k] But if the meaning of the contract is certain and beyond doubt, no evidence of usage will be admitted to vary or contradict it.[l]

In order to establish a custom, it will be necessary to show its existence for so long a time that "the memory of man runneth not to the contrary," and that the usage has continued without any interruption of the right; for, if it has ceased for a time for such a cause, the revival gives it a new beginning, which will be what the law calls within memory. It will be no objection, however, that the exercise of the right has been merely suspended.[m] It must also have been peaceably acquiesced in and not subject to dispute; for, as customs owe their origin to common consent, their being immemorially disputed, either at law or otherwise, shows that such consent was wanting.[n] In addition to this, customs must be reasonable and certain.

Evidence of usage is never admissible to oppose or alter a general principle, or rule of law, so as, upon a given state of facts, to make the legal rights and liabilities of parties other than they are by law.[o] With respect to a usage of trade, however, it is sufficient if it appears to be known, certain, uniform, reasonable, and not contrary to law.[p] But if not directly known to the parties to the transaction it will still be binding upon them if it appear to be so general and well established that knowledge of it may be presumed.[q] See CONSTRUCTION, above.

DAMAGES.

Liquidated damages are those whose amount has been determined by anticipatory agreement between the parties.

Where there is an agreement between the parties for the doing or not doing particular acts, the parties may, if they please, estimate beforehand the damages to result from a breach of the agreement, and prescribe in the agreement itself the sum to be paid by either by way of damages for such breach.[r]

The sum named in an agreement as damages to be paid in case of a breach will, in general, be considered as liquidated damages, or as a penalty, according to the intent of the parties. The mere use of the words "penalty" or "liquidated damages" will not be decisive of the question if, on the whole, the instrument discloses a different intent.[s]

Such a stipulation in agreement will be considered as a penalty merely, and not as liquidated damages, in the following cases: Where the parties in the agreement have expressly declared it, or described it, as a "penalty," and no other

d-Parkhurst *vs.* Smith, Willes, 332. e-1 H. Bl. 569-614; 16 C. B. 420; 30 Eng. L. & Eq. 496; 47 Me. 530. f-3 M. & W. 535. g-1 C. B. (N. S.) 110. h-1 M. & W. 418, 423; 3 Bulst. 30; 1 Cromp. & J. 403. i-11 Liford's case, 11 Rep. 52; Co. Litt. 56, a.; 1 Wms. Saund. 323, n. (6); 13 M. & W. 706; 5 Bing. N. C. 1; 6 M. & W. 174; Brown's Leg. Max. 362, 2d Ed. j-3 Sumner, 530; 3 M. & W. 445; 3 Camp. 429; 15 Me. 140; Id. 350; 20 Me. 67; 16 Id. 164. k-1 Hall, 602; 2 Pet. 138; 5 Binn. 285; 9 Wend. 349; 1 M. & W. 476. l-13 Pick. 176; 1 Cr. & M. 808. As to the effect of usage in respect to agricultural leases, see Taylor, Landl. & Ten. § 541. m-1 Bl. Comm. 76; 2 Id 31; 14 Mass. 488; 3 Q B. 581; 6 Id. 383. n-2 Wend. 501; 3 Watts, 178. o-2 T. R. 327; 19 Wend. 252; 6 Met. (Mass.) 393; 6 Pick. 131; 6 Bin. 416. p-3 Wash. C. C. 150; 7 Pet. 1; 5 Binn. 287; 8 Pick. 360. q-1 Caines, 43; 4 Stark. 452. r-1 H. Bl. 232; 2 B. & P. 335, 350; 2 Brown Parl. Cas. 431; 4 Burr. 2225; 2 T. R. 32. s-Story Eq. Jur. 1318; 6 B. & C. 224; 6 Bingh. 141; 6 Ired. 186; 15 Me. 273; 2 Ala. (N. S.) 425; 8 Mo. 467.

intent is deducible from the instrument;[q] where it is doubtful on the language of the instrument whether the stipulation was intended as a penalty or as liquidated damages;[r] where the agreement was evidently made for the attainment of another object or purpose, to which the stipulation is wholly collateral;[s] where the agreement imposes several distinct duties or obligations of different degrees of importance, and yet the same sum is named as damages for a breach of either indifferently;[t] where the agreement is not under seal, and the damages are capable of being certainly known and estimated;[u] where the instrument provides that a larger sum shall be paid, upon default to pay a lesser sum in the manner prescribed.[v]

The stipulation will be sustained as liquidated damages in the following cases: Where the agreement is of such a nature that the damages are uncertain, and are not capable of being ascertained by any satisfactory and known rule;[w] where, from the tenor of the agreement, or from the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment.[x]

DATE includes the time (*i. e.*, day, month, and year) and place when and where an instrument of writing was made. And when the place is mentioned in the date, the law presumes, in the absence of evidence to the contrary, that it was executed at the place of the date.[y] Written instruments generally take effect from the day of their date, but the actual date of their execution may be shown, though different from that which the instrument bears. The date is not of the essence of the contract, but is essential to the identity of the writing by which it is to be proved;[z] and if a written date is an impossible one the time of delivery must be shown.[a]

DEATH. Contracts are, in general, not affected by the death of either party. The executors or administrators of the decedent are required to fulfil all his engagements, and may enforce all those in his favor. But to this rule there are the following exceptions: The contract of marriage; the contract of partnership; those contracts which are altogether personal, as, where the deceased had agreed to accompany the other party to the contract on a journey, or to serve another, or to instruct an apprentice.[b] In all those cases where one is acting for another, and by his authority, such as agencies and powers of attorney, where the agency or power is not coupled with an interest, the death of the party makes an immediate revocation. Whenever any express or implied authority is being exercised by another, the death of the party giving it is a revocation.[c]

Persons who have been once shown to have been in life are presumed thus to continue until the contrary is shown; so that it lies on the party asserting the death to make proof of it.[d] But proof of a long-continued absence, unheard from and unexplained, will lay a foundation for presumption of death. The general rule is, that the presumption of the duration of life ceases at the expiration of seven years from the time when he was last known to be living.[e] Such continued absence for seven years from the particular State of his residence, without showing an absence from the United States, is sufficient.[f]

DEBTS may be evidenced by the various forms of contracts, as conditional conveyances, judgments, mortgages, simple agreements, etc., etc. The distinguishing and necessary feature is that a fixed and specific quantity is owing, and no future valuation is required to settle it.[g]

DEFAULT is the non-performance of a duty, whether arising under a contract or otherwise.[h] By the statute of frauds "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement," etc., "shall be in writing," etc. See title FRAUD, and FRAUD, below.

DELIBERATION (the understanding by which the party examines whether a thing proposed ought to be done or not, or whether it ought to be done in one manner or another) relates to the end proposed; to the means of accomplishing that end; or to both. It is a presumption of law that all acts committed are done with due deliberation—that the party intended to do precisely what he has done. But he may show the contrary. In contracts, for example, he may show that he has been taken by surprise.

DELIVERY is frequently symbolical, as by delivery of a key to a room containing goods,[i] marking timber on a wharf, or goods in a warehouse, or by separating and weighing or measuring them,[j] or otherwise constructively delivering, as by the delivery of a part for the whole.[k]

q-2 B. & P. 340, 350, 360; 1 H. Bl. 227; 1 Campb. 78; 7 Wheat. 14; 1 McMull. 106; 2 Ala. (N. S.) 425; 5 Met. (Mass.) 61; 1 Pick. 451; 4 Id. 179; 3 Johns. Cas. 297; 17 Barb. 260; 24 Vt. 97. r-3 C. & P. 240; 6 Humph. 186; 5 Sandf. 192; 24 Vt. 97; 16 Ill. 475. s-11 Mass. 488; 15 Id. 488; 1 Brown Ch. 418. t-6 Bingh. 141; 5 Bingh. (N. C.) 390; 7 Scott, 364; 5 Sandf. 192; but see 7 Johns. 72; 15 Id. 200; 9 N. Y. 551. u-2 Barn. & Ald. 704; 6 Barn. & C. 216; 1 M. & M. 41; 4 Dall. 150; 5 Cow. 144. v-5 Sandf. 192, 640; 16 Ill. 400; 14 Ark. 329. w-2 T. R. 32; 1 Alc. & N. Ir. 389; 2 Burr. 2225; 10 Ves. Ch. 429; 3 M. & W. 535; 3 C. & P. 240; 8 Mass. 223; 7 Cow. 307; 4 Wend. 468; 5 Sandf. 192; 12 Barb. 137, 366; 18 Id. 336; 14 Ark. 315; 2 Ohio St. 519. x-2 Story Eq. Jur. § 1318; 2 Greenl. Ev. 259; 1 Bingh. 302; 7 Conn. 291; 11 N. H. 234; 6 Blackf. 206; 13 Wend. 507; 17 Id. 447; 22 Id. 201; 26 Id. 630; 10 Mass. 459; 7 Met. (Mass.) 583; 2 Ala. (N. S.) 425; 14 Me. 250. y-Plowd. 7, *b*. z-2 Greenl. Ev. §§ 12, 13, 489, n.; 8 Mass. 159; 4 Cush. 403; 1 Johns. Cas. 91; 3 Wend. 233; 31 Me. 243; 17 Eng. L. & Eq. 548; 2 Greenl. Cruise Dig. 618, n. a-Shepp. Touchst. 72; Cruise Dig. 618, n. b-Poth. Ob. c. 7; Art. 3, §§ 2, 3; Bac. Abr. *Executor* P.; 1 Burn. Eccl. L. 82; Ham. Part. 157; 1 Rawle, 61; 2 B. & Ad. 303. c-30 Vt. 11. d-2 East. 312; 2 Rolle, 461. e-1 Phillips Ev. Cowen & H. Ed. 197, 2 Cow. & H. notes, 489; 1 Greenl. Ev. § 41; 5 Johns. Ch. 263; 5 B. & Ald. 86. f-10 Pick. 515; 1 Rawle, 373; 1 A. K. Marsh, 278; 1 Penning. 167; 2 Bay, 476. g-3 Bl Comm, 154; 2 Hill N. Y. 220. h-2 B. & Ald. 516. i-2 Aik. 79; 5 Johns. 335; 1 Yeates, 529; 2 Ves. Sr. 445; 1 East. 192; see also 7 East. 558; 3 B. & Ald. 1; 3 B. & P. 233; 3 B. & C. 45. j-2 Vt. 265. k-23 Vt. 265; 9 Barb. 511; 19 Id. 416; 11 Cush. 282; 39 Me. 496; 2 H. Bl. 504; 3 B. & P. 69; see 6 East. 661. As to what constitutes delivery see 4 Mass. 661; 8 Id. 287; 10 Id. 308; 14 Johns. 167; 15 Id. 349.

Delivery is not necessary to complete a sale of personal property, as between the seller and buyer;[l] but as against third parties possession retained by the seller raises a presumption of fraud, which presumption is by some authorities regarded as conclusive;[m] by others merely as strong evidence of fraud to be left to the jury.[n] The rules requiring actual full delivery are subject to modification in case of bulky articles.[o] A condition requiring delivery may be annexed as a part of any contract of transfer.[p] In the absence of contract the amount of transportation to be performed by the seller to constitute delivery is determined by general usage. See PERFORMANCE; SALES, below.

DEMAND. In causes of action arising upon contract it is frequently necessary to secure to the party all his rights and to enable him to bring an action, that he should make a demand upon the party bound to perform the contract or discharge the obligation. Thus, where property is sold to be paid for on delivery, a demand must be made and proved on trial before bringing an action for non-delivery,[q] but not if the seller has incapacitated himself from delivering them.[r] And this rule and exception apply to contracts for money.[s]

DEPENDENT contracts are those by which it is not the duty of the contractor to perform until some obligation contained in the same agreement has been performed by the other party.[t]

DEPOSIT. See BAILMENTS.

DESCRIPTION is that which is said or written to designate a person or thing, or demonstrate condition, mode, object, subject-matter, or whatever forms a part of, or is essential to, the contract. Several descriptions may be employed to denote the same person or object; and the rule of law in such cases is, that if one of the descriptions be erroneous it may be rejected, if, after it is expunged, enough will remain to identify the person or thing intended. That is, if there be an adequate description with convenient certainty of what was contemplated, a subsequent erroneous addition will not vitiate it. On the other hand, if the matter stand in doubt upon the words, whether they import a false reference or description, or whether they are words of restraint that limit the generality of the former words—the law will never intend error or falsehood.

DEVIATION. When a contract is to build a house according to the original plan, and a deviation takes place, the contract must be traced as far as possible, and the additions, if any have been made, must be paid for according to the usual rate of charging.[u]

DISAFFIRMANCE, or a declaration of disagreement to conform to the terms of a voidable contract already entered into, may be made by an infant declaring that he will not abide by his contract with another, and in many other cases. Disaffirmance is express or implied—express when the declaration is made in express terms that the party will not abide by the contract; implied when a party does an act which plainly manifests his determination not to abide by it, as when an infant made a deed of his land, and on coming of age he made a deed of the same land to another.[v]

DISCOUNT. See INTEREST; MONEY.

DISSENT. The law presumes every person to whom a conveyance has been made has given his assent to it, because it is supposed to be for his benefit. To rebut this presumption his dissent must be expressed.[w] See ASSENT, above.

DISSOLUTION. See PARTNERSHIP.

DIVISIBILITY. See APPORTIONMENT, above; ENTIRETY, below.

EARNEST is the payment of a part of the price of goods sold, or the delivery of a part of such goods, for the purpose of binding the contract. The effect of earnest is to bind the goods sold; and upon being paid for without default the buyer is entitled to them. But, notwithstanding the earnest, the money must be paid on taking away the goods, because no other time for payment is appointed. Earnest only binds the bargain, and gives the buyer a right to demand, but a demand without the payment of the money is void. After earnest given the vendor cannot sell the goods to another without a default by the purchaser; and therefore if the latter does not come and pay, and take the goods, the vendor ought to go and request him, and then if he does not come, pay for the goods and take them away in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person.[x]

ENTIRETY. If the part of the contract to be performed by one party consists of several distinct and separate items, and the price to be paid by the other is apportioned to each item to be performed, or is left to be implied by law; such a contract is generally severable.[y] The same rule holds where the price to be paid is clearly and distinctly apportioned to the different parts of what is to be performed, although the latter is in its nature single and entire.[z]

l-Story Sales. m-1 Cranch, 309; 2 Munf. 341; 4 M'Cord, 294; 1 Overton, 91; 14 B. Mon. 533; 18 Penn. St. 113; 4 Harring. 458; 2 Ill. 296; 1 Halst. 155; 5 Conn. 196; 12 Vt. 653; 23 Id. 82; 4 Fla. 219; 9 Johns. 337; 1 Campb. 332; 2 T. R. 587. n-Cowp. 432; 2 B. & P. 59; 3 B. & C. 368; 4 Id. 652; 5 Rand. 211; 1 Bail. 568; 3 Yerg. 475; 7 Id. 440; 3 J. J. Marsh, 643; 4 N. Y. 303, 580; 2 Met. Mass. 99; 18 Me. 127; 5 La. An. 1; 1 Texas, 415. o-5 S. & R. 19; 12 Mass. 400; 16 Me. 49. p-19 Me. 147. q-5 T. R. 409; 3 M. & W. 254; 3 Price Ex. 58; 1 Tayl. (N. C.) 149. r-10 East. 359; 5 B. & Ald. 712; 2 Bibb. 280; 1 Vt. 25; 4 Mass. 474; 6 Id. 61; 16 Id. 453; 3 Wend. 556; 9 Johns. 361; 2 Me. 308; 5 Munf. 1. s-2 Dowl. & R. 55; 1 Chitty Pr. 57, n. *x*., 438, n. *a*. t-Hammond Partn 17, 29, 30, 109. u-3 B. & Ald. 47; see 1 Ves. Ch. 60; 10 Id. 306; 13 Id. 73, 81; 14 Id. 413; 6 Johns. Ch. 38; 3 Cranch, 270; 5 Id. 262; 9 Pick. 298; Chitty Contr. 168. v-2 Dev. & B. 320; 10 Pet. 58; 13 Mass. 371, 375. w-4 Mas. C. C. 206; 11 Wheat. 78; 1 Binn. 502; 2 Id. 174; 6 Id. 338; 12 Mass. 456; 17 Id. 552; 3 Johns. Ch. 261; 4 Id. 136, 529. x-1 Salk 113; 2 Bl. Comm. 447; 2 Kent Comm. 389; Ayliffe Pand. 450; 3 Camp. 426. y-3 B. & P. 162; 3 Bing. 285; 11 Wheat. 237–251; 2 B. & Ald. 882; 14 Wend. 257; 4 Barb. 36, 47; 19 Id. 313; 8 Foster, 290; 25 Penn. St. 203. z-5 B. & Ald. 942; 4 A. & E. 448; 2 M. & W. 602; 10 Johns. 203; 1 Kern 35; 5 Ellis & B. 772; 34 E. L. & E. 178; 6 Ellis & B 355; 34 Me. 107; 1 Parsons Mar. L. 45, n. 1.

But the mere fact that the subject of the contract is sold by weight or measure, and the value is ascertained by the price affixed to each pound, or yard, or bushel; of the quantity contracted for, will not be sufficient to render the contract severable.[a] And if the consideration to be paid is single and entire, the contract is entire, although the subject of the contract may consist of several distinct and wholly independent items.[b]

EQUALITY. The law presumes that contracting parties act upon a perfect equality. When, therefore, one party uses any fraud or deceit to destroy this equality, the party aggrieved may avoid the contract. In case of a conveyance or grant to two or more persons jointly without designating what each takes, they are presumed to take in equal proportions.[c]

EQUIVALENT. Sometimes a condition must be literally accomplished in the particular form specified; and some may be fulfilled by an equivalent. When such appears to be the intention of the parties, as, if A. promises to pay B. one hundred dollars, and thereupon A. dies, A.'s executors may fulfil A.'s engagement; for it is equivalent to B. whether the money be paid by A. or his executors.[d]

EQUIVOCAL. It is a general rule in the construction of contracts that when an expression may be taken in two senses, that sense shall be preferred which gives it effect. See CONSTRUCTION; above.

ERASURE or obliteration in an instrument of writing renders it void or not under the same circumstances as interlineation.[e] See ALTERATION, above; INTERLINEATION, below.

EXCEPTIONS are such clauses as exclude something from the effect or operation of the contract which will otherwise be included. They differ from reservations, exceptions being always a part of the things granted, while the latter is of things not yet existing but which are newly created or reserved. See CONVEYANCES.

FORMALITY. No precise form of words is necessary even in a specialty.[t] On the contrary, it is so far immaterial in what part of an instrument any clause is written, that it will be read as of any place and with any context, and, if necessary, transposed in order to give effect to the certain meaning and purpose of the parties.[t]

FRAUD avoids every contract, and annuls every transaction into which it enters. The fraud must be material to the contract or transaction which is to be avoided because of it; for if it relate to another matter, or to this only in a trivial and unimportant way, it affords no ground for the action of the court.[f] It must, therefore, relate distinctly and directly to this contract; and it must affect its very essence and substance.[g] The fraud must work an actual injury;[h] for if no damage be caused by the fraud, no action lies.[i] If a purchaser makes false representations of his ability to pay, his property, or credit, the sale is void, and no title passes between the parties to the contract.[j] It must appear that the injured party not only did in fact rely upon the fraudulent statement,[k] but had a right to rely upon it in the full belief of its truth; for otherwise it was his own fault or folly, and he cannot ask the law to relieve him from the consequences.[l] Concealment is not in law so great an offence as misrepresentation. Concealment, to be actionable, must of course be of such facts as the party is bound to communicate.[m] A false representation, in order to have the full effect of fraud, must relate to a substantial matter of fact, and not merely to a matter which rests in opinion, or estimate, or judgment.[n] Where a party rescinds a contract on the ground of fraud, he must do so at once on discovering the fraud.[o] If both parties act fraudulently, neither can take advantage of the fraud of the other, for the law will not interfere between them; and this is so, if both parties are acting fraudulently, although the beginning, and the greater fraud, may be on one side or the other.[p] And if one acts fraudulently, he cannot set his own fraud aside for his own benefit; for no man can be permitted to found any rights upon his own wrong.[q] Therefore if one gives a fraudulent bill of sale of property for the purpose of defrauding his creditors, *he* cannot set that bill aside and annul that sale, although those who are injured by it may.[r]

Material misrepresentations which go to the substance of a contract, avoid it, whether they are caused by mistake, and occur wholly without fault, or are designed and fraudulent.[s]

GAMING when considered in itself, without regard to the end proposed by the parties interested, is not contrary to natural equity; the contract is considered a reciprocal gift which the parties make under certain conditions. Some games depend upon skill alone, as billiards; others upon chance, as a lottery; and others of both skill and chance, as backgammon. In general, at common law, all games are lawful unless some fraud has been practised,

a-5 Met. 452; 12 Id. 286; 21 N. Y. (7 Smith) 397. b-22 Pick. 452; 3 Watts. & Serg. 109; 14 C. B. 195; 25 E. L. & E. 257; 2 Jones (N. C.) 403; Id. 454. c-4 Day, 395. d-Rolle Abr. 451; 1 Bouv. Inst. n, 760. e-See 5 Pet. 560; 11 Co. 88; 4 Cruise Dig. 368; 13 Vin. Abr. 41; Fitz. 207; 5 Bingh. 183; 3 C. & P. 55; 2 Wend. 555; 11 Conn. 531; 5 Mort. 190; 2 La. 291; 3 Id. 56; 4 Id. 270. f-5 Dow. 159; 1 Barb. 471; 5 Id. 91. g-4 Scott N. R.; 3 Man. & G. 446; 15 Ohio, 500. h-4 M. & W. 115; 5 C. B. 207; 26 Eng. L. & Eq. 261; 15 C B. 597; 29 Eng. L. & Eq. 290; 25 Penn. St. 413. i-2 Mass. 112; 25 Me. 243; 11 Vt. 615; 1 Dev. 69. j-1 Hill, 311; 14 Wend. 31; 1 Woodb. & M. 334; 4 Paige, 537. k-1 Greenl. 376; 2 Mason, 236; 9 Gill & Johns. 220; 21 Penn. St. 367; 20 Mo. 546; 21 Barb. 585; 20 Id. 253. l-11 Wend. 374; 4 Ga. 95. m-3 Eng. L. & Eq. 17; 3 Conn. 413; 5 Ala. 596; 1 Yeates, 307; 5 Penn. St. 467; 8 N. H. 463; 10 Clark & F. 934; 1 Dev. 351; 18 Johns. 40; 6 Humph. 36. n-5 Blackf. 18; 3 Bulstr. 94; 18 Me. 418; 7 Scott, 341; 1 Simons, 89; 6 Scott, 540; 3 B. & C. 623. o-5 M. & W. 83; 24 Wend. 74; 9 B. & C. 59; 4 Mass. 502; 4 Paige, 537; 4 Denio, 554; Baldw. 331; 8 Barb. 10; 10 Ala. 478. p-1 McLean, 490; 1 Ohio St. 262; 20 Wend. 24; 1 Fairf. 71; 27 Miss. 13. q-9 B. & C. 532; 5 Mass. 116; 19 Me. 281; 2 Harring. (Del.) 128. r-9 Q. B. 166; 18 Me. 231. s-3 Mo. 477; 4 How. (Miss.) 435; 4 Scam. 569; Coxe. 48; 1 Woodb. & M. 90; 2 Id. 246; 3 Story, 700; 4 B. Mon. 601. t-See CONSTRUCTION; *general rules;* and notes x, y, z, above.

or such games are contrary to public policy. Each of the parties to the contract must have a right to the thing played for. He must have given his free and full consent, and not have been entrapped by fraud. There must be equality in the play, and the play must be conducted fairly. But even when all these rules have been observed, the courts will not countenance gaming by giving too easy a remedy for the recovery of money won at play.[t] When fraud has been practised, as in other cases, the contract is void. In many of the States gaming is prohibited under penalty, and no recovery of money lost or won at gaming can be had.

GOOD-WILL, GOODS AND CHATTELS, WARES AND MERCHANDISE. See SALES.

HAZARDOUS contracts are those in which the performance of one of its objects depends upon an uncertain event.[u] See INSURANCE, MARITIME LAW.

HYPOTHECATION. See BAILMENTS, CONVEYANCES, PLEDGE.

ILLEGALITY of a contract is in general a perfect defence. This seems too obvious to need illustration. The objection that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed, but it is founded on general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident. The principle of public policy is this: No action can be founded upon or arise out of fraud.[v] No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating, or otherwise, the cause of action appears to arise from an illegal or an immoral consideration, or the transgression of a positive law of the country, then the court says he has no right to be assisted. It is upon that ground the court goes, not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault[w] the condition of the defendant is better than that of the plaintiff.[x]

IMMORALITY. See CONSIDERATION, above.

INCAPACITY, INCOMPETENCY. See PARTIES, below.

INDIVISIBILITY. See APPORTIONMENT, ENTIRETY, above.

INFANTS. See PARTIES, below.

INTENTION. See CONSTRUCTION, above.

INTERPRETATION is the discovery and representation of the true meaning of any signs used to convey ideas.[y] The "true meaning" of any signs is that meaning which those who used them were desirous of expressing. A person adopting or sanctioning them "uses" them as well as their immediate author. Both parties to an agreement equally make use of the signs declaratory of that agreement, though one only is the originator, and the other may be entirely passive. The most common signs used to convey ideas are words. When there is a contradiction in signs intended to agree, resort must be had to construction; that is, the drawing of conclusions from the given signs, respecting ideas which they do not express. Construction is usually but erroneously confounded with interpretation. Close interpretation is adopted if just reasons, connected with the formation and character of the text, induce us to take the words in their narrowest meaning. This species of interpretation has generally been called literal, but the term is inadmissible.[z] Extensive interpretation (or liberal) adopts a more comprehensive signification of the word. Extravagant interpretation is that which substitutes a meaning evidently beyond the true one; it is, therefore, not genuine interpretation. Free or unrestricted interpretation proceeds simply on the general principles of interpretation in good faith, not bound by any specific or superior principle. Limited or restricted interpretation is when we are influenced by other principles than are strictly hermeneutic ones.[a] Predestined interpretation takes place if the interpreter, laboring under a strong bias of mind, makes the text subservient to his preconceived views or desires. This includes artful interpretation, by which the interpreter seeks to give a meaning to the text other than the one he knows to have been intended.

There can be no sound interpretation without good faith and common sense. The object of all interpretation and construction is to ascertain the intention of the authors, even so far as to control the literal signification of the words; for words are to be so understood that the subject-matter may be preserved rather than destroyed.[b] Words are, therefore, to be taken as those who used them intended, which must be presumed to be their popular and ordinary signification, unless there is some good reason for supposing otherwise, as where technical terms are used. When there is no ambiguity in the words, then no exposition contrary to the words is to be made.[c] When words have two senses, of which one only is agreeable to the law, that one must prevail.[d] When they are inconsistent with the evident intention they will be rejected.[e] When words are inadvertently omitted, and the meaning is obvious, they will be supplied by inference from the context. Impossible things cannot be required. The subject-matter and nature of the context, or its objects, causes, effects, consequences, or prece-

t-Bac. Abr. u-See 1 Bouv. Inst. n. 707; 1 J. J. Marsh, 596; 3 Id. 84. v-2 Kent Comm. 466; 1 Story Contr. § 592; 22 N. Y. 272. w-Per *Mansfield*, Holman *vs.* Johnson, Cowper, 343; 4 Comst. 449. x-Broom Max. (3 Lond. Ed.) 664; Bac. Max. Reg. 19. y-Lieber, Leg. & Pol. Hermeneutics. z-Lieber Herm. 66. a-Ernesti Inst. Interpretis. b-Bac. Max. Reg 3, Plowd. 156; 2 Bl. Comm. 380; 2 Kent Comm. 555. c-Co. Litt. 147; Broom Max. (3d Lond. Ed.) 890. d-Cowp. 714. e-2 Atk. Ch. 32.

dents, or the situation of the parties, must often be consulted in order to arrive at their intention, as where words have, when literally construed, either no meaning at all or a very absurd one. The whole of an instrument must be viewed together, and not each part taken separately; and effect must be given to every part, if possible. Assistance must be sought from the more near before proceeding to the remote. When one part is totally repugnant to the rest it will be stricken out; but if it is only explanatory it will operate as a limitation. Reference to the *lex loci* on the usage of a particular place or trade is frequently necessary in order to explain the meaning.

Words spoken cannot vary the terms of a written agreement; they may overthrow it. Words spoken at the time of the making of a written agreement are merged in the writing.[h] There are exceptions to this rule, as in a case of fraud.[i] Where there is a latent ambiguity which arises only in the application and does not appear upon the face of the instrument, it may be supplied by other proof;[j] for an ambiguity which arises out of a fact may be removed by proof of the fact.[k] The rule that an agreement is to be construed most strongly against the party benefited can only be applied in doubtful cases. The more the text partakes of a solemn compact, the stricter should be its construction. Penal statutes must be strictly interpreted; remedial ones liberally;[l] and generally, in regard to statutes, the construction given them in the country where they were enacted will be adopted elsewhere. The general expressions used in a contract are controlled by the special provisions therein. In agreements relating to real property, the *lex rei sitæ* prevails; in personal contracts, the *lex loci contractus*, except where they are to be performed in another country, and then the law of the latter place governs.[m] When there are two repugnant clauses in a deed which cannot stand together, the first prevails; with a will the reverse is the case. In all instruments the written part controls the printed. Dates and amounts written at length are preferred before figures.

In addition to the above rules, there are many presumptions of law relating to agreements, such as, that the parties to a simple contract intend to bind their personal representatives; that where several parties contract without words of severalty, they are presumed to bind themselves jointly; that every grant carries with it whatever is necessary to its enjoyment; when no time is mentioned a reasonable time is meant; and other presumptions arising out of the nature of the case.[n]

It is the duty of the court to interpret all written instruments,[o] written evidence,[p] and foreign laws.[q] See ALTERATION; CONSTRUCTION; ERASURE, above.

JOINT CONTRACTS are those in which the contractors are jointly bound to perform the promise or obligation therein contained, or entitled to receive the benefit of such promise or obligation. It is a general rule that a joint contract survives, whatever may be the beneficial interests of the parties under it. When a partner, covenanter, or other person entitled, having a joint interest in a contract not running with land, dies, the right to sue survives in the other partner, etc.[r] And when the promise or obligation is to perform something jointly by the promissors or obligors, and one dies, the action must be brought against the survivor.[s] When all the parties interested in a joint contract die, the action must be brought by the executors or administrators of the last surviving obligee against the executors or administrators of the last surviving obligor.[t]

JUDGMENT. The whole purpose of the law being to settle questions and terminate disputes, it will not permit a question which has been settled to be tried again. But the party insisting on the former recovery as a bar to an action, must show that the *record* of the former suit includes the matter alleged to have been determined.[u] Consequently, where the declaration in the first suit states a particular matter as the ground of action, and issues taken by the defendant, parol proof is inadmissible to show that a different subject was litigated upon the trial.[v] A judgment on the same matter in issue is a conclusive bar.[w]

LAW OF. See CONSTRUCTION, INTERPRETATION, above.

LEGISLATION. All those whose interests are to be affected by legislation may, both morally and legally, for the protection or advancement of their interests, use all means of persuasion which do not come too near bribery or corruption; but the promise of any personal advantage to a legislator is open to objection, and therefore void.[x] And a contract tending to corrupt appointment to office, even by a private corporation, is, for a similar reason, void.[y]

LETTERS. Where a proposition is made by letter, the mailing a letter containing an acceptance of the proposition completes the contract.[z]

h-5 Co. 26; 2 B. & C. 634; 4 Taunt. 779. i-1 S. & R. 464; 10 Id. 292. j-1 Dall. 426; 4 Id. 340; 3 S. & R. 609. k-Bac. Max. Reg. 23; 8 Bingh. 247; see 1 Powell Dev. 477; 2 Kent Comm. 557; Broom Max. (3d Lond. Ed.) 541; 13 Pet. 97; 8 Johns. 90; 3 Halst. 71. l-1 Bl. Comm. 88; 6 W. & S. 276; 3 Taunt. 377. m-2 Mass. 88; 1 Pet. 317; Story Confl. L. § 242; 4 Cow. 410, *n.*; 2 Kent Comm. 39, 457, *notes*; 3 Conn. 253, 472; 4 Id. 517; 1 Wash. C. C. 253; see 12 Mass. 4. n-See CONSTRUCTION, above. o-3 See Binn. 337; 4 S. & R. 279; 7 Id. 372; 5 Id. 100; 10 Mass. 384; 3 Cranch. 180; 3 Rand. 586. p-2 Watts, 347. q-1 Penn. 388. r-1 Dallas, 65, 248; Addis. Contr. 285. s-Hamm. Partn. 156; Barb. Partn. t-Addis. Contr. 285. u-3 Comst. 173. v-3 Gray, 83; 2 Kernan, 84; Id. 343. w-20 Howell's St. Tr's 538; 2 Gallison, 229; 4 Watts, 191; Peters C. C. 202; 3 Cowen, 120; 4 Id. 559; 3 East. 346; 1 G. Greene, 421; 3 Denio, 238; 4 Comst. 71. x-5 Watts & S. 315; 6 Dana, 366; 4 M. & W. 361; 7 Watts, 152; 3 Esp. 253; 18 Pick. 472; 1 Aikens, 264; 5 Halst. 87; 10 Barb. 489; 16 How. 341. y-Davidson *vs.* Seymour, 1 Bosw. 88. z-1 B. & Ald. 681; 6 Hare, 1; 1 Ho. Lds. Cas. 381; 7 M. & W. 515; 21 N. H. 41; 4 Paige Ch. 17; 11 N. Y. 441; 4 Ga. 1; 12 Conn. 431; 7 Dana, 281; 9 Port. Ala. 605; 5 Penn. St. 339; 9 How. 390; 4 Wheat 228; see 1 Pick. 281; Parsons Mar. L. 22, n.

MAINTENANCE. See CHAMPERTY, above.

MANDATE. See BAILMENTS.

MARITIME CONTRACTS include, among others, bills of lading, charter parties, contracts of affreightment, marine hypothecations, contracts for maritime service, in building, repairing, supplying, and navigating ships or vessels, contracts and quasi contracts for averages, contributions, and jettisons.[a] The term "maritime contract" in its ordinary and proper signification does not strictly apply to contracts relating to the navigation of our great inland lakes and rivers; and yet contracts in respect to their navigation from State to State are within the admiralty jurisdiction of the United States to the same extent as though they were arms of the sea and subject to tidal influences.[b] Such contracts are, therefore, denominated maritime contracts.

MEMORANDUM is an informal written instrument recording some agreement or fact, and is usually commenced thus, "Memorandum, that it is agreed," etc., or, "Be it remembered that," etc. It is also a noting of the chief points of the agreement or contract. It should, to have any effect, be signed by both parties, or by a disinterested person who has a competent knowledge of its character and the circumstances to which it refers. If the parties sign it, it binds them. If a witness sign it, it is merely corroborative evidence of the matters noted.

MISNOMER. The use of a wrong name or a mistake in a name in contracts will not, in general, avoid the contract if the party can be ascertained.[c]

MIS-READING OR MIS-RECITAL of an agreement, contract, or other written instrument to an illiterate or blind man who is a party to it amounts to a fraud, because the contract never had the assent of both parties.[d]

MISREPRESENTATION must be both false and fraudulent in order to make a party making it responsible to the other for damages.[e] Misrepresentation as to a material part of the consideration will avoid an executory contract.[f] A misrepresentation, to constitute fraud, must be contrary to fact; the party making it must know it to be so,[g] excluding cases of mere mistake,[h] and including cases where he falsely asserts a personal knowledge,[i] and one which gave rise to the contracting of the other party.

MISTAKE is some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence.[k] That result of ignorance of law or fact which has misled a person to commit that which, if he had not been in error, he would not have done.[l]

As a general rule, mistakes of law do not furnish an excuse for wrongful acts, or a ground of relief from the consequences of acts done in consequence of such a mistake.[m] An act done or a contract made under a mistake or ignorance of a material fact is voidable and relievable.[n] The rule applies to cases where there has been a studied suppression of facts by one side, and to cases of mutual ignorance or mistake.[o] But the fact must be material to the contract, *i. e.*, essential to its character, and an efficient cause of its concoction.[p] A mistake sometimes prevents a forfeiture in cases of violation of revenue laws.[q]

An award may be set aside for a mistake of law or fact by the arbitrators apparent on the face of the papers.[r]

The word which the parties intended to use in an instrument may be substituted for one which was actually used by a clerical error.[s]

MODIFICATIONS or changes in the contract may be provided for at the time of making the contract by a condition which shall have that effect; for example, if I sell you a thousand bushels of grain upon condition that my crop shall produce so much, and it only produces eight hundred bushels, the contract is modified; it is for eight hundred bushels, or whatsoever is produced, and no more. A contract may be modified by the consent of both parties after it has been made.[t]

MUTUALITY. See OBLIGATION OF, below.

NAKED CONTRACTS are those made without consideration; for this reason they are void. A naked contract is a mere agreement without the requisites necessary to confer upon it a legal obligation to perform.[u] The term

a-See 2 Gall. C. C. 398, *et seq.*; 20 How. U. S. 393; 7 Id. 729; 19 Id. 171. b-12 How. U. S. 443, 468. c-11 Co. 20; Ld. Raym. 384; Hob. 125; see 1 Roper Leg. 131; 19 Ves. Ch. 381. d-5 Co. 19; 6 East. 309; Dane Abr. c. 86, A. 3, § 7; 2 Johns. 404; 12 Id. 469; 3 Cow. 537. e-3 Conn. 413; 10 Mass. 197; 1 Const. 328, 475; Met Yelv. 21 *a.* n 1; Peake Cas. 115; 3 Campb. 154; Marsh. Inst. b. 1 c. 10 s. 1; and see 5 M. & S. 380; 12 East. 638; 3 Bos. & P. 370. f-1 Phillips Ins. §§ 630, 675. g-2 Kent Comm. 471; 1 Story Eq. Jur. § 142; 4 Price, 135; 3 Conn. 597; 22 Me. 511; 7 Gratt. 64, 239; 6 Ga. 458; 5 Johns. Ch. 182; 6 Paige Ch. 197; 1 Story C. C. 172; 1 Woodb. & M. 342. h-5 Q. B. 804; 9 Id. 197; 10 M. & W. 147; 11 Id. 401; 14 Id. 651; 7 Cranch. 69; 13 How. 211; 8 Johns. 25; 7 Wend. 10; 11 Id. 375; 1 Met. (Mass.) 1; 27 Me. 309; 7 Vt. 67, 79; 6 N. H. 99. i-18 Pick. 96; 1 Met. (Mass.) 193; 3 Id. 469; 6 Id. 245; 27 Me. 309; 16 Wend. 646, 16 Ala. 785; 1 Bibb. 244; 4 B. Mon. 601; 3 Cranch. 281. j-Rawle Cas. (3d Ed.) 622; 14 N. H. 331; 1 Woodb. & M. C. C. 90, 342; 2 Id. 298; 2 Strobh. Eq. 14; 2 Bibb. 474; 8 B. Mon. 23; 4 How. (Miss.) 485; 3 Cranch. 282; 3 Yerg. 178; 19 Ga. 448; 5 Blackf. 18; see 13 Me. 262; 12 Pet. 26; 23 Wend. 460; 7 Barb. 65. k-Story Eq. Jur. § 110. l-Jeremy Ex. Jur. B. 2 Pt. 2, p. 358. m-6 Clark & F. Ho. L. 964-971; 9 M. & W. 54; 5 Hare Ch. 91; 8 Wheat 214; 1 Pet. 15; 9 How. 55; 7 Paige Ch. 99, 137; 2 Johns. Ch. 60; Story Eq. Jur. §§ 125-138; see 2 M'Cord Ch. 455; 6 Harr. & J. 500; 25 Vt. 603; De Gex M. & G. 76; 21 Ala. (N. S.) 252; 13 Ark. 129; 6 Ohio, 109; 11 Id. 480; 21 Ga. 118; Beasl. Ch. 165 n-Story Eq. Jur. § 140. o-3 Burr. 21; 26 Beav. Rolls. 454; 12 Sim. Ch. 465; 9 Ves. Ch. 275; 3 Chanc. Cas. 56; 2 Barb. 475; 1 Hill, 287; 11 Pet. 71; 8 B. Mon. 580; 4 Mas. C. C. 414; 5 R. I. 130. p-1 Ves. Ch. 126, 210; De Gex & S. 83; 6 Binn. 82; 11 Gratt. 468; 2 Barb. 37; 2 Sandf. Ch. 298; 13 Penn. St. 371. q-Paine C. C. 129; Gilp. Dist. Ct. 235; 4 Call, 158, and some other cases; 1 Bishop Cr. L. § 697; 4 Cranch, 347; 11 Wheat. 1; 11 Id. 1; 1 Mass. 347. r-2 B. & P. 371; 1 Dall. 487; 1 Sneed. 321; see 6 Met. (Mass.) 136; 17 How. 344; 6 Pick. 148; 2 Gall. C. C. 61; 4 N. H. 357; 3 Vt. 308; 6 Id. 529; 13 Ill. 461; 2 . & Ald. 691; 3 Id. 237, 1 Bingh. 104; 1 Dowl. & R. 366; 1 Taunt. 152; 6 Id. 254; 3 C. B. 705; 2 Exch. 344; 3 East. 18. s-Adams Eq. 169, *et seq.*; 13 Gray, 373; 6 Ired. Eq. 462; 17 Ala. (N. S.) 562. t-See 1 Bouv. Inst. n. 733. u-3 McLean, C. C. 330; 2 Denio, 403; 6 Ired 480; 1 Strobh 329; 1 Ge 294; 1 Dougl. 188.

and the rule which decides upon the nullity of its effects are borrowed from the civil law.[v]

NEGOTIABLE CONTRACTS. See BILLS OF EXCHANGE, BONDS AND NOTES.

NOTICE. When contracts express that they are to be done "on notice," either a general or some specified notice, such notice is indispensable.[w] Generally, where anything is to be done by one party on the performance of some act by the other, this other must give notice of such act.[x]

OBLIGATION OF. The legal obligation of a contract consists in the right of either party to have it enforced against the other, or to recover compensation for its breach by due process of law.[y]

Obligations are absolute when they give no alternative to the obligor, but requires fulfilment according to the engagement. Accessory obligations are dependent on the original or principal obligation—as, if I sell you a house and grounds, the principal obligation on my part is to make you a title for it; the accessory obligation is to deliver you all the title papers which I have relating to it, and take care of the estate till it is delivered to you and the like. Alternative obligations are those where a person engages to do or to give several things in such a manner that a payment or performance of one will acquit him of all—as if A. agrees to give B., upon sufficient consideration, a horse or one hundred dollars, it is an alternative obligation.[z] It is necessary that two or more things should be promised disjunctively; where they are promised conjunctively there are as many obligations as there are things enumerated; but where they are in the alternative, though they are all due, there is but one obligation, which may be discharged by the payment or performance of any of them. The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor.[a] If one of the acts is prevented by the obligee, or the act of God, the obligor is discharged from both.[b] Civil obligations are those having a binding operation in law, and which gives the obligee the right of enforcing it in a court of justice. They are such engagements as are binding on the obligor.[c] They are divided into express, implied, pure, conditional, absolute, alternative, determinate, indeterminate, divisible, indivisible, single, penal, joint, and several; they are, also, purely personal, purely real, or mixed. Conditional obligations are those whose execution is suspended by a condition which has not been accomplished, and subject to which it has been contracted. Determinate obligations are those having for their object a certain thing; as, a delivery of the horse, H.; this obligation can only be discharged by delivering the identical horse. Divisible obligations are those that, though being a unit, are susceptible of being lawfully divided with or without the consent of the parties. See APPORTIONMENT, above. Express obligations are those by which the obligor binds himself in express terms to perform his obligation. Imperfect obligations are those which are not binding on us as between individual and individual, but for whose performance we are accountable to the Almighty only, such as charity or gratitude; in this sense an obligation is a mere duty.[d] Implied obligations are those which arise by implication of law; as, if one send you daily a loaf of bread, a newspaper, or periodical, or the like, as to a regular customer or subscriber, without any express authority, and you make use of it in your family, the law raises an obligation on your part to pay the baker or publisher the value of the bread, newspapers, or periodicals, etc. Indeterminate obligations are those where the obligor binds himself to deliver one of a certain species, as a horse, and the delivery of any horse will discharge the obligation. Indivisible obligations are those not susceptible of division; as, if I promise to pay you a hundred dollars, you cannot assign one-half of this to another so as to give him a right of action against me for his share. Joint obligations are those by which two or more obligors promise the obligee to perform an obligation. When the obligation is only joint, and the obligors do not promise separately to fulfil their engagement, they must be all sued, if living, to compel the performance, or, if they be dead, the survivors must all be sued. Natural or moral obligations are those which cannot be enforced by action, but which is binding on the party who makes it in conscience and natural justice. Penal obligations are those embraced in a penal clause, which is to be enforced if the principal obligation is not performed. See DAMAGES, above. Perfect obligations are those which give a right to another to require us to give another something or to do something; they are either natural, moral, or civil. Personal obligations are those by which the obligor binds himself to perform an act without directly binding his property for its performance; it also denotes an obligation in which the obligor binds himself only, not including his heirs or representatives. Primitive or principal obligations are those which are contracted with a design that they should be the first fulfilled. Principal obligations are those which are the most important objects of the engagement of the contracting parties. Pure or simple obligations are those which are not suspended by any condition; either because contracted without condition, or because contracted with one which has been fulfilled. Real obligations are those by which real estate and not the person is

v-Dig. 19, 55; see Fonbl. Eq. 335; 2 Kent. Comm. 364; 6 Toubl. 10, n. 13 w-2 Wms. Saund. 62, a. n. (4); 2 Bulstr. 144; 23 Pick. 400; 1 Met. 189. x-6 M. & W. 442; 8 Dowl. P. C. 377; 4 Jur. 509; 7 M. & W. 126; Vin. Arb. "Condition" (A. d.) pl. 15 S. C. *nom.* Cro. Jac. 432; 2 C. & P. 610; 1 Bulstr. 12. y-2 Kas. 135. z-Poth. Ob. Pt. 2, Ch. 3, Art. 6, No. 245. a-Dougl. 14; 1 Ld. Raym. 279; 4 Mort. (N. S.) 167. b-See 2 Evans Poth. Ob. 52–54; Viner. Abr. *Condition* (S. C.). c-4 Wheat. 197; 12 Id. 318, 337. d-Poth. Obl. Art. Prel. n. 1.

liable to the obligee for the performance. As, when a person buys an estate subject to a mortgage, he is not liable for the debt, but the estate is. Secondary obligations are those which are contracted to be performed in case the primitive cannot be. As, if I sell you my house, I (primarily) bind myself to give you a title; if I cannot, my secondary obligation is to pay you damages for my non-performance of the primary obligation. Several obligations are those by which one or more individuals bind themselves separately to perform an engagement. In this case each obligor may be sued separately; and if one or more of them be dead, their respective legal representatives may be sued. Single obligations are those without penalty, as where I promise simply to pay you one hundred dollars.

IMPAIRING THE OBLIGATION OF CONTRACTS. The constitution of the United States provides that "no State shall pass" "any law impairing the obligation of contracts."[e] In general, only contracts are embraced in this provision respecting property or some object of value, and confer rights which can be asserted in a court of justice. The law of place acts upon a contract, and governs its construction, validity, and obligation, but constitutes no part of it. The law explains the stipulations of the parties, but never supercedes or varies them. This is very different from supposing that every law applicable to the subject-matter, as statutes of limitation and insolvency, enters into and becomes a part of the contract; this can neither be drawn from the terms of the contract, nor presumed to be contemplated by the parties to the contract. There is a broad distinction taken as to the obligation of a contract and the remedy upon it. The abolition of all remedies by a law operating at the present time is, of course, an impairing of the obligation of the contract. But a legislature may vary the nature and extent of remedies, as well as the times and modes in which these remedies may be pursued, and for suits not brought within such times as may be prescribed. A reasonable time within which rights are to be enforced must be given by laws which bar certain suits.[f] The meaning of the obligation is important with regard to the distinction taken between the laws existing at the time the contract is entered into and those which are enacted afterwards. The former are considered to have been in contemplation of the parties, and so far a part of their contract; the latter are said to impair, provided they affect the contract at all. See LAWS.

OFFERS or propositions to do a thing should contain a right, if accepted, of compelling the fulfillment of the contract; and this right when not expressed is always implied. Persons may change their will at any time if it be not to the injury of another; they may, therefore, revoke or recall their offers at any time before they have been accepted, and in order to deprive them of this right the offer must have been accepted on the terms in which it was made.[g] Any qualification of, or departure from, these terms, invalidates the offer, unless the same be agreed to by the party who made it.[h] When the offer has been made, the party is presumed to be willing to enter into the contract for the time limited; and, if it be not fixed by the offer, then until it be expressly revoked or rendered nugatory by a contrary presumption.[i] See ACCEPTANCE.

PAROL CONTRACTS are those which are made verbally or in writing not under seal —for those which are under seal are such as deeds or specialties, and embrace bonds, judgments, recognizances, undertakings, etc., etc.[j]

A contract which is made under seal, and afterwards modified verbally, becomes thereby wholly a parol contract.[k] In States where seals are abolished the principle of distinction in contracts is still the same, though no seal be required.

PARTIES may act independently and severally, or jointly and severally.

They may act as representatives of others, as agents, factors, and brokers, servants, attorneys, trustees, executors and administrators, and guardians.

They may act in a collective capacity, as corporations, joint-stock companies, and partnerships.

They may be new parties, by novation, assignment, and by indorsement.

They may be parties disabled in whole or in part, as infants, married women, bankrupts or insolvents, non compos mentis, drunkards, etc.

In general, all persons may be parties to contracts; but no person can contract with himself in a different capacity (as A., being a member of the firm of A. & Co., he cannot contract with the firm of A. & Co., because he cannot contract with himself) as there must be an agreement of minds.[l] And no want, immaturity, or incapacity of mind, in the consideration of the law, disables a person from becoming a party. Such disability may be entire or partial, and must be proved.[m]

In case of death of a sole party the debt or contract survives against his heirs, executors, and administrators.

In case of the death of one or more of the joint obligors or promisors the joint debt or contract survives against his heirs, executors, or administrators of the deceased obligor or promisor, as well as against the survivors.

e-Const. U. S. Art. 1, § 10, clause 1; see title LAWS, subdiv. IMPAIRING OBLIGATION OF CONTRACTS. f-3 Pet. 290; 1 How. 311; 2 Id. 608; 2 Gall. C. C. 141; 8 Mass. 430; 1 Blackf. 36; 2 Me. 293; 14 Id 344; 7 Ga. 163; 21 Miss. 395; 1 Hill (S. C.) 328; 7 B. Mon. 162; 9 Barb. 489. g-10 Ves. Ch. 438; 2 C. & P. 553. h-4 Wheat. 225; 3 Johns. 534; 7 Id. 470; 6 Wend. 103. i-6 Wend. 103. j-1 Chitty Contr. 1; 7 T. R. 350, 351, n.; 3 Johns. Cas. 60; 1 Chitty Pl 88. k-2 Watts, 451; 9 Pick 298; 3 Wend 71. l-1 Vern. Ch. 465; 2 Atk. Ch. 59; 9 Ves. Ch. 234; 12 Id. 372; 13 Id. 156; 2 Brown Ch. 400; 1 Pet. C. C. 373; 3 Binn 54; 7 Watts, 387; 11 S. & R. 210; 9 Paige Ch. 238, 650; 3 Sandf. 61; 2 Johns. Ch. 252; 4 How. 503. m-2 Stark. 326; 1 Esp. 353 1 T. R. 648; 11 Ad. & E. 634; 7 L. J Exch. 233.

When all the obligors or promisors die, the debt or contract survives against the heirs, executors, and administrators of all the deceased joint obligors and promisors.

PARTNERSHIP. See that title.

PAYMENT to an agent in the ordinary course of business binds the principal, unless the latter has notified the debtor beforehand that he requires the payment to be made to himself.[n] Payment to an attorney is as effectual as if made to the principal himself,[o] but not so to an agent of the attorney appointed by the attorney to see the debtor;[p] and where one contracts to do work and sues for the price, the defendant may prove that the plaintiff had a partner in the undertaking, and that he has paid that partner.[q] It is a general rule that payment to one partner is good, and binds the firm.[r] So payment to one of two joint creditors is good, though they are not partners in business.[s] Payment to the creditor's *wife* will not be a good payment,[t] unless she was his agent, either expressly or by course of business.[u] One may be justified in making payments to a party who is sitting in the creditor's counting-room, and apparently intrusted with the transaction of the business, and authorized to receive the money, although he be not so in fact.[v] In general, it is only a money payment that binds the principal[w] so that he is not affected by any claim which the debtor may have against the agent.[x] And an agent authorized to receive payment in money cannot bind his principal by receiving goods,[y] or a bill or note.[z]

PAYMENT IN BANK BILLS. A payment in good bank bills, not objected to at the time, is a good payment; and so is a tender of such bills;[a] but the creditor may object and demand specie.[b] A tender of copper cents cannot be made under the constitution of the United States.[c] If the bills are forged the payee may treat them as a nullity, for such bills are not what they purport to be.[d] But such forged notes (or coin) must be returned by the receiver in a reasonable time, or he must bear the loss.[e] Where the bills of a bank that has failed are paid and received in ignorance of such failure, the loss falls on the party paying,[f] but they must be returned in a reasonable time.[g]

PAYMENT BY CHECK. Payment is often made by the debtor's check upon a bank. The holder is not bound by receiving it, but may treat it as a nullity if he derives no benefit from it, provided he has been guilty of no negligence which has caused an injury to the drawer;[h] nor is it necessary to preserve the payee's rights that it should be presented on the day it was received.[i] And if drawn on a bank in which the drawer has no funds it need not be presented at all in order to maintain an action upon it.[j]

PAYMENT BY DELEGATION. Payment may be made by an arrangement whereby a credit is given or funds supplied by a third party to the creditor, at the instance of the debtor.

PAYMENT BY LETTER. In general the debtor is discharged, although the money does not reach the creditor, if he was directed or expressly authorized by the creditor so to send it, or if he can distinctly derive such authority from its being the usual course of business; but not otherwise.[k]

PART PAYMENT. Payment of a part of a debt, or of *liquidated* damages, is no satisfaction of the whole debt, even where the creditor agrees to receive a part for the whole, and gives a receipt for the whole demand;[l] unless it were a payment of a debt by a fair and well-understood compromise, carried faithfully into effect.[m] And if a part be paid before all is due,[n] or in any way more beneficial to the creditor than that prescribed by the contract;[o] here there is a new consideration for the release of the whole debt. And if a stranger pay from his own money or give his own note for a part of a debt due from another, in consideration of a discharge of the whole, such discharge is good.[p] If a creditor by his own act and choice compel a payment of a part of his claim by process of law, this will generally operate as an extinguishment of his whole claim, under the rule that he shall not divide an entire cause of action as to give himself two suits upon it.[q] He may often bring his action for a part, but a recovery in that action bars a suit for the remainder. As, if one has a demand for three articles un-

n-11 East. 36; 6 M. & S. 166; Cowp. 251; 2 C. & P. 49; 1 Cowp. 444; 2 Id. 24; 3 C. & P. 352; 5 Scott. 79; 2 Camp. 343. o-1 W. Bl. 8; 2 Doug. 623; 1 Wash. (Va.) 10; 1 Call, 147; 4 Conn. 517; 8 Pet. 18; 1 Greenl. 257; 1 Pick. 347; 8 Dowl. 656; 8 Johns. 361; 10 Id. 220; 10 Vt. 471; 3 Stew. 23; 5 Stew. & P. 34; 36 Me. 496. p-2 Doug. 623; 1 Ala. 249; 5 Eng. (Ark.) 18; 3 Greenl. 373; 15 Me. 144. q-8 Wend. 542. r-6 Ves. 198; 2 Blackf. 371; Breese, 107; 6 M. & S. 156; 1 Wash. (Va.) 77; 4 C. & P. 108; 7 N. H. 568. s-4 J. J. Marsh, 367. t-2 Scott N. R. 372. u-Addison, 316; 2 Freem. 178; 22 Me. 335. v-Moody & M. 200–238; 5 Taunt. 307; 2 Cromp. & M. 304. w-11 Mod. 71. x-10 B. C. 760. y-2 C. & P. 508. z-5 M. & W. 645; 2 Ld. Raym. 928; Holt N. P. 278. a-9 Pick. 512; 7 Johns. 476; 8 Ohio, 69; 2 Fairf. 475; 2 Cromp. & J. 16, n.; Id. 15; 3 T. R. 551; 5 Yerger, 199; 4 Esp. 267; 3 Humph. 162; 6 Ala. 226. b-3 Halst. 172; 4 N. H. 296; 4 Dev. & Bat. 435. c-2 Nott & M'Cord, 519. d-10 Wheat. 333; 2 Johns. 455; 6 Hill, 340; 2 Hawks. 326; 3 Id. 568; 7 Leigh. 617; 2 Harris & Johns. 368; 3 Scam. 392; 5 Conn. 71; 6 Mass. 182; 11 Id. 137; 3 Barr. 330; 4 Gill. & J. 463. e-7 Leigh. 617; 11 Ill. 137; 3 Pick. 394. f-11 Vt. 576; Id. 516; 9 N. H. 365; 22 Me. 88; 11 Wend. 1; 13 Id. 101; 18 Barb. 545; 18 Q. B. 722; 14 Eng. L. & Eq. 64. g-17 Mass. 33. h-1 Hall, 56; 4 A. & E. 954; 2 Camp. 515; 8 T. R. 451; 6 Id. 139; 2 B. & P. 518. i-6 Wend. 443; 2 Taunt. 396; 2 Camp. 537; 13 Wend. 549. j-1 Hall, 78. k-Peake, 67; 11 M. & W. 233; 3 Mass. 249; Ryan & Moody, 149; 1 Exch. 477. l-Pinnell's Case, 5 Rep. 117; Stra. 426; 2 B. & C. 477; 5 East. 230; 3 N. H. 518; 11 Vt. 60; 26 Me. 88; 10 A. & E. 121; 4 Gill. & Johns. 305; 5 Johns. 386; 9 Id. 333; 11 How. Pr. R. 100; 27 Me. 362; 5 Cranch, 11; 3 N. H. 518; 14 Vt. 44; 1 Pike (Ark.) 11; 1 Camp. 558, n.; 3 Id. 331; 18 Q. B. 757; 16 Eng. L. & Eq. 90; 10 Exch. 607; 28 Eng. L. & Eq. 498; 12 C. B. 261; 14 Eng. L. & Eq. 243; 3 Dowl. & L. P. C. 631; 15 C. B. 823; 29 Eng. L. & Eq. 241. m-1 Rawle, 391. n-Pinnell's Case, 5 Rep. 117; 2 Met. 283; 3 Hawks, 580. o-15 M & W. 236; 1 Stra. 42; 2 B. & C. 477; Dyer, 75, a.; 2 Met. 285–6; 2 Litt. 49; 3 Barb. Ch. 621; 5 Day, 359; 5 Johns. 386; 13 Mass. 424. p-2 Met. 283; 20 Johns. 76; 14 Wend. 116; 1 Id. 164; 13 Ala. 353; 4 B. & C. 506; 11 East. 390. q-11 S. & R. 78; 15 Johns. 229; Id. 432; 16 Id. 121; Id. 136; 8 How. Pr. R. 514; 2 Seld. 179; 6 Cush. 282; 1 Wend 487; 15 Johns. 432; 16 Id. 136.

der one contract, and sues for one, he cannot afterwards bring his action for the other two.

PENALTY. See DAMAGES, above.

PERFORMANCE. To make this defence effectual the performance must have been by him who was bound to do it; and whatsoever is necessary to be done for the full discharge of this duty, although only incidental to it, must be done by him. Nor will a mere readiness to do discharge him from his liability, unless he makes that manifest by tender or an equivalent act.[r]

IMPOSSIBILITY OF PERFORMANCE. If the performance of a contract becomes impossible by the act of God, that is, by a cause which could not possibly be attributed to the promisor, and this impossibility was not among the contingencies which a prudent man should have foreseen and provided for, this would seem a sufficient defence.[s] But mere hardship or difficulty of performance by the promisor will not suffice.[t]

KIND OF PERFORMANCE. The performance must be such as is required by the true spirit and meaning of the contract, and the intention of the parties as expressed therein. A mere literally accurate performance may wholly fail to satisfy the true purpose of the contract. But if the contract expresses and defines the exact method, and that method is accurately followed, this is a sufficient performance.[u] If the contract be in the alternative, as to do a thing on one day or another, or in one way or another, the right of election is with the promisor, if there be nothing in the contract to control the presumption.[v] A. contracted to deliver "from one to three thousand bushels of potatoes," *held* he might deliver any quantity he chose within the limits of the contract.[w] If the contract is to do one of two things by a given day the debtor has until that day to make his election; but if he suffer that day to pass without performing either, his contract is broken and his right of election gone.[x] Where A. agreed to deliver to B., by the first of May, from 700 to 1,000 barrels of meal, for which B. agreed to pay on delivery at the rate of six dollars per barrel, and A. delivered 700 barrels, and also before the day tendered to B. 300 barrels more, to make up the 1,000 barrels, which B. refused, it was held that B. was bound to receive and pay for the whole 1,000 barrels; the delivery of any quantity between 700 and 1,000 barrels being at the option of A. only, and for his benefit.[y]

PART PERFORMANCE. A partial performance may be a defence, *pro tanto*, or it may sustain an action *pro tanto;* but this can be only in cases where the duty to be done consists of parts which are distinct and severable in their own nature (thus, in an entire contract for sale, or manufacture, of a large quantity of an article or articles, at an agreed price for each, the current of authorities holds that a delivery and acceptance of part, gives a right to recover for that part, deducting whatever damages the other party sustained by the non-fulfilment of the contract;[z]) and are not bound together by expressions giving entirety to the contract. It is not enough that the duty to be done is in itself severable, if the contract contemplates it only as a whole.[a]

TIME OF PERFORMANCE. If the contract specifies no time, the law implies it shall be performed in a reasonable time,[b] and will not permit this implication to be rebutted by extrinsic testimony going to fix a definite time, because this varies the contract.[c] What is a reasonable time is a question of law.[d] If the contract refers to "the day of date," or "the date," and expresses any date, this day and not that of the actual making is taken, but if there is in the contract no date, or an impossible date, then the day of the actual making will be understood to be meant by the day of the date.[e] The rule which makes notes which become due on Sunday without grace, payable on the Monday following, applies to all contracts.[f] No one is bound to do any work in performance of his contract on Sunday,[g] unless the work by its very nature, or by express agreement, is to be done on that day, and can be then done without a breach of the law.

PRESENCE of parties in many contracts and judicial proceedings is necessary in order to render them valid. A party to a deed executed by himself must personally acknowledge it, when such acknowledgment is required by law to give it its full force and effect; and his actual presence in person is indispensable, unless another person represents him as his attorney, having authority from him for that purpose. A lunatic, a man asleep,[h] or insensible,[i] or if the act were done secretly so that he knew nothing of it,[j] would not be considered present.

PRESENTMENT. See BILLS OF EXCHANGE; BONDS AND PROMISSORY NOTES.

PRICE. See title SALES.

PRINCIPAL. See title AGENCY; and OBLIGATION, above.

r-8 Exch. 689; 20 Eng. L. & Eq. 498; 2 M. & W. 123; Shep. Touch. 378; 2 Brod. & Bing. 165; 2 M. & S. 120; 2 J. B. Moore, 274; 1 Cromp. & M. 178. s-W. Jones, 279; S. C. *nom* Palmer, 543; 1 Gray, 282; 1 Kernan, 25; 2 Id. 99. t-6 T. R. 650; Id. 750; 10 East. 530; Pet. C. C. 86; Addison, 342; 2 Kernan, 99; 4 Ellis & B. 99; Id. 963; 30 Eng. L. & Eq. 336; Rev. in 7 Ellis & B. 763. u-16 Me. 164; 11 Vt. 554; 15 Pick. 546. v-11 Johns. 59; Doug. 16. w-4 Greenl. 497; 7 Johns. 465. x-1 Bailey, 136. y-3 Johns. Cas. 81. z-18 Pick. 555; 9 B. & C. 386; 1 Camp. 53; Id. 55 n.; 6 J. B. Moore, 114; 12 S. & R. 275; 15 Vt. 515; 3 Bing. 235; 5 B. & C. 378; 5 B. & P. 61. a-6 T. R. 320; 11 Vt. 557; 20 Me. 453; 11 Met. 440; 4 Comst. 412; 8 Vt. 54; 6 Id. 35; Id. 383; 12 Id. 617; 13 Id. 268; 2 Pick. 267; 19 Id. 528; 8 B. & C 324; 4 Ellis & B. 71; 26 Eng. L. & Eq. 144. b-8 Scott, 544; 16 Pick. 227; 2 Penn. 63; 3 Bibb. 105; 3 Sumner, 530; 20 Me. 67. c-16 Pick. 227; 3 Sumner, 530; 2 Kernan, 184; 3 M. & W. 445. d-Cro. Jac. 204; 1 Pick. 43; 5 Id. 54; 2 T. R. 436; 5 M. & S. 479; 2 Greenl. 24; 1 Hawks. 41; 14 Me. 57; 16 Id. 164; 24 Id. 131; 3 Sumner, 530; 15 Me. 350. e-4 B. & C 908; Co. Litt. 46. d.; 2 L. Ray. f-10 Gray, 306. g-18 Conn. 18; 2 Id. 69; 6 Johns. 326, and note (*a*) in 2d Ed.; 20 Wend. 205; 10 Ohio, 426; 7 Blackf. 479; *Contra* 6 Gill & J. 268; 10 A. & E. 57. h-Dig. 4. 2. 1. 3. i-1 Dougl. 241; 4 Brown Part. Cas. 71; 3 Russ. Ch. 441. j-1 P. Wms. Ch. 740.

PROPOSALS or formal offers to perform some undertaking, stating the time and manner of performance, and price demanded, or one or more of these particulars, either directly or by implied or direct reference to some announcement requesting such an offer,[k] are not to be considered as subject to different rules from any other offer.[l] Until it has been accepted, a proposal may be withdrawn by the party who makes it. To be binding, the acceptance must be in the same terms without any variation whatever.[m]

PUNCTUATION is not regarded in the construction or interpretation of a written instrument, or in written law.

RATIFICATION. See title AGENCY; and AFFIRMANCE; CONFIRMATION, above.

READING. When a person signs or executes an instrument of writing it is presumed that it has been read to him; but this presumption may be rebutted. See BLIND; ILLITERATE; PRESENCE; above.

REFERENCE. See AGENCY; ARBITRATORS.

RESCISSION. Whatever party has the right to rescind must do it within the time specified, if there be such a time, or otherwise within a reasonable time.[n] What is a reasonable time is a question of law for the court only.[o] Generally, as a contract can be made only by the consent of all the contracting parties, it can be rescinded only by the consent of all.[p] But this consent need not be expressed as an agreement.[q] Generally, where one fails to perform his part of the contract, or disables himself from performing it,[r] the other party may treat the contract as rescinded.[s] No contract can be rescinded by one of the parties, unless both can be restored to the condition in which they were before the contract was made.[t] If, therefore, one of the parties has derived an advantage from a partial performance, he cannot hold this and consider the contract as rescinded because of the non-performance of the residue,[u] but must do all that the contract obliges him to do, and seek his remedy in damages.

RELEASES may either give up, discharge, or abandon a right of action, or convey a man's interest or right to another who has possession of it or some estate in the same.[v]

A release is a good defence, whether it be made by the creditor himself, or result from the operation of law.[w] No special form of words is necessary, if it declare with entire distinctness the purpose of the creditor to discharge the debt and debtor. It may expressly extend to only a part of a claim or debt,[x] or to the party released, with express reservation of rights against other parties; in which case it will be construed only as a covenant not to sue.[y] But if a plaintiff is met by a general release under his seal to the defendant, he cannot set up an exception by parol;[z] and where a release is general it cannot be limited or qualified by extrinsic evidence, although a receipt may be.[a] A release may be by operation of law, as, if parties intermarry.[b]

REQUEST. In some cases the necessity of a request is implied from the nature of the transaction; as where a horse is sold to A., to be paid for on delivery, A. must show a request,[c] or impossibility on the part of the vendor to comply if requested,[d] previous to bringing an action; so, on a promise to marry.[e] If the contract, in terms, provides for a request, it must be made.[f] It should be in writing and state distinctly what is required to be done.[g]

RESTRAINT OF TRADE. An agreement by one who exercises a certain trade, business, or occupation, to abandon the same, and thereafter exercise it no more, whether under seal or not, or whether with or without consideration, is void. The unreasonableness of "contracts in restraint of trade," and business, are: 1. Such contracts injure the parties making them, by diminishing their means for obtaining livelihoods and a competency for their families. They tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions. 2. They tend to deprive the public of the services of men in the employments and capacities in which they may be most useful to the community as well as to themselves. 3. They discourage industry and enterprise, and diminish the products of ingenuity and skill. 4. They prevent competition and enhance prices. 5. They expose the public to all the evils of monopoly. Against evils like these, wise laws protect individuals and the public, by declaring all such contracts void.[h] But contracts which are limited as to time, or place, or persons, for a good consideration, are valid, and may be enforced.[i] These rules extend to all branches of trade and all kinds of business.[j]

SAID means "before-mentioned." In contracts and pleadings it is usual and proper, when it is desired to speak of a person or thing before-mentioned, to designate them by the term "said," or "aforesaid," or by some similar term; otherwise the latter description may be ill for want of certainty.[k]

k-See 35 Ala. (N. S.) 33. l-Pierce Am. Rly. L. 364. m-1 La. 190; 4 Id. 80. n-2 Camp. 530; 1 Starkie, 107; 1 J. B. Moore, 106. o-14 Me. 57; 22 Pick. 546; 6 Scott. 187. p-4 Man. & G. 898. q-The rescission by one party may be as strongly expressed by acts as by words, 1 Pick. 57; 4 Id. 114; 5 Greenl. 277; 7 Bing. 266; 1 T. R. 133. r-2 C. B. 905; 2 Penn. 454; Id. 445; 8 Foster, 561; 9 La. An. 31; 4 Wend. 285. s-6 Taunt. 154. t-5 East. 249; 2 Young & J. 278; 4 Man. & G. 903; 2 Exch. 783; 14 Me. 364; 1 Met. 547; 4 Blackf. 515; 2 Watts, 433; 10 Ohio, 142; 27 Miss. 498; 3 Vt. 442; 4 N. H. 298; 1 Id. 17; 22 Pick. 283; 32 Vt. 1. u-1 M. & W. 231. v-Sh. Touch. 320; Litt. 444; Bac. Abr.; Vin. Abr.; Roll. Abr.; Nelson Abr. w-12 M. & W. 441; Co. Litt. 291, a. x-2 Roll. Abr. 413, tit.; Release (H.) pl. 1. y-C. B. 1858; 21 Law Rep. 376. z-8 A. & E. 854. a-1 B. & C. 704; 1 McLean. 194. b-1 Ld. Raym. 515; 2 P. Wms. 242; Hob. 216; 5 T. R. 384. c-5 T. R. 409; 1 East. 209. d-10 East. 359; 5 B. & Ald. 712. e-2 Dowl. & R. 55. f-1 Johns. Cas. 327. g-1 Chitty Pr. 497. h-19 Pick. 51; 7 Cowen. 307; 21 Wend. 157; Id. 166; 1 Hoff. Ch. 479; 7 Blackf. 344; 11 Ohio St. 349. i-4 Mass. 223; 9 Id. 522; 4 Bibb. 486; 1 Pick. 413; 3 Id. 188; 7 Cow. 397; 6 Pick. 206; 19 Id. 51; Id. 523. The whole subject examined by *Bronson J.* in 21 Wend. 157; Id. 166; 1 Hoff. Ch. 470; 7 Blackf. 344; 11 Ohio St. 349. j-19 Pick. 51. k-2 Lev. 207; Com. Dig. Pl., Gould. Pl. C. 3, § 63.

SET-OFF. Set-off is a mode of defence by which the defendant acknowledges the justice of the plaintiff's demand, but sets up a demand of his own against the plaintiff, to counterbalance it in whole or in part.[m]

SETTLEMENTS are agreements by which two or more persons who have dealings together so far arrange their accounts as to ascertain a balance due from one to the other. They are also payments in full.

SHIPPING ARTICLES are agreements in writing or print between the master and seamen or mariners on board of his vessel (except such as shall be apprenticed or servant to himself or owners), declaring the voyage or voyages, term or terms of time for which such seamen or mariners shall be shipped. It is also required that at the foot of every such contract there shall be a memorandum, in writing, of the day and the hour on which each seaman or mariner, who shall so ship and subscribe, shall render himself on board to begin the voyage agreed upon. For want of shipping articles the seaman is entitled to the highest wages which have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage, within three months next before the time of such shipping, on his performing the service, or during the time he shall continue to do duty on board such vessel without being bound by the regulations, or subject to the penalties or forfeitures contained in said act of Congress; and the master is further liable to a penalty.[n]

Shipping articles ought not to contain any clause which derogates from the general rights and privileges of seamen; and if they do, the clause will be declared void.[o] A seaman who signs shipping articles is bound to perform the voyage, and he has no right to elect to pay damages for non-performance of the contract.[p]

SIGNATURE is the act of putting one's name at the end of an instrument to attest its validity. It is the name thus written. It is not necessary that a party should write his name himself to constitute a signature; his mark is sufficient, though he is able to write.[q] A signature may be made by another party at the request, and in the presence of the contracting party. A signature may be made by a party, another person guiding his hand with his consent.[r]

SILENCE cannot be considered as a consent to a contract, except in cases where the silent person is bound in good faith to explain himself; in which case silence gives consent.[s] But no assent will be inferred from a man's silence unless he knows his rights, and knows what he is doing, nor unless his silence is voluntary.

SIMPLE CONTRACTS are those the evidence of which is merely oral or in writing not under seal nor of record.[t] See introduction to the subject "CONTRACTS," above.

SPECIALTIES are writings sealed and delivered containing some agreement.[u] See introduction to the subject "CONTRACTS," above.

SPECIFICATIONS are the particulars and details of the contract at large.

SPELLING though bad will not avoid a contract when it appears with certainty what is meant. For example, where a man agreed to pay *threty* pounds he was held to pay *thirty* pounds; and *seutene* was holden to be *seventeen*,[v] and *undirtood* to be *understood*.[w]

STAKEHOLDERS must deliver the thing holden by them to the person entitled to it, on demand. It is frequently questionable who is entitled to it. In case of an unlawful wager, although he may be justified for delivering the thing to the winner, by the express or implied consent of the loser,[x] yet if before the event has happened he has been required by either party to give up the thing deposited with him by such party, he is bound so to deliver it;[y] or if, after the event has happened, the losing party gives notice to the stakeholder not to pay the winner, a payment made to him afterwards will be made to him in his own wrong, and the party who deposited the money or thing may recover it from the stakeholder.[z]

STRANGER. See CONSIDERATION, above.

STRATAGEM. See CONCEALMENT; FRAUD; MISREPRESENTATION, above.

STATUTE. All contracts made in violation of a valid statute are absolutely void and of no effect.

SUB-CONTRACTS are those made by persons who have contracted for the performance of labor or services with a third party for the whole or part performance of that labor or service.[a] See AGENCY; "*Sub-Agents*," above.

SUIT. It is a good cause of abatement of an action upon contract that another is then pending for the same cause and between the same parties.[b] But the prior action must be between the same parties;[c] and the plaintiff must sue in the same capacity.[d] For no man can use the machinery of the law merely to vex and distress another.

SUNDAY. Labor of whatever kind, other than the household offices of daily necessity, or other works of charity and necessity, on the first day of the week, commonly called Sunday,[e] is, in general, under penalty, prohibited, but all persons do not come under prohibition.[f]

If a contract is commenced on Sunday, but not completed until a subsequent day, or if

m-Barbour on Set-off, p. 17; see PRACTICE; SET-OFF AND COUNTER CLAIM. n-Act Congress, July 20, 790. o-2 Sumn. C. C. 443; 1 Mas. C. C. 541. p-2 Va. Cas. 276. q-8 A. & E. 94; 3 Nev. & P. 228; 3 Curt. C. C. 752; 5 Johns. 144. r-4 Wash. C. C. 262, 269. s-6 Toull. 1. 3, t. 3, n. 32 note; 14 S. & R. 393; 2 Belt. Supp. Ves. Ch. 442; 1 Dane Abr. C. 1, Art. 4, § 3; 8 T. R. 483; 6 Penn. St. 336; 1 Greenl. Ev. § 201; 2 Bouv. Inst. n. 1313. t-1 Chitty Contr. 1; 1 Chitty Pl. 88. u-2 S. & R. 502; Willes, 189; 1 P. Wms. Ch. 130. v-Cro. Jac. 607; 10 Co. 133, a.; 2 Rolle Abr. 147. w-1 Chitty Cr. L. x-8 Johns. 147. y-3 Taunt. 377; 4 Id. 492. z-16 S. & R. 147; 7 T. R. 536; 8 Id. 575; 4 Taunt. 474; 2 Marsh, 542. a-9 M. & W. 710; 3 Gray, 362; 17 Wend. 550; 22 Id. 395; 1 E. D. Smith, 716; 2 Id. 558. b-4 Blackf. 56; 4 Dana, 62; 7 S. & Marsh, 333. c-2 Dev. 244; 15 M. & W. 494; 1 Camp. 60; 2 Sumn. 586; 2 Bailey, 362; Id. 412; 17 Vt. 138. d-3 Penn. St. 434. e-4 Ohio St. 566; 2 Id. 400, 391. f-Id.

it merely grew out of a transaction which took place on Sunday, it is not for this reason void.[g] Thus, if a note is signed on Sunday, its validity is not impaired if it be not delivered on that day.[h] But, a contract made in violation of the express provisions of the Lord's day Acts, is void, like any other illegal and prohibited contract.[i]

SURETYSHIP. See title PAYMENT.

SURPRISE. See DELIBERATION, above.

TENDER. If the tender be of money, it can be a defence only when made before the action was brought.[j] A tender may be made to a *quantum meruit*.[k] A tender does not bar the debt as a payment would, for in general he is bound to pay the sum which he tenders whenever he is required to do so.[l] But it puts a stop to accruing damages or interest for delay in payment, and gives the defendant costs.[m] It need not be made by the defendant personally; if made by a third person, at his request, it is sufficient;[n] and if made by a stranger without his knowledge or request, a subsequent assent of the debtor will operate as a ratification of the agency and make the tender good.[o] Any person may make a valid tender for an idiot.[p] If an agent, furnished with money to make a tender, at his own risk tenders more, it is good.[q] So, a tender need not be made to a creditor personally; but it must be made to an agent actually authorized to receive the money.[r] If the money be due to several jointly, it may be tendered to either, but must be pleaded as made to all.[s] The whole sum due must be tendered,[t] as the creditor is not bound to receive a part of his debt. If the tender be for the whole debt, it is valid.[u] If the obligation be in the alternative, one thing or another, as the creditor may choose, the tender should be of both, that he may make his choice.[v] To make a tender of money valid the money must be actually produced and proffered,[w] unless the creditor expressly or impliedly waives this production.[x] The debtor is not bound to count out the money, if he has it and offers it.[y] No condition must be annexed to the tender,[z] which the creditor can have any good reason whatever for objecting to; as, for instance, that he should give a receipt in full of all demands.[a] The tender should be in money made lawful by the State in which it is offered.[b] Generally, a tender is valid, and effectual if made at any time after the debt is due; and a demand made after the tender if for more than the sum tendered, will not avoid the tender.[c] Certainly not, if the demand is for more than the real debt, although the excess was for another debt truly due.[d]

TENDER OF CHATTELS. The thing tendered may not be money, but some specific article. If one is bound to deliver chattels at a particular *time* and *place*, it may not be enough if he has them there; they may be mingled with others of a like kind which he is not to deliver. Or they may need some act of separation, or identification, or completion, before they could become the property of the other party.[e] Generally, if no time or place be specified, the articles are to be delivered where they are at the time of the contract,[f] unless collateral circumstances designate a different place.[g] If the time be fixed,[h] but not the place, then it will be presumed that the deliverer was to bring the articles to the receiver at that time, and for that purpose he must go with the chattels to the residence of the receiver,[i] unless something in their very nature or use, or some other circumstances of equivalent force, distinctly implies that they are to be left at some other place.[j] It may happen, from the cumbrousness of the chattels or other circumstances, that it is reasonable and just for the deliverer to ascertain from the receiver, long enough beforehand, where they shall be delivered; and then he would be held to this as a legal obligation.[k] So, too, in such a case, the receiver would have a right to designate to the deliverer, a reasonable time beforehand, a place of delivery reasonably convenient to both parties, and the deliverer would be bound by such direction.[l] If no place be indicated, and the deliverer is not in fault in this, he may deliver the chattels to the receiver, in person, at any place which is reasonably convenient.[m] And if the receiver refuses or neglects to appoint any place, or purposely avoids re-

g-3 Foster, 229; 19 Vt. 358; 24 Id. 187; 11 Ala. 885; 3 B. & C. 282; 4 Bing. 84; 2 Ohio St. 387. h-35 Me. 143; 18 Vt. 379; 2 Penn. St. 448; 9 N. H. 500; 7 Gray, 543. i-6 Vt. 219; 12 Met. 24; 4 Cush. 322. j-Bac. Abr. Tender (D) 5 Pick. 106; 8 East. 168; 3 Pick. 414; 5 Id. 187. k-Stra. 576; B. R. 10 W. 3; 2 Salk. 622. l-3 Taunt. 95; 6 Pick. 340; 2 B. & P. 550; 5 Bing. 31; 5 Pick. 291; 4 B. & Ad. 132; 2 B. 377; 5 M. & W. 94; 5 Id. 9; 1 Man. & G. 873; 12 M. & W. 743; 5 Jur. 317. m-5 C. B. 365; 3 Bing. 290; 9 Cowen, 641; 3 Johns. Cas. 243; 17 Mass. 389; 12 Johns. 274; 10 S. & R. 14; 2 Cush. 475; 5 Pick. 106. n-Cro. Eliz. 48; 1 Rol. Abr. 421, K. pl. 2; 2 Fairf. 188. o-2 C. & P. 78; 2 Fairf. 188; 2 M. & S. 86. p-Co. Litt. 206, b; 1 Rawle, 408. q-2 M. & S. 86. r-1 M. & W. 313; 1 Camp. 477; 2 Fairf. 475; 1 Gray, 600; 5 Taunt. 307; 1 Car. & K. 36; 4 B. & C. 28; 6 Dowl. & R. 132; 3 C. & P. 453; Moody & M. 200. s-3 T. R. 683; 16 S. & R. 371. t-5 C. B. 365; 2 Conn. 659. u-2 Stra. 916; 5 Rep. 115; 4 B. & Ad. 546; 3 T. R. 683; Peake, 88; 5 D. & R. 289; 5 M. & W. 306; 3 Camp. 70; 6 Taunt. 336; 1 C. & P. 365; 5 D. & R. 289; 3 Bing. 304; 22 Vt. 440. v-Fordley's Case, 1 Leon, 68. w-Noy, 74; Com. Dig. pl. (2 W.) 28; 10 East. 101; 4 Esp. 68; 7 J. B. Moore, 59; 3 C. & P. 342; 1 Scott. 70; 5 Esp. 48; 8 Greene, 107; 5 N. H. 440; 7 Id. 535; 15 Wend. 637; 6 Md. 37. x-2 M. & S. 86; 6 Pick. 356; 2 C. & P. 77. y-8 Ohio, 169, 172; Walker (Miss.) 369; 6 Pick. 356. z-Bevans *vs.* Rees, 5 M. & W. 306. a-Glasscott *vs.* Day, 5 Esp. 48; 12 Mass. 450; 3 Pick. 48; 20 Wend. 47; 8 C. & P. 259; 2 Id. 50; Id. 51, n.; 30 Conn. 344. b-Wade's Case, 5 Rep. 114; 13 Mass. 235; 4 N. H. 296. c-22 Vt. 440. d-5 C. B. 378; 11 M. & W. 356. e-7 Greenl. 91; 2 Fairf. 398; 24 Me. 316; 32 Id. 31; 5 Johns. 119; 1 D. Chip. 399; Walker, 401; 4 Cowen, 452; 7 Conn. 110; 4 Mass. 474; 4 N. H. 40; 14 Id. 459; 13 Vt. 258; 14 Id. 457; 3 Wash. C. C. 140. f-7 Barb. 472; 3 Watts & S. 295; 1 Stew. 524; 6 Ala. 326; Id. 24; Hardin, 80, n.; 1 Wash. (Va.) 326; 5 Cowen, 518; 20 Wend. 196; 2 Denio, 145. g-Bronson *vs.* Gleason, 7 Barb. 472. h-If the time fall on Sunday, tender on Monday is good, 10 Ohio, 426; 3 Cush. 137; 18 Conn. 18; 2 Id. 69; 20 Wend. 205; 5 Yerg. 410; 1 Greenl. 120; 3 Wash. C. C. 140; 19 Vt. 587; 2 Scott, N. R. 485. i-3 Watts & S. 295; 2 Penn. 63; 1 Greenl. 120. j-11 Vt. 612; 1 Leon, 69; 8 Vt. 340; 10 Id. 274; 3 Day, 327; 1 Kern. 80; 2 Seld. 585. k-Co. Litt. 210, b.; 3 Watts & Serg. 295; 20 Me. 325; 5 Greenl. 192; 16 Me. 49; 3 Dev. 78; 2 Penn. 63. l-20 Me. 325; 1 Greenl. 120. m-Howard *vs.* Miner, 20 Me. 325.

ceiving notice of a place, the deliverer may appoint any place, with a reasonable regard to the convenience of the other party, and there deliver the articles.[n]

If the promise be to pay money at a certain time, or deliver certain chattels, it is a promise in the alternative; and the alternative belongs to the promisor;[o] he may do either the one or the other, at his election; nor need he make his election until the time when the promise is to be performed; but after that day has passed without election on his part, the promisee has an absolute right to the money, and may bring his action for it.[p] A contract to deliver a certain quantity of merchandise at a certain time means, of course, to deliver the whole then.[q]

If by the terms of the contract certain specific articles are to be delivered at a *certain time* and *place* in payment of an existing debt, this contract is fully discharged and the debt is paid, by a complete and legal tender of the articles at the time and place, although the promisee was not there to receive them; and no action can thereafter be maintained on the contract.[r] But the property in the goods has passed to the creditor, and he may retain them as his own.[s]

If there be a contract to deliver wares or goods which are merchandise, and belong to a certain trade, this means wares or goods of the kind, fashion, and quality in common use in that trade, and not such as are antiquated and unsalable.[t]

TERM is that space of time allowed for the performance of a contract, as if a builder engage to construct a house for you, you must allow a reasonable time for fulfilling his engagement.[u]

TRANSPORTATION. See DELIVERY; PERFORMANCE, above.

TRIPARTITE consists of three parts. See CONVEYANCING.

UNCONSCIONABLE bargains are those contracts which no man in his senses not under delusion would make, on the one hand, and which, on the other, no fair and honest man would accept.[v]

UNCERTAINTY. See CERTAINTY, above.

UNINTELLIGIBLE CONTRACTS have no effect whatever. See CONSTRUCTION; INTERPRETATION, above.

UNLAWFUL CONTRACTS are of two kinds: those which are void and those which are not. When the law expressly prohibits the transaction in respect of which the agreement is entered into, and declares it to be void, it is absolutely so.[w] But when it is merely prohibited without being made void, although unlawful it is not void.[x] See CONDITIONS; CONSIDERATION; CONSTRUCTION, above.

USURY. See INTEREST; PAYMENT.

VIS MAJOR. See title ACCIDENT.

VOID CONTRACTS are those which have no force or effect whatever.

Wagers upon the result of an election have always been considered as void, as being contrary to sound policy, and tending to impair the purity of elections.[z] All wagers are considered illegal, and contrary to good policy.[a] Wagers as to the mode of playing, or the result of any illegal game, as boxing, wrestling, cockfighting, etc., are void at common law.[b] See STAKEHOLDER, above.

VOIDABLE CONTRACTS are those which have some force or effect, but which, in consequence of some inherent quality, may be legally annulled or avoided; for example, a contract made by an infant with an adult may be avoided or confirmed by the infant on his coming of age. Voidable contracts are, generally, of binding force until avoided by the party having the right to annul them.[y]

WAIVER. If after knowledge of a supposed fraud, surprise, or mistake, a party performs a contract in part, he will be considered as having waived all objection.[c] One may renounce or waive that which is in his favor, provided it be of no detriment to, or prejudice another's rights.

WARRANTY. See INSURANCE; SALES.

WORDS are to be understood in a proper or figurative sense, and they are used both ways in law. Every one is required to use words in the sense they are generally understood; for as speech has been given to man to be a sign of his thoughts for the purpose of communicating them to others, he is bound, in treating with them, to use such words or signs in the sense sanctioned by usage—that is in the sense in which they themselves understand them—or else he deceives them.[d]

WORK AND LABOR. See BAILMENTS.

CONTRACT FORMS.

Articles of agreement consist of a written memorandum of the terms of an agreement. They may relate either to real or personal estate, or both; and if in proper form will create an estate or trust, such that a specific performance may be enforced.

n-Co. Litt. 210; 25 Wend. 405; 2 Hill, 351; 20 Me. 325. o-7 Ala. 775; 4 Yerger, 177; 5 Humph. 423; 14 Vt. 457. p-3 Day, 327; 2 Penn. 63, 301; 2 Greene, 205; 3 Scam. 389; 17 Vt. 105; 1 Greenl. 120. q-2 Penn. 63; 9 B. & C. 386; 15 Vt. 515; 18 Pick. 555. r-2 Blackf. 87; 8 Johns. 474; 24 Vt. 536; 4 Barr, 669; 2 Greene, 254; 1 Stew. 272; 5 Watts, 262; 9 Yerg. 414; Peck. 212; 10 Yerger, 245; 2 Penn. 63; 7 Conn. 110; Brayton, 223; 5 Johns. 119; 4 Cow. 552; 1 Root, 443, 55. s-See preceding note, 1 N. H. 295; Co. Litt. 207; 9 Co. 79; 1 Root, 55, 443; 8 Johns. 474; 3 Johns. Cas. 243. t-Dennet *vs.* Short; 7 Greenl. 150. u-1 Wis. 314. v-4 Bouv. Inst. n. 3838. w-3 Binn. 533. x-12 S. & R. 237; Chitty Contr. 230; 23 Am. Jur. 1–23; 1 Mod. 35; 8 East. 236, 237; 3 Taunt. 244; Hob. 14. y-Bac. Abr. *Inf.* (I 3.); Com. Dig. *Enf.*; Fonbl. Eq. B. 1, C. 2, § 4, n. *b*; 3 Burr. 1794; 1 Nels. Ch. 55; 1 Atk. Ch. 354; Str. 937; Perkins, § 12. z-1 T. R. 56; 16 S. & R. 147; 2 Browne (Pa.) 182; 4 Johns. 426; 8 Id. 454; 11 Id. 23; 12 Id. 1; 9 Cowen, 169; 1 R. & I. 1; 12 Johns. 376; 5 Wend. 250; 7 Watts, 295; Id. 343; 4 Harris & McH. 284; 1 Bailey, 486; 1 Greene, 3-3; 1 La. An. 176; 18 Vt. 9; 9 Dana, 31; 2 Gratt, 257; 10 Ala. 316; 15 Conn. 28; 2 Humph. 131; 1 Harring. (Del.) 517; 3 Id. 420; 8 Mo. 8; 24 Ohio St. 328. a-2 Vt. 144; 2 Mass. 1; 3 Pick. 446; 12 Met. 399; 6 N. H. 104; 1 Strobh. 82; 6 Whart. 176; 15 Me. 233; 3 Cal. 328. b-2 H. Bl. 43; 1 C. & P. 613; 3 Camp. 140; 1 Bing. 1; 1 Hall, 300; 1 Nott & M'Cord, 180; 4 M'Cord, 211; 3 Denio, 107, 340; 13 Penn. St. 601; 1 Cowp. 729; 4 Camp. 152; 1 Rawle, 42; 1 B. & Ald. 683. c-1 Brown Parl. Cas. 289. d-Heccen. Præl. Puffend. Lib. 1, § 197; Wolff Inst. Jur. Nat. § 798.

The instrument should contain:

1. **The date,** which should be truly stated.

2. **The names of the parties,** stated clearly and explicitly, with their additions, for the purposes of distinction, as well as a designation as parties of the first, second, etc., part.

3. **The subject-matter of the contract,** including the time, place, and more important details of the manner of performance.

4. **The covenants** to be performed by each party.

5. **Should be signed** by the parties, or their agents. When signed by an agent, the proper form is, A. B., by his agent (or attorney) C. D. (or as in the form below).[e]

To render an agreement complete, six things must concur. There must be: 1. A person to contract. 2. A person able to be contracted with. 3. A thing to be contracted for. 4. A lawful consideration. 5. Clear and explicit words to express the agreement; and, 6. The assent of the contracting parties.

Contract—Introductions.

We agree:
That, etc.; *or*,

We hereby agree:
That, etc.; *or*,

It is hereby agreed:
That, etc.; *or*,

This agreement witnesseth:
That, etc.; *or*,

Know all men by these presents:
That, etc.; *or*,

This agreement, made this —— day of ——, between A. B. and C. D., witnesseth: *or*,

---

A. B., of —— county, farmer, and C. D., of —— county, trader, have this —— day of ——, agreed together as follows: *or*,

---

This agreement (*or* contract) for building, etc. (*or* merchandise, *or* work, etc.) entered into this —— day of ——, by and between A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth: *or*,

---

Articles of agreement made and concluded (*or* had, made, concluded, and agreed upon) this —— day of ——, between A. B., of the city of ——, merchant, and C. D., of the city of ——, manufacturer; *or*,

---

Know all men by these presents: That this agreement (*or* these articles of agreement, *or* this contract, *or* indenture) had, made, entered into, concluded, and agreed upon, this —— day of ——, A. D. ——, witnesseth: *or*,

---

To all to whom these presents may come greeting (*or* To all whom it may concern): Know ye that this agreement, etc., between the ——, a corporation, existing under the laws of the State of ——, of the first part, and C. D., E. F. and G. H., a company, doing business under the firm-name and style of The C. D. —— Manufacturing Company of ——, of the second part, witnesseth:

Contract—Conclusions.

Signed (and sealed).[f] ***or*,**

Signed, sealed and acknowledged.[g] *or*,

Witness our hands (and seals). ***or*,**

Given under our hands (and seals). ***or*,**

In witness whereof, we hereunto set our hands, etc.; *or*,

In witness whereof, the parties to these presents have hereunto set their hands, etc.; *or*,

---

In witness whereof, we have hereunto set our hands (and affixed our seals) (at ——) **this —— day of ——. *or*,**

In witness whereof, we have hereunto set our hands (*or* subscribed our names) **the day and year first** (*or* last) **above written. *or*,**

In witness whereof, A. B., the party of the first part, and C. D., the party of the second part, in their own proper persons, have hereunto respectively and severally set their hands and seals, this —— day of —— (*or* the day and year first, *or* last) **above written.**

Contract—Testatum or Witness Clauses.

Test; *or*,

Attest; *or*,

In witness; *or*,

Witnesses; *or*,

In presence of; *or*,

Executed (and delivered) **in presence of; *or*,**

Signed and interchanged in presence of; *or*,

Signed, sealed, and delivered in presence of; *or*,

Signed, sealed, and acknowledged in presence of:

See title WILLS, post.

Contract—General Form.

By Agent or Attorney in Fact.

If A. signs "A., for B.," this is the signature of A., and he is the contracting party, although he makes the contract at the instance and for the benefit of B. But if he signs "B., by A.," then it is the contract of B., made by him through his instrument A. In the first case, A. is principal; in the second, B. is the principal and A. his agent. The name of the principal must appear *as such* in the signature of a deed;[h] and in agreements, the words must be sufficient to bear that construction of the signature.[i] Parol evidence may always be admitted to *charge* an unnamed principal, but not to discharge an actual signer.[j]

This agreement, made this —— of ——, A. D. ——, by and between A. B., of —— county, in the State of ——, of the first part, *by C. D., his attorney in fact*, and E. F., of —— county, in the State of ——, of the second part, *by G. H., his attorney in fact*, witnesseth,

That said party of the first part, etc. (*here follow as in other agreements, below*).

In witness whereof, the parties have hereunto set their hands, the day and year first above written.

A. B.,
By E. F., his attorney in fact.
C. D.,
By G. H., his attorney in fact.

Contract—General Form.

With provisions fixing damages in case of breach.

ASCERTAINED, FIXED, or LIQUIDATED DAMAGES are damages whose amount has been determined by anticipatory agreement between the parties to an agreement.

A stipulation for liquidated damages will be sustained as liquidated damages in the following cases:

First, Where the agreement is of such a nature that the damages are uncertain, and are not capable of being ascertained by any known rule.[k]

---

e-Plowd. 161; Co. Litt. 35, b. f-In many of the States private seals are abolished. g-Mod. h-Bac. Abr. Leases, 1, 10; 5 Pet. 319, 359; 9 M. & W. 79. i-5 Wheat. 326, 337; 11 Mass. 197; 6 Cush. 54; 7 Id. 217; 2 East. 154; 3 Blackf. 55; 6 B. Mon. 612; 12 Ired. L. 95; 1 Busb. L. 422; 8 Texas, 98; 12 Id. 75; 21 Conn. 627; 33 Me. 106; 3 Fla. 262; 9 Barb. 528; 4 Comst. 208; 32 E. L. & E. 127; 1 Duer, 89. j-12 Q. B. 310; 8 M. & W. 34; 11 A. & E. 594; 9 M. & W. 79; 11 Mass. 97, 27; 16 Pick. 350; 9 N. H. 263; 7 Wend. 68; 10 Id. 87; 6 Whart. 79; 10 B. Mon 347; Paine C. C. 252; 8 Met. 348; 1 Cal. 481; 10 B. & C. 671; 2 Cranch. 419; 7 Cush. 371; 5 Sanf. 101. k-2 T. R. 32; 1 Alc. & N. Ir. 389; 2 Burr. 2225; 10 Ves. Ch. 429; 3 M. & W. 535; 1 C. & P. 240; 8 Mass. 223; 7 Cow. 307; 4 Wend. 468; 5 Sandf. 192; 12 Barb. 137, 366; 18 Id. 336; 14 Ark. 315; 2 Ohio St. 519.

Second, Where, from the tenor of the agreement, or the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment.[1]

This agreement, made this —— day of ——, A. D. ——, by and between A. B., of the town of ——, in the county of —— (merchant), and C. D., of the town of ——, in the county of ——, (manufacturer, witnesseth:

That said party of the second part shall (*here insert the subject-matter or object of the agreement*).

That said party of the first part shall pay unto said party of the second part, for the same, the sum of —— dollars, as follows: —— dollars, on the —— day of ——, A. D. ——, and —— dollars, on the —— day of ——, A. D. ——, with the interest on the amount due, payable at the time of each payment.

And for the performance of this agreement, the said parties bind themselves, each to the other, in the sum of —— dollars, as liquidated damages, to be paid by the failing party.

In witness whereof, the said parties have hereunto set their hands, the day and year first above written. (*Signed*) A. B.
C. D.
[*Witnesses.*]

Contract—General Form.

With Liquidated Damages, etc.

This agreement, made this —— day of ——, A. D. ——, by and between A. B. (of etc.) of the first part, and C. D. (of etc.) of the second part, witnesseth:

That said party of the first part, for the consideration hereinafter mentioned, covenants and agrees with said party of the second part, to (*here state the agreement*).

In consideration of which, said party of the second part covenants and agrees with said party of the first part to (*here state agreement*).

And for the true and faithful performance of each and all the covenants and agreements above mentioned, said parties bind themselves, each to the other, in the sum of —— dollars, as liquidated damages, to be paid by the failing party.

In witness whereof, the parties to these presents have hereunto set their hands, the day and year first above written.

A. B.
C. D.

Contract—Arbitration.

See title ARBITRATORS, ante.

We, the undersigned, A. B., of ——, and C. D., of ——, agree:

To submit a controversy now existing between us, in relation to an exchange of horses, made between us at ——, on the —— day of ——, to A. R., B. I., and T. R., of ——, or any two of them.

That the award to be made by said arbitrators, or any two of them, shall, in all things, by us and each of us, be well and faithfully kept and observed.

That said award shall be in writing, signed by each of said arbitrators, or any two of them, and ready to be delivered to said parties in difference, or either of them, on the —— day of ——.

Witness our hands (and seals) this —— day of ——. (*Signed*) A. B.
[*Witnesses.*] C. D.

Contract—Assignment.

Of Lease.

See title ASSIGNMENT, ante.

See CONTRACT—SALE AND ASSIGNMENT, post.

This agreement witnesseth:

That C. D., of ——, for a consideration of —— dollars, shall, on or before the —— day of ——, at (his own expense, *or* the expense of E. F.), assign, (convey, grant, and transfer) unto E. F., of ——, all his (demand estate), interest, right, and title in and to the following described premises, to wit: (*copying the description from his lease*) (demised and) leased unto him by A. B., for a term of —— years.

To have and to hold the same unto the said E. F., his heirs and assigns, during the residue of said term of years, by virtue of the said lease, subject to the rents, covenants, and agreements therein specified.

In witness whereof, etc.

(*Signatures.*)

Contract—Auctioneer's.

Auctioneer's Agreement.

This agreement, made this —— day of ——, between A. B., purchaser, and E. F., auctioneer, witnesseth:

That A. B. has this day become the purchaser at public auction of the following described property, situated in ——, to wit (*describing the premises*).

That said A. B. has this day paid unto said E. F. —— dollars of the purchase money therefor.

That said A. B. agrees to pay the remaining sum of —— dollars, purchase money therefor (on the —— day of ——, *or* upon the execution of a good and sufficient warranty deed, etc.)

That said E. F., in consideration thereof, hereby covenants and agrees that the vendor, C. D., shall execute and deliver said A. B. a good and sufficient warranty deed (with full covenants), for the premises above described, upon the payment of said remaining sum of —— dollars.

In witness whereof, said parties have hereunto set their hands, etc. A. B.
[*Witness.*] E. F.

Contract—Auctioneer's.

Another Form.

Whereas A. B. has this —— day of ——, become purchaser at public sale of (*describe the land*) and paid unto me —— dollars of the purchase money therefor, I therefore hereby agree that the vendor, C. D., shall, in all respects, fulfil the conditions (hereunto annexed) of this sale, upon payment of —— dollars, the residue of said purchase money. (*Signed*) A. B.
[*Witness.*] E. F.

Contract—Auctioneer's.

By Purchaser at Auction.

Whereas I have, this —— day of ——, become purchaser at auction sale of (*describe the land*) and paid unto E. F. —— dollars of the purchase money therefor, I therefore hereby agree to pay the sum of —— dollars to the vendor, C. D., on (*or* before) the —— day of ——, upon the performance of the conditions (hereunto annexed) of said sale. (*Signed*) A. B.
[*Witnesses.*]

Contract—Barter or Trade.

Salt for Cheese.

This agreement, etc.

That said A. B. shall sell and deliver to said C. D., at his store, in ——, on the —— day of ——, one hundred barrels of fine salt, in good, substantial barrels, suitable for packing beef and pork, and for use of the dairy and kitchen.

In consideration whereof, said C. D. shall sell and deliver to said A. B., at the storehouse of E. F., in ——, on the —— day of ——, one thousand pounds of good, merchantable cheese, and four hundred pounds of sweet table butter; both well packed, in tierces or firkins, and made in dairies where at least fifteen cows are kept.

In witness whereof, etc.

Contract—Bond.

Bond for Performance.

See BONDS, UNDERTAKINGS, post.

Contract—Apprenticeship.

Indenture of Apprenticeship.

This agreement, made this —— day of ——, A. D. ——, witnesseth:

That A. A., of the county of ——, and State of ——, now aged —— years, of (his *or* her) own free will, does hereby bind (himself *or* herself) to serve M. M., of the county of ——, and State of ——, as apprentice (*or* clerk) in the trade of a blacksmith (*or* other trade, profession, *or* employment), and to learn said trade (*or* profession, etc.), until (he *or* she is of the age of eighteen *or* sixteen years, which will be on the) —— day of ——, A. D. ——.

That during said term said apprentice shall serve said master faithfully, honestly, and indus-

[1] 2 Story Eq. Jur. § 1318; 2 Greenl. Ev. 259; 1 Bing. 302; 7 Conn. 291; 11 N. H. 234; 6 Blackf. 206; 13 Wend. 507; 17 Id. 447; 22 Id. 201; 26 Id. 630; 10 Mass. 459; 7 Met. (Mass.) 583; 2 Ala. (N. S.) 425; 14 Me. 250.

triously, his secrets keep, and lawful commands everywhere obey; at all times protect and preserve the goods and property of the said master, and not suffer or allow any to be injured or wasted.

That said apprentice shall not buy, sell, or traffic in his own goods, or the goods of others, nor be absent from the said master's service day or night without leave: but in all things behave as a faithful apprentice ought to do, during said term.

That said master shall clothe and provide for the said apprentice in sickness, and in health, and supply (him *or* her) with sufficient and suitable food, raiment, and lodging; and shall use and employ the utmost of his endeavors to teach or cause said apprentice to be taught and instructed in the trade of (*here state the trade, etc., as above*).

That said master shall cause said apprentice to be taught to read and write, and the ground rules of arithmetic, the compound rules, and the rule of three.

That said master shall at the expiration of said apprentice's time of service give (him *or* her) —— suits of clothes, of the value of forty dollars, and —— dollars in current money of the United States.

(*If money is paid with the apprentice, insert here*) and the said M. M. acknowledges receipt of —— dollars with said A. A., from (*his father or mother*, F. A.), as a compensation for his instruction, as above mentioned.

(*Or if wages are to be paid for the service of the apprentice, insert*) and said M. M. further agrees to pay said A. A. the following sums of money, to wit: for the first year of his service —— dollars; for the second year of his service —— dollars; for every subsequent year until the expiration of his term of service —— dollars; which said payments are to be made on the —— day of —— in each year.

And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each unto the other.

In witness whereof, the parties aforesaid have hereunto set their hands the day and year first above written.

(*Signature of Apprentice.*) —— ——
(*Signature of Master.*) —— ——
(*Signature of Parent or Guardian.*) —— ——

Form of Affidavit of Master to be Indorsed on the Indenture.

State of ——, —— county, ss.

I do solemnly swear that I will faithfully perform the duties required by the within indenture and enjoined on me by law. M. M——.

Subscribed and sworn to before me this —— day of ——, A. D. ——.

C. C., *Clerk of the —— Court,*
or J. P., *Justice of the Peace.*

Contract—Building.

Long Form.

This agreement, made this —— day of ——, A. D. ——, by and between A. B. (builder *or* contractor), of ——, of the first part, and C. D. (manufacturer *or* farmer, etc.), of ——, of the second part, witnesseth:

That said party of the first part, for the consideration hereinafter mentioned, covenants and agrees to make, erect, build, and finish, in a good, substantial, and workmanlike manner, and in conformity with the plans, drafts, specifications, and explanations thereof, which is hereunto annexed and made a part hereof, a (*dwelling house, business house, or other building, naming it*), on (*here describe the location*), in —— county, State of ——, on or before the —— day of ——, A. D. ——.

That said building shall be made, erected, built, and finished out of good and substantial materials, to be furnished as follows, to wit:

By said party of the first part (*here give kind, quality, and quantity, etc.*)

By said party of the second part (*same as above*).

That as soon as the roof thereof is put on and covered, said party of the first part shall effect full insurance on said building, in the sum of —— dollars, the policy to be in the name and for the benefit of said party of the second part, his heirs, executors, administrators, or assigns, payable, in case of loss, to whom it may concern.

That each party to this agreement shall pay one-half the cost of said insurance.

In consideration of which, said party of the second part does hereby covenant, promise, and agree, to pay, or cause to be paid, unto said party of the first part, or his legal representatives, the sum of —— dollars, in the manner following, to wit: (*Here state the times, amounts, and manner of payment, etc.*)

And it is further agreed by and between the parties to this agreement as follows:

Alterations. That no charge of any kind shall be made by said party of the first part against said party of the second part beyond or in excess of the sum of —— dollars for the full performance of this agreement, unless said party of the second part shall alter the aforesaid plans, drafts, specifications, and explanations, in which case the value of such alterations shall be added to the amount to be paid under this contract, or deducted therefrom, as the case may require; it being expressly understood that said party of the second part may, from time to time, make any alterations of, to, and in the said plans, drafts, specifications, and explanations, upon the terms aforesaid.

Arbitration. That the parties of the first part, and of the second part, severally, respectively, and mutually, agree to submit each, all, and every demand between them hereinafter arising, if any, concerning the manner of performing or completing the work, or the time or amount of any payment to be made under this agreement, or the quantity or quality of labor or materials, or both, to be done, furnished, or provided under this agreement, or any other cause or matter touching the work, materials, or the damages contemplated, set forth, or referred to, in or by this agreement, to the determination of A. R., B. I., and T. R., the award of whom, or any two of whom, being made in writing, and delivered to said parties to this agreement, or either of them, within —— days of the time hereinbefore fixed for the final completion of this agreement, shall be final.

Damage sustained by persons or property. That said party of the first part shall be solely responsible for any injury or damage sustained by any and all person and persons, on property, during or subsequent to the progress and completion of the works hereby agreed upon, from or by any act or default of said party of the first part, and shall be responsible over the party of the second part for all costs and damages which said party of the second part may legally incur by reason of such injury or damage; and that said party of the first part shall give all usual requisite and suitable notices to all parties whose estates or premises may or shall be in any way interested in or affected by the performance of said works.

Extra work. That no extra work of any kind shall be performed, or extra materials furnished by said party of the first part, unless first authorized by the said party of the second part, in writing; and

That said party of the first part, or his representatives, shall not be delayed in the constant progress of the work under this agreement, or any of the extra work under the same or connected therewith, by said party of the second part; and for each and every day said party of the first part shall be so delayed, —— additional days shall be allowed to complete the work aforesaid, from and after the day hereinbefore appointed for its entire completion, unless upon the contingency provided for below in the —— article of this agreement.

That for each and every day's delay in the performance and completion of this agreement, or for any extra work under it, after the time hereinbefore fixed for the final completion of this agreement, there shall be allowed, and paid by said party of the second part to said party of the first part, or his legal representatives, damages for such delay, if the same shall arise from any act or default on the part of said party of the second part.

Foreman. That said party of the first part shall engage and provide at his own expense during the progress of the work, under, and until the complete fulfilment of this agreement, a thoroughly competent "foreman," whose duty it is to attend to the general supervision of all matters hereby undertaken by said party of the first part, and also the correct and exact marking, preparing, laying out and locating all patterns, moulds, models, and measurements in, to, for, and upon the work hereby agreed upon, from, and in conformity with said plans, drafts, specifications, and explanations.

Forfeiture of contract. That if at any time during

the progress of said work said party of the second part shall find that said work is not carried forward with sufficient rapidity and thoroughness, or that the materials furnished, foreman, sub-contractors, or workmen employed by said party of the first part, are unskilled, incompetent, and insufficient for the completion of said work within the time and manner stipulated in the plans, drafts, specifications, and explanations aforesaid, he shall give notice of such insufficiency and defects in progress, materials, foreman, sub-contractors, or workmen, to said party of the first part; and if within —— days thereafter such insufficiency and defects are not remedied, then said party of the second part may enter upon the work, and suspend or discharge said party of the first part, and all employed under him, and carry on and complete the work by "day's work," or otherwise, as said party may elect, providing and substituting proper and sufficient materials and workmen; and the expense thereof shall be chargeable to said party of the first part, and be deducted from any sum which may be due to him on a final settlement: all questions arising out of this eighth article of this agreement shall be subject to the final decision of the arbitrators hereinafter mentioned.

Liens. That in case any lien or liens for labor or materials shall exist upon the property or estate of said party of the second part, at the time or times when by the terms and provisions of this agreement a payment is to be made by said party of the second part to said party of the first part, such payment, or such part thereof as shall be equal to not less than double the amount for which said lien or liens shall or can exist, shall not be payable at the said stipulated time or times, notwithstanding anything to the contrary in this agreement contained; and that said party of the second part shall, and may be well assured that no such liens do, or can attach or exist, before he shall be liable to make either of said payments.

Work, whether described or not, etc. That all the works described or referred to in the annexed specifications and explanations are to be executed by said party of the first part, whether or not said works are illustrated by the aforesaid plans or drafts: and that said party of the first part is to execute all works shown by said plans and drafts, whether or not said works are described or referred to in said specifications or explanations.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written. A. B.
(*Witnesses.*) C. D.

SPECIFICATION OF MATERIALS AND LABOR, ETC.

(We here enumerate a majority of the subjects of contract which may be agreed upon, and recommend that they be each passed upon separately, and that a separate memorandum be made of each item included in the agreement.)

Alcoves.
Banking, about main and other buildings and fences, etc.
Basement.
Bath Room.
Bay Windows.
Bells.
Blinds. Inside and outside.
Boarding. Rough.
Bolts. Chain and plain.
Bracing, Bridging.
Bronzes.
Burglar Alarms.
Cellars.
Chimneys.
Closets.
Cupboards.
Deadening.
Doors. Inside and outside.
Drains.
Drainage.
Dumb Waiters.
Fences.
Fountains.
Finish. Inside, outside.
Fire Alarms.
Flagging.
Floors.
Framing. Kind of materials and work.
Furring.
Gas-fitting.
Gutters and Conductors.
Grading.
Halls.
Hardware.
Housing.
Labor.
Lightning-rods.
Locks.
Mantels.
Materials. Quantity, quality, damage to and by, from shrinkage or other cause. Care and protection of, from weather, by housing, priming, etc.
Out-houses.
Painting.
Partitions.
Pavements.
Pipes.
Plumbing.
Porches.
Position of main and other buildings.
Priming.
Rooms.
Sewers.
Screens.
Shingling, Slating, Tinning.
Sinks.
Sheathing.
Speaking Tubes.
Stairs.
Stories. First, second, third, walls, cross-walls, sub-division walls, chimneys, materials for, etc.
Structure of main and other buildings.
Tiling.
Urinals.
Venetian Blinds.
Ventilation.
Walks.
Washstands.
Weather.
Windows.
Items omitted.

(*Signed*) A. B.
(*Witnesses.*) C. D.

Contract—Building.

Long Form.

This agreement witnesseth, etc.

That A. D. shall for the considerations hereinafter mentioned, on or before the —— day of —— next, erect and finish for C. D., in a good, substantial, and workmanlike manner, the masons' part of —— stores, on the lots —— and ——, in —— street, in ——, agreeably to the several drawings, plans, and specifications made by A. T., architect, and signed by the parties hereto.

That said work shall be done under the direction and to the satisfaction of said architect, or such other architect in good standing, as said C. D. shall select for that purpose, to be testified by a certificate or writing, under the hand of said architect.

That said A. B. shall find and provide such good, proper, and sufficient materials of all kinds whatsoever, as shall be requisite for completing and finishing all the stone-masons', bricklayers', brown-stone, blue-stone, and granite cutters', excavators', and other works of the said buildings, mentioned in said specifications.

That said C. D. shall, in consideration of the covenants and agreements of said A. B. being strictly performed and kept, well and truly pay, or cause to be paid to said A. B. the sum of —— dollars, at the times and in the manner following: (*here give the amounts, conditions, and times of payment*). **When all said works are completely finished, according to said drawings, plans, and specifications, the remaining sum of —— dollars. Provided, however, that in each of said cases a certificate be obtained and signed by said architect.**

It is further agreed:

Additions, alterations, etc. Should the owner at any time during the progress of said building request any addition to, alteration of, deviation from, or omissions concerning said agreement, the same shall be made and shall in no way affect or make void said agreement, but shall be added to or deducted from the amount of said contract by a fair and reasonable valuation. Should any dispute arise concerning the true value of the extra work or works omitted, the same shall be valued by two

competent persons, one selected by said owner and one by said contractor, the two having power to choose an umpire, whose decision shall be binding, conclusive, and final.

Damages, loss, etc. Said owner shall not in any manner be accountable or answerable for any damage or loss that shall happen said works or any part thereof, or to any of the materials or things employed in the progress or completion of said work (loss or damage by fire [or other unavoidable accident] excepted).

Liens for labor or materials. Should any claim or claims be made by any person or persons for work done, or materials furnished for said building, upon the employment, or alleged employment or purchase by said contractor, and a notice of such claim be filed, to create a lien upon said building and premises, under any law of the State, now or hereafter in force, said owner shall be at liberty to retain in his hands, out of any moneys which would otherwise be payable to said contractor, the amount of such claim or claims, and the reasonable amount of costs and expenses likely to occur by reason thereof. Until such claim be lawfully cancelled or discharged (of record).

And said contractor shall cause all liens to be fully and absolutely settled, cancelled, and discharged, without loss, expense, or damage to said owner, and without any delay in the progress of said work aforesaid; and so deliver over to said owner the same, free from all claims and demands whatsoever.

Materials, labor, etc. Said contractor, at his own costs and charges, shall provide all customary and necessary materials and labor, scaffolding, implements, moulds, models, transportation, drayage, cartage, and all accessories of every description for the due performance of the several erections in said drawings, plans, and specifications set forth.

Should said contractor, at any time during the progress of said work, refuse or neglect to supply a sufficiency of materials or workmen, then, upon three days' notice being given, said owner shall have power to provide materials and workmen, and finish said work, and the expense thereof shall be deducted from the amount of said agreement.

The specifications, plans, and drawings are intended to co-operate, so that the work exhibited in the plans or drawings, and not mentioned in the specifications, or *vice versa*, are to be executed the same as if it were mentioned in the specifications and set forth in the plans and drawings, to the true meaning and intention of said drawings and specifications.

Said specifications, plans and drawings shall be strictly adhered to by said contractor, subject only to the exceptions in this agreement above mentioned.

Should any dispute arise respecting the true construction of said specifications, plans, or drawings, the same shall be decided by said A. T., or such other architect in good standing as said owner shall appoint to oversee said buildings, and his decision shall be conclusive and final.

In witness, etc

Contract—Building.

Short Form—With Liquidated Damages, etc.

This agreement, made this —— day of ——, A. D. ——, by and between A. B. (of ——, farmer), of the first part, and C. D. (of ——, builder), of the second part, witnesseth:

The said party of the second part agrees to and with said party of the first part, to make, erect, build, and finish, in a good, substantial, and workmanlike manner, on lot ——, in street ——, in —— county, ——, one (brick, stone, *or* frame) house, agreeable, and according to the plan, draft, and explanation hereto annexed, of good and substantial materials (*or* of such materials as said party of the first part may furnish therefor), on or before the —— day of ——, A. D. ——.

That the said party of the first part agrees to pay unto the said party of the second part for the same the sum of —— dollars, as follows: —— dollars, when, etc. (*giving time or progress of work*), —— dollars, when, etc.

(*If the owner is to furnish materials, add:*) And also that he will furnish the necessary materials for said work in such reasonable quantities, and at such reasonable times as said party of the second part shall require.

And for the performance of the above covenants, the said parties bind themselves, each to the other, in the sum of —— dollars, as liquidated damages, to be paid by the failing party.

In witness whereof, the said parties have hereunto set their hands, the day and year first above written.

A. B.
C. D.

[*Witnesses.*]

Contract—Building.

Short Form—According to Plan Annexed.

This agreement, etc., witnesseth:

That A. B., for the consideration hereinafter mentioned, shall, within the space of ——, next after the date hereof, in a good and workmanlike manner, and according to the best of his art and skill at ——, well and substantially build, finish, erect, and set up one dwelling house, according to the drawings, plans, and specifications hereunto annexed.

That the dimensions of said dwelling shall be as follows: (*giving them*).

That said dwelling shall be composed of material as follows: (*describing it minutely and at length*).

That all said materials shall be furnished by said ——; *or*,

That A. B. shall, at his own costs and expense, provide the following materials for the construction of said building: *give items*).

That C. D. shall, at his own costs and expense, provide the following materials for the construction of said building: (*give items*.

That all further and other materials customary and necessary in the construction and completion thereof shall be furnished by and at the costs and expense of ——.

That C. D., in consideration of the premises, shall pay said A. B. the sum of —— dollars, as follows:

First payment. When, etc.

Second payment. When, etc.

Etc., etc.

Final payment of the remaining sum of —— dollars, in full for all said work, when said building is complete for occupancy.

In witness, etc.

Contract—Building.

Short Form—According to Plans Annexed.

Articles of agreement made and concluded the —— day of ——, between A. B., of ——, and C. D., of ——, as follows, viz.:

The said A. B., for the considerations hereinafter mentioned, covenants, promises and agrees that he will, within the space of six months from the date hereof, in a good and workmanlike manner, and according to his best art and skill, well and substantially erect and build, set up, and finish one dwelling (*or* store) house, on lot number ——, on —— street, in the town of ——, and in such place thereon as said C. D. shall direct, and according to the plans and specifications hereunto annexed.

The dimensions of said house to be as follows, viz.: (*describing them*).

The said house to be composed of such stone, brick, and other materials, as said C. D. shall furnish.

In consideration whereof, said C. D. covenants, promises, and agrees, well and truly to pay, or cause to be paid to said A. B., the sum of one thousand dollars, in the manner following, viz.:

Two hundred dollars, part thereof, when the foundations and cellar of said building are completed.

Two hundred dollars, part thereof, when the roof of said building is completed.

Two hundred dollars, part thereof, when said building is enclosed.

The remaining four hundred dollars when said building is fully completed and keys thereof delivered to said C. D.

And for the true performance of all and every covenant, promise, and agreement aforesaid, said parties each binds himself unto the other in the penal sum of —— dollars, firmly by these presents.

In witness whereof, etc.

Contract—Building.

For Bricklaying and Plastering.

This agreement, etc., witnesseth:

That A. B., for the considerations hereinafter

mentioned, shall, in a good, sufficient, and workmanlike manner, at his own cost and charge, with materials to be furnished by C. D., do and perform all the work and workmanship belonging to the bricklayer and plasterer, in and about the erecting and building of a good and substantial dwelling (*or* store) house, on lot No. ——, on —— street, in ——, etc.

That said A. B. will build the same in such manner, and with such thickness of walls, height or stories, and such or so many lights, chimneys, and conveniences, and in such manner, and will execute and perform such ornamental work about said building as said C. D. shall direct.

That said A. B. will use his utmost care and diligence in using and working up said C. D.'s materials for said building to the best and most advantage.

That said A. B. will pay and discharge all his workmen to be employed in and about said building in full and at the end of each week during the time he is employed upon said building.

That said A. B. shall completely finish all said work belonging to the bricklayer and plasterer, in said building, on or before the —— day of —— next.

That no lien or liens for work, labor, or materials shall attach or exist at the completion of said building against the same.

That in consideration therefor said C. D. shall pay or cause to be paid for all such work as shall by said A. B. be done or performed in and about said building, the following rates:

—— for every thousand brick, by actual count (*or* measured by custom of bricklayers), laid.

—— per yard for every yard, by actual measurement of plastered surface (*or* measured by custom of plasterers), ornamental work excepted.

—— dollars in full for all ornamental work to be done and performed as aforesaid.

That nothing is to be measured or paid for that is not covered with plaster.

That no extra charge is to be made or allowed for arches, closets, corners, fire-places, jambs, joints, recesses, or any other kind of work whatever, usually or at any time rated as extra, but the whole is to be measured actually, singly, and without repetition, or regard to or for any custom or usage among bricklayers and plasterers, or otherwise.

That said C. D. shall pay all said money in the manner following, viz. (*state the amounts and dates of payment, etc.*)

In witness, etc.

Contract—Building.

Materials furnished by Builder, etc.

This agreement, etc., witnesseth:

That said A. B., for the considerations hereinafter mentioned, shall within —— months from the date hereof, erect, build, and completely cover and finish a dwelling-house and buildings for said C. D., upon lot No. ——, in —— street, in the city of ——, according to the plan and elevation set forth in the schedule hereunder written (*or* hereunto annexed).

That said A. B. shall do, perform, and execute, all and singular, the works also mentioned in said schedule, and according to the plan and elevation therein contained or mentioned.

That said A. B. shall provide such good, proper, and sufficient materials of all kinds whatsoever, as shall be suitable for erecting the said dwelling-house and buildings and completely finishing said works.

That said dwelling-house and buildings shall be completed in a good, substantial, and workmanlike manner (to the satisfaction and approval of S. A. [surveyor *or* architect), for this purpose to be testified by a writing or certificate under the hand of said S. A.

That if said A. B. shall be guilty of any delay whatsoever in building and finishing said dwelling-house, buildings, or works, then it shall be lawful for the said C. D. to give notice in writing, at the dwelling-house of said A. B., and after —— days from so giving said notice to purchase proper and sufficient materials, and employ a sufficient number of workmen to complete said dwelling-house, buildings, and works, and to deduct and retain the cost of said materials and sums of money paid said workmen, out of the money that would be due said A. B. upon the performance of this agreement, and that in such events said A. B. shall not do any act or thing to prevent, hinder, or molest said C. D., or any person employed by him, from using said materials and completing and finishing said dwelling-house, buildings, and works in the manner aforesaid.

That said C. D., in consideration of the premises, and subject to the conditions and stipulations in this agreement contained, shall pay or cause said A. B. to be paid the sum of —— dollars, as follows, viz. (*giving terms, time and amounts of each payment*).

Arbitration. See preceding forms.

Extra work, etc.

That in case said C. D. shall direct more work to be done in and about said dwelling-house, buildings, and works than is contained in the schedule hereunder written (*or* hereunto annexed), then and in such case he shall pay said A. B. so much money as such extra work and the materials used therein shall cost and amount to (not exceeding —— dollars).

Omitted work, etc.

That in case said C. D. shall direct less work to be done in and about said dwelling-house, buildings, or works, or to diminish or omit any work thereon, then and in such case he shall deduct, and said A. B. shall allow, out of said sum of —— dollars, so much money as the work so diminished or omitted shall amount to, upon a reasonable and true valuation (not exceeding —— dollars).

Workmen's wages to be paid by owner.

That said C. D. shall, every week during the progress of said buildings and works, pay and supply said A. B. with such sums of money as shall be sufficient for paying and discharging the workmen and laborers for their labor and wages, as the same shall become due and payable, not exceeding the sum of —— dollars (in any one week *or* month), and that said payments shall be ascertained by said S. T. by a certificate under his hand.

That said A. B. shall receive (weekly *or* monthly) the sum of —— dollars.

That the remainder of said sum of —— dollars shall be paid said A. B. upon the completion of said buildings and works ready for use and occupancy, the same to be ascertained as aforesaid.

In witness, etc.

Contract—Buildings, etc.

Rebuilding—Mills.

This agreement, etc., witnesseth:

That said party of the first part, for the consideration hereinafter mentioned, will, on or before the —— day of —— next, completely and thoroughly rebuild or cause to be rebuilt the mills of said party of the second part, situate on the —— outlet of the —— lake, in the town of ——, with such materials and workmen as said party of the second part shall find and provide for the same.

That said party of the first part shall not absent himself nor depart from the work and rebuilding aforesaid, without leave of said party of the second part.

That if said party of the first part shall absent himself without leave, he shall pay said party of the second part —— dollars for every day of such absence, to be deducted from the wages becoming due to said party of the first part, as hereinafter provided.

That said party of the second part, in consideration of the premises, shall pay said party of the first part, for all such time as he shall be employed in such work and rebuilding weekly, each week, the sum of —— dollars, and so, in proportion, for a less time than a week; and in addition thereto the sum of —— dollars on the completion of said work and rebuilding.

In witness whereof, etc.

Contract—Building, etc.

Taking Down and Rebuilding.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall forthwith take down the dwelling- (*or store-*) house of said C. D., situated at ——, etc.

That in the place and stead thereof he will make, erect, build, and finish one new dwelling- (*or* store-) house (*or* tenement), forty feet in width, fifty feet in length, a cellar of corresponding size, and —— feet deep, and two and one-half stories high, with four rooms on the first two, and two rooms on the attic floors.

That said A. B. shall find and provide at his own costs and charges, all manner of brick, iron, lath, lead, lime, nails, sand, shingles (slate), stone, tin, tiles, and all and every other material and manufactured article customary or necessary to the proper construction of the same.

That said A. B. shall cleanse and carry away and dispose of all rubbish whatsoever which shall arise in the execution or by virtue of this agreement.

That said A. B. shall, on or before the —— day of ——, well and substantially, and in a workmanlike manner in all things complete the said building ready for immediate occupancy.

That said C. D. shall, in consideration thereof, pay unto said A. B. the sum of —— dollars, as follows (*stating terms, time, and amount of payment*).

In witness whereof, etc.

Contract—Building, etc.

Taking Down and Rebuilding.

This agreement, etc., witnesseth:

That A. B., for the consideration hereinafter mentioned, shall forthwith take down and remove the dwelling-house of C. D., situated on lot No. ——, in —— street, in ——; and in the stead thereof shall, on or before the —— day of —— next, make, erect, build, and finish one new tenement or dwelling-house, of the following dimensions, viz.: width of front ——, length or depth backwards ——, height ——, of —— stories, each —— high; all divided into rooms as follows, ——. The dimensions of the cellars shall be as follows, viz., ——, etc., etc.

That said A. B. shall furnish at his own cost and expense, all stone, brick, lumber, sand, lime, iron, hardware, nails, oils, paints, glass, putty, and all and everything necessary in the complete erection and finish of said building, fit and ready for occupancy.

That said C. D., in consideration of said building being so made, erected, built, and finished, shall pay or cause to be paid unto said A. B. the sum of two thousand dollars, at three several payments, to wit:

Five hundred dollars thereof at the beginning of said work.

Five hundred dollars when the roof of said building is framed and covered.

The one thousand dollars remaining, when the whole building is completed as aforesaid.

In witness whereof, etc.

Contracts—Building and Construction.

Engines and Machinery for Steamship, etc.

This agreement, etc., witnesseth:

That said A. B. shall, for the consideration hereinafter mentioned, build, construct, and finish, and set in position, and secure complete and perfect in all its parts, together with all appurtenances, ready for sea and service, furnishing all materials therefor, according to the specifications hereunto annexed, and in a good, substantial, and workmanlike manner, the following engines and machinery for said C. D., to the satisfaction and under the direction of the superintendent of such construction, in said specification named.

That said engines and machinery shall consist of two side-lever low-pressure steam marine engines and four boilers, of the capacity, dimensions, material, and workmanship mentioned in the specification hereunto annexed; and with all tools, fixtures, and appurtenances therein mentioned, or referred to, or properly appertaining or belonging thereto.

That in every particular which is not specifically named and provided for in said specification, and said engine and boilers, tools, fixtures, and appurtenances shall be built, constructed, and fully completed, of such materials, and in such manner in every respect as said superintendent shall approve and direct.

That said engines, boilers, tools, fixtures, and appurtenances shall be set in position, secured fixed, and fully completed in readiness for sea and service, on board of the steamship ——, now building for said C. D. at ——, and in every respect ready for use on or before the —— day of ——.

That said C. D. shall, in consideration thereof, pay unto said A. B. the sum of —— dollars, as follows: —— dollars upon the execution of these presents, —— dollars upon, etc.

Etc.

And the residue of said sum of —— dollars so soon as said engines, boilers, tools, fixtures, and appurtenances are proved by a satisfactory trial to be built, constructed, completed, fixed, set in position, and secured in all respects according to the provisions of this agreement.

In witness, etc.

Contract—Building and Construction.

Locomotive.

Agreement between A. B. and C. D., composing the firm of A. B. & Co., of ——, and P. T. and T. R., president and secretary of the —— Company, witnesseth:

That said A. B. & Co. shall build for said company one locomotive engine and tender, as hereinafter described (*or* of the same model, make, kind, and description as the —— now in use at —— by the —— Company; *or* of the same model, make, description, and finish as that described on pages —— and —— inclusive, in a certain book, the title of which is as follows: ——), and deliver the same at ——, on or before the —— day of —— next.

That said P. T. and T. R. shall, in consideration thereof, pay unto said A. B. & Co. (by the draft of P. T., accepted by T. R., and payable —— from date, with interest), the sum of —— dollars.

DESCRIPTION.

Said engine shall be constructed from the most approved and best quality of materials, and in the most perfect system and manner, and (of the same model, make, description, and finish, etc., as above).

The power and efficiency of said engine to be warranted at ——, and sufficient to carry one hundred tons, of two thousand pounds to the ton, of empty cars on an ascending grade not exceeding forty feet to the mile, with a curve not less than six hundred feet radius, at a speed not exceeding —— miles per hour.

In witness whereof, said parties have hereunto set their hands (and seals) this —— day of ——.

A. B. & Co. [*Seal.*]

—— Co.,

By P. T., *President*, and T. R., *Treasurer*. [*Seal.*]

Contract—Building and Construction.

Paving Streets, etc.

This agreement, made this —— day of ——, between A. B., party of the first part, and the city of ——, party of the second part:

That the said party of the first part, for and in consideration of the sum of one dollar to him in hand well and truly paid by said city of ——, the receipt of which is hereby acknowledged, and of other good and sufficient considerations, hereby covenants and agrees to and with said party of the second part, to pave —— street from —— street to —— street with —— pavement, in accordance with resolution of councils (an ordinance entitled, etc.) approved (*or* passed) ——.

That said party of the first part further covenants and agrees that he will execute and finish said paving in accordance with all the ordinances (*or* resolutions) of said city relating to paving, and that he will fully and faithfully comply with all their provisions.

That said party of the first part also hereby agrees that he will keep the said street in good order and repair for at least three years after the same shall have been paved and thrown open for public use, and that the said city of —— shall be at no expense for said paving, excepting the following intersections of cross streets, etc. (*describing them fully*).

That said party of the first part shall not transfer his right or authority to other parties to pave said street, without first having obtained the con-

sent, in writing, of the chief commissioner of highways (*or* other proper officer, *naming him*); nor shall said paving be commenced without a written order from the said chief, etc., and shall be completed on or before the —— day of ——, and if the work is not completed within the time specified, said chief, etc., is hereby authorized to annul this contract upon three days' notice.

That said party of the first part shall properly enclose the said work, and to place signal lights thereon at night.

That said party of the first part shall be responsible for and pay all loss or damages which may arise by reason of the prosecution of the said work, and in case of the happening of such loss or damages, the amount thereof shall be retained by the party of the second part out of any payment or payments due or to grow due hereunder.

That said party of the second part, for and in consideration of the covenants hereinbefore mentioned to be done, shall pay the said party of the first part for the work done under and in pursuance of this contract, in assessment bills, made out and signed by the proper officers, at the rate or sum of —— dollars and —— cents for each and every square yard of said pavement laid in pursuance hereof, except for the intersections of cross streets, etc., aforesaid, which shall be paid for by warrants on the city treasurer, drawn by said chief, etc., at the rate of —— dollars and —— cents for each and every square yard of said intersection paved in pursuance hereof, the total cost of said intersections not to exceed in any event the sum above specified.

That it is, however, expressly stipulated and provided by said party of the second part, that said assessment bills and said warrants shall be accepted as so much cash, and that in the event of a failure to collect said assessment bills, no recourse shall be had against said party of the second part for the whole or any part of the amount for which they have been issued.

That the said party of the first part may use the name of the city, and employ all her legal remedies, by lien or otherwise, in the collection of said assessment bills at the cost of said parties of the first part.

This agreement shall not be construed to allow paving to be done after the first day of December, or before the first day of April, in any year.

In witness whereof, the said party of the first part has hereunto annexed his hand (and seal), and said chief, etc., of the said city of ——, has hereunto set his hand and seal, the day and year first above written.

The words from "And" to "hereunder" in ——, the margin being first added and made a part of the contract.

Sealed and delivered in the presence of

A. B. [*Seal.*]
The City of ——,
By C. D., *Chief, etc.* [*Seal.*]
—— ——. [*Seal.*]

Guaranty of Performance.

For a good and valuable consideration by us received, *we*, the undersigned, do hereby guarantee a faithful compliance with the terms of the above agreement, upon the part of the said A. B.

S. R. [*Seal.*]
T. Y. [*Seal.*]

Sealed and delivered in the presence of

W. T., N. S.

Contract—Building and Construction.

Ship or Yacht.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned and with materials to be furnished by said C. D., at his yard, in ——, shall, in a good, substantial, and workmanlike manner, build the hull of a new ship, of dimensions as follows: (*giving them*).

That said A. B. shall launch said ship on or before the —— day of —— next.

That said C. D., in consideration therefor, shall pay said A. B. after the rate of —— dollars per ton for every ton of said ship's burthen or tonnage (carpenter's *or* other) measure.

That said sum shall be payable (as follows, *giving terms, etc.*) within —— days after launching said ship.

In witness, etc.

Contract—Building and Construction.

Ship or Vessel.

This agreement, etc., witnesseth:

That said A. B. shall, at his present place of building, on or before the —— day of —— next, in a good, substantial, and workmanlike manner, build for said C. D. the hull of a ship or vessel of the dimensions hereinafter mentioned, for the sum of —— dollars, and such other and further sum and sums of money to be ascertained and paid at such times and in the manner hereinafter specified.

Calking, finishing, etc.

The hull and deck of said vessel shall be thoroughly calked with well teased oakum and filled up and finished in a substantial and workmanlike manner with all things of the best quality, and necessary and usually made and provided by shipbuilders for ships of such burthen and construction as said vessel shall be.

Description, dimensions, materials, work, etc.

The keel of the hull shall be in length, within the posts, eighty feet; the rake afore to be ten feet, and the rake abaft in suitable proportions; the harpings to lie at fourteen feet forwards and fifteen feet aft; the hull at the dead flat to be in breadth twenty-eight feet, the birth thereof to be nineteen feet from the top of the ceiling to the top of the covering board, the square of the floor to be fifteen inches on the keel and eleven inches at the sirmonk; the timbers to be eight inches square at the binds and four inches at the top timber heads; the transom to be eighteen feet long; the post four feet broad; the plank from the keel to the binds to be three inches thick, except five strokes on each side, viz.: three on the bilge and two under the binds, which are to be four-inch plank; the hull to have three binds, each ten inches deep and seven inches thick; one stroke immediately above the binds to be four-inch plank; all the rest to the channel binds to be two and a-half-inch plank; to have twelve hold beams, thirteen inches square, with eight hooks forward, all whole transoms aft, and one hook to be ceiled with three-inch plank from the keel to the underside of the hold beams, excepting three strokes on the bilge on each side, four-inch plank; all the ceiling from the hold beams to the upper deck beams to be two and one-half-inch plank, excepting one long plank under the main deck beam, which is to be four inches thick; to be ceiled fore and aft with two and one-half-inch plank, and above the binds forward with two-inch plank; to have one four-inch plank to be bolted to the fore beam and transom, knees to be bolted through the side into the beams: the main deck to be laid with Norway deals three inches thick, two abaft the mainmast, and from thence to be two and one-half-inch plank: to have sufficient number of main deck beams; to have two feet ten inches waste, and two drifts fore and aft two feet deep; the quarter deck and forecastle deck to be laid with Norway deals two inches thick; the floors to be sixteen feet long, with fourteen inches rise, the binds to have two feet and a half hang; the covering boards in the midships to be two and a-half-inch plank.

All timbers and planks to be made use of in building the hull of said vessel, except the Norway deal planks with which the decks are laid as aforesaid, are to be oak of English growth, well seasoned and dried, and in every respect fit and suitable for the purposes to which the same shall be applied.

The trenules shall be purchased at ——, and of the best quality.

Said vessel shall have a windlass, capstan, cathreads, rudder, and tiller, all of good, sound oak, as aforesaid, of a size and construction fit for such vessel.

Said vessel shall have fourteen gun ports.

Etc., etc.

That said C. D. shall, in consideration thereof, pay unto said A. B., on the execution of these presents, the sum of —— dollars, and the further sum of —— dollars upon laying the hankings of said vessel, and —— dollars upon laying the deck of said vessel, and —— dollars, the rest and residue of all sum and sums due said A. B. by reason of the premises, upon launching and mooring said vessel in safety in —— port (*or* harbor).

That the hull of said vessel, from time to time, during the building thereof, and until the same shall be safely moored and delivered as aforesaid,

shall stand charged with and be a security unto said C. D. for the sum of —— dollars, paid on the execution of these presents; and for such further and other sums of money paid to said A. B., in pursuance of this agreement.

That said hull shall not be or become liable or subject to the contracts, debts, or engagements, or otherwise affected by any act of said A. B., or his legal representatives, to the prejudice of said C. D.

That said A. B. shall, after said vessel is moored and delivered in safety in said port (*or* harbor), by some proper instrument in writing, assign the same, free from all incumbrances, to said C. D at his request and costs and charges

In witness, etc.

Contract—Building and Construction.

To hold shares in a Yacht or Ship.

This agreement, etc., witnesseth:

That A. B., E. F., G. H., and I. K. shall each hold the several parts of a new ship by them respectively subscribed hereunder, of a new yacht (*or* ship, to be called ——), of the burthen of —— tons burthen, or thereabout, for the building of which A. B. has contracted with C. D., of ——.

That each of said first-named parties so holding said parts shall pay his respective full proportioned part of the money to be paid for the building of said vessel, at the time and times the same shall become due by the contract respecting the same.

That said E. F. shall, when said vessel is completed and delivered, be master thereof.

That the charge of outset and fitting said vessel for service shall be paid by said first-named parties, in such proportion as the majority of the owners thereof shall agree.

In witness, etc.

Contract—Building or Construction.

Steamship.

This agreement, etc., witnesseth:

That said A. B. shall build, construct, and complete a steamship, of the dimensions and materials mentioned in the specifications hereunto annexed, and in all particulars conform to said specifications and directions by the superintendent of such building herein named, for the sum of —— dollars, to be paid as hereinafter mentioned.

That said A. B. shall furnish all the materials for said steamship according to said specifications, saving and excepting only such as by the express terms of said specifications are to be furnished by said C. D.

That S. T. shall be superintendent of the building and construction of said steamship.

That the whole of said vessel shall be built, constructed, and finished of materials of the best quality, and in the best, most durable, and workmanlike manner.

That said steamship shall be built, constructed, and completed of such materials, and in such proportions of each, and in such manner, in all respects as said superintendent shall direct.

That said steamship shall be launched on or before the —— day of —— next, and thereupon placed at the disposal and under the direction of said superintendent, at ——, for the purpose of receiving her engines and machinery, and shall thereafter be fully completed as soon as said superintendent shall direct (not exceeding, however, —— therefrom).

That in consideration thereof said C. D. shall pay to said A. B. the sum of —— dollars, in instalments, as the material is delivered and work progresses, as follows:

The first payment of —— dollars when the keel is laid. All other payments at the end of every —— thereafter in the same proportion to the whole amount to be paid, which the work done and materials delivered shall bear to the whole work and materials required for the full performance of this agreement.

In witness, etc.

Contract—Building and Construction.

Railroad.

Articles of agreement, made and concluded this —— day of ——, A. D. ——, by and between the P. R. R. Co., of the first part, and A. B. & Co., of the second part, witnesseth:

That for and in consideration of the covenants and payments hereinafter mentioned to be made and performed, by the said party of the second part, the said party of the first part doth hereby covenant and agree to complete in the most substantial and workmanlike manner, to the satisfaction and acceptance of the engineer of said company:

All bridges, etc., etc.
All buildings, etc., etc.
All grading, masonry, etc., etc.
Etc., etc.

The said work to be finished as described in the following specifications, and agreeably to the directions received from the said engineer or his assistants, on or before the —— day of ——.

Specifications for Grading.

1. Under this head will be included all excavations and embankments required for the formation of the road-bed; cutting all ditches or drains about or contiguous to the road; the foundations of culverts and bridges, or walls; the excavations and embankments necessary for reconstructing turnpike or common roads, in cases where they are destroyed or interfered with in the formation of the railroad; and all other excavations or embankments connected with, or incident to, the construction of said railroad.

2. All cuttings shall be measured in the excavations, and estimated by the cubic yard, under the following heads, viz., *earth, loose rock, solid rock, embankment.*

Earth will include clay, sand, loam, gravel, and all other earthy matter, or earth containing loose stone, or boulders intermixed, which do not exceed in size three cubic feet.

Loose rock shall include all stone and detached rock lying in separate and contiguous masses containing not over one cubic yard; also, all slate or other rock that can be quarried without blasting, although blasting may be occasionally resorted to.

Solid rock includes all rock occurring in masses exceeding one cubic yard which cannot be removed without blasting.

3. Earth, gravel, and other material taken from excavation (except when otherwise directed by the engineer) shall be deposited in the adjacent embankment, the cost of removing which, when the haul is not more than —— feet, will be included in the price paid for excavation; all material necessarily procured from without the road, and deposited in the embankments will be paid for as embankment only, but all material necessarily procured from within the line of the railroad, and hauled more than —— feet, will be paid for as excavation and also as embankment. In procuring materials for embankment from without the line of road, the place will be designated by the engineer in charge of the work, and in excavating and removing it care *must* be taken to injure or *disfigure* the land as little as possible.

4. The embankment shall be formed in layers of such depth, and the materials disposed and distributed in such manner, as the engineer may direct, with the required allowance for settling. Material necessarily wasted from the cuttings shall be used in widening the embankments, or be deposited in the vicinity of the road, according to the directions of the engineer.

5. The ground to be occupied by the excavations and embankments, together with a space of twelve feet beyond the slope stakes on each side, or ten feet beyond the berm ditch where one is required, shall be cleared of all trees, brush, and other perishable matter. Where the filling does not exceed two and a half feet, the trees, stumps, and saplings must be grubbed: but under all other portions of the embankment it will be sufficient that they be cut close to the earth: no separate allowance will be made for grubbing and clearing: but its cost will be included in the price for excavation.

6. Contractors, when desired by the engineer in charge of the work, shall deposit on the side of the road, or at such convenient points as may be designated, any stone or rock that they may excavate: and if, in so doing, they should deposit material required for embankment, the additional cost, if any, of procuring other materials from without the road, will be allowed. All stone or rock excavated and deposited as above, together with all timber removed from the line of the road, will be considered the property of the said company, and

the contractors upon the respective sections will be responsible for its safe-keeping until removed by said company, or until the work herein contracted for is finished.

7. The line of road, or the gradients, may be changed if the engineer shall consider such change necessary or expedient; and for any considerable alterations the injury or advantage to the contractor will be estimated and such allowance or deduction made in the prices as the engineer may deem just and equitable; but no claim for an increase in prices of excavation or embankment on the part of the contractor will be allowed or considered unless made in writing before the work, on that part of the section where the alteration has been made, shall have been commenced. The engineer may also, on the conditions last recited, increase or diminish the length of any section for the purpose of more nearly equalizing or balancing the excavations and embankments.

8 Whenever the route of the railroad is traversed by public or private roads, commodious passing places must be kept open and in safe condition for use; and in passing through farms the contractor must also keep up such temporary fences as may be necessary for the preservation of the crops.

9. No charge shall be made by the contractor for hindrances or delay from any cause in the progress of any portion of the work in this contract, but it may entitle him to an extension of time allowed for completing this work, sufficient to compensate for the detention, to be determined by the engineer, provided he shall give the engineer in charge immediate notice in writing of the cause of the detention.

Nor shall any claims be allowed for extra work unless the same shall be done in pursuance of an order from the engineer in charge, and the claim made at the first settlement after the work was executed, unless the engineer, at his discretion, should direct the claim, or such part as he may deem just and equitable, to be allowed.

10. The quantities exhibited to the contractor at the time of soliciting proposals for the work herein contracted for are necessarily only approximate; they furnish only general information, and will in no way govern or affect the final estimate, which will be made out on the completion of the work from actual measurements and established facts not determinable at time of letting the work.

Form of Bids. See below.

Specifications for Masonry.

1. All masonry will be estimated and paid for by the cubic yard of twenty-seven cubic feet, and will be included under the following heads, viz., *Brick work, bridge masonry, rectangular culvert masonry, arched culvert masonry, vertical and slope wall masonry, and rip-rap.*

2. **Brick work.** Where bricks are used in arches, piers, or abutments of bridges, they shall be made of the best clay, well-tempered, moulded and burnt; they shall be thoroughly wet, and laid in thin mortar made of the best hydraulic cement mixed with such portion of sand as the engineer in charge may direct. Laying of bricks dry and subsequent grouting will not be permitted, excepting in the courses which form the keys of arches. The joints to be of such thickness, and the bond to be of old English, Flemish, or such other character as the engineer may prescribe, either for the walls or arches. No bats, cracked, broken, or salmon brick to be used in the work.

Brick Drains, where required, shall be of such form as the engineer in charge may designate; if barrel or circular, the lower half shall invariably be laid dry upon bed duly dressed to radius of exterior of drain; the upper half to be laid in hydraulic cement, or lime-mortar, as the engineer may direct.

Form of Bids. See below.

3. **Bridge masonry.** When rock foundation cannot be had for abutments and piers the masonry shall be started upon hewn timber sunk to such a depth as to protect it from decay and to prevent the possibility of underwashing. The timber platforms will be composed of one or more courses, according to the depth of the water, the height of the masonry, or other circumstances of which the engineer shall judge and determine. The masonry will be of two qualities, either to be adopted at the *discretion* of the engineer.

First quality bridge masonry will be rock range work. The stone to be accurately squared, jointed and bedded, and laid in courses of not less than twelve nor exceeding twenty inches in thickness, regularly decreasing from bottom to top of pier or abutment. The stretchers shall in no case have less than sixteen inches bed for a twelve-inch course, and for all courses above sixteen inches they shall have at least as much bed as face; they will generally be at least four feet in length. The headers shall be of similar size with the stretchers, and shall hold the size in the heart of the wall that they show on the face, and be so arranged as to occupy one-fifth of the face of the wall, and they shall be similarly disposed in the back. When the thickness of the wall will admit of their interlocking they shall be disposed in that manner. When the wall is too thick to admit of that arrangement, stones not less than four feet in length shall be placed transversely in the heart of the wall to connect the two opposite sides of it. The stone for the heart of the wall shall be of the same thickness as those in the face and back, and must be well fitted to their places; any remaining interstices shall be filled with sound stone chips. The face stone to be set in hydraulic cement mortar, the interior stones to be laid dry, and every course to be thoroughly grouted. The proportion of sand, cement, and lime, in the mortar and grout, to be as directed by the engineer. The upper surface of each course shall be level throughout with the upper bed of the face stone thereof. The stones, forming the points of piers, which act as ice-breakers, shall be neatly dressed on their faces; the other face stones may be left with the face as they come from the quarry, unless the projections should exceed two inches, in which case they shall be roughly scabbled down to that point. The abutments and piers, or such portions of them as the engineer may direct, shall be covered with a course of coping, not less than —— inches thick, well dressed, and fastened together with clamps of iron.

Second quality of bridge masonry shall be rubble work, laid in irregular courses, and shall consist of stone containing, generally, six cubic feet each, so disposed as to make a firm and compact work; and no stone in the work shall contain less than two cubic feet, except for filling up the interstices between the large blocks in the heart of the wall; at least one-fifth of the face shall be composed of headers, extending full size four feet into the wall, and from the back the same proportions and of the same dimensions, so arranged that a header in the back shall be between two headers in the face. The corner-stones shall be neatly hammer-dressed so as to have horizontal beds and vertical joints.

4. **Culvert masonry—Arched.** The foundations of arched culverts, when the bottom of the pit is common earth, gravel, etc., will generally consist of a pavement formed of stone set edgewise, not less than *twelve* inches in depth, secured in the same manner as described below for rectangular culverts. When the foundation upon which a culvert is to be built is soft and compressible, and where it will at all times be covered with water, timber well hewn, and from eight to twelve inches in thickness, according to the span of the culvert, shall be laid side by side crosswise upon longitudinal sills; and where a strong current will be forced through during floods, three courses of sheet piling are to be placed across the foundation, one course at each end, and one in the middle; to be sunk from three to six feet below the top of the timber according as the earth is more or less compact. The abutments are to be built of range work or in broken courses, the face stones bedded and jointed. The stretchers in the face are to have *beds* of at least fifteen (15) inches, and in no case less bed than rise, and they are to be not less than two feet long, measured in the face of the wall. The headers shall extend through the wall in cases where it does not exceed three and a half feet thick, and they shall not have less than eighteen (18) inches length of face. There shall be not less than one header to every seven feet of face, measured from centre to centre of headers, and so arranged that a header in a superior course shall be placed between two headers in the course below; the backing stones shall be of large size, and have parallel beds, laid so as to break joints with one another, and when the thickness of the wall exceeds three and a half feet, headers of the same dimensions as those in the face shall be placed in the back of the wall, in the proportion of one for every two headers in the face. The arch stone shall have accurately cut beds and joints and shall be laid in courses throughout. The ring stones shall be neatly cut and composed of alternate long and short bond stones of not less than three feet, and eighteen

inches, respectively. The parapet and wing walls shall be built similar to the abutments and covered with a well-dressed coping, not less than ten inches thick and three feet wide. The outside stones to be laid in cement mortar, and the whole wall thoroughly grouted. The spandrel backing to be good rubble work, built as directed by the engineer.

Culvert masonry—Rectangular. All rectangular culverts will be built dry, with a water way of not less than two and a half by three feet; the abutments will rest on a pavement of stone, set edgewise, of at least ten inches in depth, confined and secured at the ends by deep curbstones, which must be protected from undermining by broken stone placed in such quantity and position as the engineer may direct. The abutment walls shall not be *less* than two feet thick, and built of good-sized and well-shaped stone, properly laid and bound together by stones occasionally extending entirely through the walls. The upper course to have at least one-half of the stones headers; and the stretchers in no case to be less than twelve inches wide; no stone in this course to be less than six inches thick. The covering to be of sound, strong stone, at least twelve inches thick, and to lap its whole width not *less* than ten inches on each abutment. The thickness of the covering stone and dimensions of the whole walls to be increased at the discretion of the engineer.

5. **Rip-rap.** Where the excavation of the road-bed does not furnish sufficient stone for the protection of walls and embankments, the same shall be procured at such places, and disposed in such manner as the engineer may direct, and shall be estimated and paid for as rip-rap.

6. **Slope wall and vertical masonry.** The vertical walls shall be good, dry rubble work, and of such dimensions and built with such batter as the engineer may direct. Slope walls shall be built of such thickness and slope as may be required by the engineer, no stones, however, to be used in their construction which do not reach through the walls, or that are less than six inches in thickness and twelve inches in length; the beds of the stones to be placed at right nagles to the face of the bank; the joints must be close and free from spalls.

7. **In all masonry the stone or brick** must be of a quality, size, and shape to be approved of by the engineer. Such portions of the masonry as the engineer may require to be laid in lime mortar, or hydraulic cement, shall be so laid; the —— furnishing or paying for the lime and cement used. If, in the progress of the masonry, an increase in the number of headers specified should be required by the engineer, such additional number shall be laid in the work as he shall designate.

The price per cubic yard paid for all masonry, whether of brick or stone, shall in every case include the furnishing of all materials, together with (*or* less) the cost of scaffolding, centring, etc., and all expenses attending the delivery of these materials, and all risks from floods or otherwise.

And the said party of the second part does promise and agree to pay to the said party of the first part, for all the work to be performed under this contract, as follows, to wit:

Earth excavation, per cubic yard, 20 cents.
Rock excavation, " " 60 "
Bridge masonry, " " $5.00.
Etc., etc.

On or about the last day of each month during the progress of this work, an estimate shall be made of the relative value of the work done, to be judged of by the engineer, and 90 per cent. of the amount of said estimate shall be paid to the party of the first part, on or about the 15th day of the following month. And when all the work embraced in this contract is completed, agreeably to the specifications and in accordance with the directions and to the satisfaction and acceptance of the engineer, there shall be a final estimate made of the *quality*, *character*, and *value* of said work, according to the terms of this agreement, when the balance appearing due to the said party of the first part shall be paid to him within thirty days thereafter, upon his giving a release, under seal, to the party of the second part, from all claims or demands whatsoever growing in any manner out of this agreement, and upon his procuring and delivering to the parties of the second part full releases in proper form and duly executed, from mechanics and material men, of all liens, claims and demands for materials furnished and provided, and work and labor done and performed upon or about the work herein contracted for under this contract.

It is further covenanted and agreed between the said parties, that the said party of the first part shall not sub-let or transfer this contract, nor any part thereof, to any person (excepting for the delivery of materials), without the written consent of the engineer, but will at all times give personal attention and superintendence to the work.

It is further agreed and understood that the work embraced in this contract shall be commenced within five days from this date, and prosecuted with such force as the engineer shall deem adequate to its completion within the time specified; and if at any time the said party of the first part shall refuse or neglect to prosecute the work with a force sufficient, in the opinion of the said engineer, for its completion within the time specified in this agreement, then, and in that case the said engineer in charge, or such other agent as the engineer shall designate, may proceed to employ such a number of workmen, laborers, and overseers as may, in the opinion of the said engineer, be necessary to insure the completion of the work within the time hereinbefore limited, at such wages as he may find it necessary or expedient to give, pay all persons so employed, and charge over the amount so paid to the party of the first part as for so much money paid to him on this contract; or for the failure to prosecute the work with an adequate force, for non-compliance with his directions in regard to the manner of constructing it, or for any other omission or neglect of the requirements of this agreement and specifications on the part of the party of the first part, the said engineer may, at his discretion, declare this contract or any portion or section embraced in it forfeited; which declaration and forfeiture shall exonerate the said company from any and all obligations and liabilities arising under this contract the same as if this agreement had never been made; and the reserved percentage of ten per cent. upon any work done by the party of the first part may be retained forever by the said company.

And the said party of the first part has further covenanted and agreed to take, use, provide, and make all proper, necessary, and sufficient precautions, safeguards, and protections, against the occurrence or happening of any accidents, injuries, damages, or hurt to any person or property during the progress of the construction of the work herein contracted for, and to be responsible for, and to indemnify and save harmless the said parties of the second part, and the said engineer, from the payment of all sums of money by reason of all or any such accidents, injuries, damages, or hurt, that may happen or occur upon or about said work, and from all fines, penalties and loss incurred, for or by reason of the violation of any city or municipal ordinance or regulation, or law of the State, while the said work is in progress of construction.

In witness whereof, the parties herein named have hereunto set their hands and seals, the day and year herein first above named.

[*Witness.*]

Contract—Building and Construction.

Railroad Sub-Division.

This agreement, etc. (*See the preceding form*).

SPECIFICATIONS FOR A PERFECT SUB-DIVISION.

Road Bed and Ballast.

1. The ballast must be broken evenly and not larger than a cube that will pass through a two and one-half inch ring. There must be a uniform depth of at least twelve inches of clean broken stone under the ties. The ballast must be filled up evenly between, but not above the top of the ties, and also between the main tracks and sidings where there are any. In filling up between the tracks, coarse, large stones must be placed in the bottom in order to provide for drainage, but care should be taken to keep the coarse stone away from the ends of the ties. At the outer ends of the ties the ballast must be sloped off evenly to the sub-grade.

2. The road crossing planks must be securely spiked; the planking should be three-quarters of an inch below the top of the rail, and two and one-half inches from the

gauge line. The ends and inside edges of plank should be beveled off.

Ditches.

3. The cross section of ditches at the highest point must be of the width and depth as shown on the standard drawing, and graded parallel with the track so as to pass water freely during heavy rains and thoroughly drain the road bed.

4. The lines must be made parallel with the rails and well and neatly defined.

5. The necessary cross drains must be put in at proper intervals.

6. Earth taken from ditches or elsewhere must be dumped over the banks and not left at or near the ends of the ties, but distributed over the slope. Earth taken out of the ditches in cuts must not be thrown on the slope.

7. The channels or streams for a considerable distance above the road should be examined, and brush, drift, and other obstructions removed. Ditches, culverts, and box drains should be cleared of all obstructions and the outlets and inlets of the same kept open to allow a free flow of water at all times.

Policing.

8. The telegraph poles must be kept in proper position, and trees near the telegraph line must be kept trimmed to prevent the branches touching the wires during high winds.

9. All old material, such as old ties, old rails, chairs, bar material, etc., must be gathered up at least once a week and neatly piled at proper points.

10. Briers and undergrowth on the right of way must be kept cut close to the ground.

11. Station platforms and the grounds about stations must be kept clean and in good order.

Superstructure.

12. The track must be in good surface; on straight lines the rails must be on the same level, and on curves the proper elevation, as set down in the table, must be given to the outer rail, and carried uniformly around the curve. This elevation should be commenced from 100 to 150 feet back of the point of curvature, depending on the sharpness of the curve, and increased uniformly to the latter point where the full elevation is attained. The same method should be adopted in leaving the curve.

13. The track must be in good line.

14. The splices must be properly put on with the full number of bolts, nuts, stop washers and stop chairs. The nuts must be screwed up tight.

15. The joints of the rails must be exactly midway between the joint ties, and the joint on one line of rail must be opposite the centre of the rail on the other line of the same track. In winter a distance of five-sixteenths of an inch, and in summer one-sixteenth of an inch, must be left between the ends of the rails to allow for expansion.

16. The rails must be spiked both on the inside and outside on each tie, on straight lines as well as on curves.

17. The cross ties must be properly and evenly spaced, 16 ties to a 30 ft. rail, with 10 inches between the edge of bearing surfaces at joints, with intermediate ties evenly spaced a distance of not over two feet from centre to centre, and the ends on the outside, on double track, and on the right hand side going north or west on single track, must be lined up parallel with the rails.

18. The ties must not, under any circumstances, be notched, but should they be twisted, must be made true with the adze, and the rails must have an even bearing over the surface of the ties.

19. The switches and frogs must be kept well lined up and in good order. Switches must work easily and safety blocks must be attached to every switch head.

20. The switch signals must be kept bright and in good order.

In witness, etc.

Contract—Building and Construction.

Railroad Ticket Office.

SPECIFICATIONS FOR BUILDING TICKET OFFICE.

The specifications are intended to embrace the entire structure complete and ready for occupancy, the whole to be comprised within any contract or contracts that may be made for the same.

The entire work is to be constructed and finished in every part in a good, substantial, and workmanlike manner, according to the accompanying drawings and these specifications, to the full extent and meaning of the same, and to the entire satisfaction, approval, and acceptance of the engineer and architect, and under the supervision and direction of such agent or agents as may be appointed.

The following is a list of the drawings which accompany these specifications, and which form part thereof.

No. 1. Ground plan.
No. 2. Front elevation.
No. 3. Cross section.
No. 4. Plan and details of roof.

GENERAL CONDITIONS.

All the work to be done in the best and most workmanlike manner, of approved materials, according to these specifications, and the plans and drawings hereinbefore referred to; and everything necessary to the proper and complete execution of the said plans and drawings, whether the same may have been herein particularly specified or not, or indicated on the plans referred to, to be done and furnished in a manner corresponding with the rest of the work, as well, as truly, as faithfully as though the same were herein particularly described and specifically provided for.

Every part of the building is to be executed under the direction and subject to the approval of the engineer in charge, who shall act as the agent and representative of the engineer and architect, and in all matters or questions relating either to the work or the contract for the same, the decision of the engineer and architect shall be final and conclusive and without appeal.

Drainage.

Terra cotta drainage of sufficient size to be provided from roof conductors and from water closets, running into the main sewers nearest thereto.

Foundations.

The foundations are to be set on vertical columns of stone set in the ground, not less than two feet deep, and on a stone two (2) feet square, and from seven (7) to ten (10) inches in thickness (*or* posts planted in the ground not less than four (4) feet deep. Each post to be set on a piece of plank at the bottom, two (2) feet long, three (3) inches thick, and twelve (12) inches wide. The earth to be well rammed around the posts.) Upon the tops of these columns (*or* posts) are to set the main sills, upon which rest the main framing and floor joists of the building. The posts are to be not less than ten by ten (10x10) inches section, placed not more than ten (10) feet apart, and the sills are to be ten by ten (10x10) inches section. This timber may be hemlock.

Gas Pipe and Fitting.

Gas pipe of sufficient size to supply fifty (50) burners to be furnished and laid throughout the building in conformity to the rules and regulations of the —— Gas Company, and fitted up with outlets at the option of the engineer in charge.

All pipes to be laid so as to be easily got at for repairs, and to have such descents as will prevent the accumulation of water arising from condensation.

It is understood that the gas fixtures are not to be furnished by the party contracting for gas pipe and fitting.

Hardware.

Entrance doors are to have eight (8) inch rabbeted bronze store door locks.

All doors in partitions to have five by three and a half (5x3½) inch mortise locks.

Union Butt Company's cast butts, with loose wrought pins, will be required for all swinging doors.

Water closet doors to have rim latch, porcelain knobs, and three (3) inch, half (½) inch round bolt on inside, and coat hook on inside.

The furniture of locks to be bronze (*or* cast iron).

Windows to be provided with strong spring bronze sash fasteners and lifts. All swinging or ventilating sash to be provided with a satisfactory apparatus for opening and closing, to be operated from the floor of the building. All swinging on centre to have extra heavy cast transom plates.

All general hardware, nails, screws, hinges, etc., necessary to complete the work to be furnished as may be required during the progress of the building, and to be of the best American manufacture.

Iron Work.

All the clamps, ties, tension bars, truss rods, bolts, stirrups, bars, and other iron work, required in the various parts of the building, to be furnished of the first quality wrought iron, and made in the best manner, subject to the approval and directions of the engineer in charge, it being understood by the parties to the

contract, that such bolts, bars, etc., are to be introduced at the discretion of the said engineer, wherever he may deem it necessary to assure strength to the building.

The wrought iron in the tension members of roof trusses over general ticket office must be tough and fibrous, and capable of resisting an ultimate tensile stress of fifty-five thousand (55,000) pounds to the square inch.

All the castings required in the execution of the work to be made of good tough iron, true and sound, free from flaws, cracks, bubbles, or defects of any kind.

Lumber and Carpenter Work.

All the lumber throughout the building, except when particularly specified to the contrary, to be first quality white pine, free from shakes and flaws and unsound knots, and in every way suitable for the various purposes intended.

Doors. Outside doors to be in two (2) thicknesses of one and one-half (1½) inch clear white pine, the outside thickness to be framed and chamfered, and the interior thickness to be diagonal boards, tongued, grooved, and beaded, not exceeding three (3) inches in width, the whole to be well pinned and screwed together, all single doors to be one and a half (1½) inches thick, panelled and moulded on both sides.

The water closets to have short slat doors, hung twelve (12) inches above the floors.

Finish. The casing for windows and doors, cornices, porch, lantern, dormer windows, and all general finish to be of first quality white pine, in strict accordance to the elevations, sections, and details.

Floors. Floors are to be of one and a quarter (1¼) inch southern yellow pine, not over three (3) inches wide, tongued and grooved, dressed on the upper surface, and secret nailed to the joist. The joist to be of three (3) by six (6) inch hemlock, laid eighteen (18) inches to centres, except on second floor, where they are to be three by twelve (3x12) inches section, laid sixteen (16) inches to centres.

Main Walls and Partitions. The main framing of all outside walls is to be white pine dressed. The corner posts are to be eight by eight (8x8) inches, and the intermediate posts four by eight (4x8) inches section, and filled in with three by four (3x4) inch rough hemlock scantling. To be well braced and bridged.

Roof. All roof timbers to be of white pine of the sizes, and framed as shown in the drawings, to be dressed and chamfered. The roof sheathing to be of one (1) inch first quality spruce sheathing boards, planed on the upper side to a surface, and not exceeding eight (8) inches in width. The posts of porch to be cased and finished as shown on elevations.

Sash. All sash to be one and a half (1½) inches thick; those in windows to be double hung on approved axle pulleys; the lantern sash to be hung in centre on transom plates, and opened and closed with sections of rods with arms connecting with sash and operated by cords from the floor with wheel on end of shafts. The ventilator to be opened and closed by cord and pulley arranged as shown on the section.

Wainscoting. All the walls and partitions on the inside and outside of building to be wainscoted to the height of the window sills with one (1) inch white pine, tongued, grooved and beaded, and laid vertically inside and diagonally outside with base and cap as per drawings.

Windows. All windows, except lanterns, to have box frames, fitted with the necessary pulley, styles, etc.

All the carpenter work throughout the building to be executed according to these specifications and the drawings hereinbefore referred to, and such additional drawings as may hereafter be made in exemplification of the same, and all carpentry not herein mentioned, and which may be necessary for the complete and proper execution of the work, to be faithfully done and furnished.

Painting and Glazing.

The entire interior and exterior, wood and iron work, of the building, except interior surface of roof sheathing, to be painted in three (3) coats pure white lead, in best linseed oil, in such tints as may be directed by the engineer and architect.

The plastered surface of the main ticket office and the exterior of the building to be painted and stencilled as may be directed. The interior surface of roof sheathing to be calsomined in two coats.

The windows and transom lights throughout to be glazed with best American glass, well bedded, bradded, and left clear and perfect on the completion of the work. Lanterns to be glazed with dark claret-colored glass.

Plastering.

The interior of all rooms and the exterior to be well plastered in two (2) coats sand finish; ceilings to be finished in the side rooms in hard white coat.

The materials to be of the best quality, and the work executed in a good and workmanlike manner.

Whatever jobbing and repairing that may be necessary to render the building perfect before its final acceptance by the engineer and architect, is to be well and truly done, without extra charge.

Plumbing.

Urinals. Large size corner Bedfordshire porcelain urinal to be placed as shown. To have a three-quarter (¾) inch brass supply, and a five-eighths (⅝) inch stop-cock, with a cap on top, and a one and a half (1½) inch waste pipe and trap.

Washstands. Two washstands to be placed as shown, to have one and one-eighth (1⅛) inch marble counter-sunk top, twelve (12) inch back, and fourteen (14) inch porcelain bowl, with plated cocks, plugs, and chains, and the necessary waste pipe and trap.

Everything in connection with the plumbing which may be necessary to a creditable and proper completion of the building to be provided as may be directed by the engineer in charge, and all the work to be done in the best and most substantial manner.

Water Closets. Water closets to have Travis regular valve containers, with four (4) inch cast iron trap to each, connecting by a six (6) inch iron soil pipe with the drainage.

Roofing.

The roof to be covered with first quality tin (sheet iron, *or* other material), painted with two coats slate color metallic (*or* fire-proof) paint.

All gutters to be formed in the most approved manner, of first quality I C roofing tin well painted with two coats metallic paint, and securely connected to down spouts running into the drainage.

The down spouts used to be four (4) inches square, and in sufficient number to insure proper drainage. Spouts to be protected by wooden boxes, extending four (4) feet above the ground.

The upper floor on porch to be covered with tin, and painted as above.

Sundry Details.

Additional Drawings. Additional detail and working drawings will be furnished in exemplification of the foregoing, from time to time, as they may be required; and it is to be distinctly understood that all such additional drawings shall be of equal force with those which are herein specifically cited; and the said additional drawings are to be considered as virtually embraced within and forming part of these specifications.

Alterations. It is also understood that the engineer and architect of the building shall have the right to make any alterations, additions, or omissions of work or materials herein specified or shown, or in the drawings, during the progress of the building, that he may find to be necessary, and the same shall be acceded to by the contractor or contractors, and carried into effect without in any way violating or vitiating the contract. And the value of all such alterations, additions, or omissions shall be agreed upon, in writing, between the said engineer and architect and the contractor, before going into execution, or no allowance will be made for them by either party.

Care of Finished Work. Particular care must be taken by the contractor of all the finished work as the building progresses, which work must be covered up and thoroughly protected from injury or defacement during the erection and completion of the building.

Removal of Rubbish, etc. All refuse material and rubbish that may accumulate during the progress of the work to be removed, from time to time, as may be directed by the engineer in charge, and on the completion of the work all the grounds must be thoroughly cleaned up, and the surplus material and rubbish carted away.

Risks, Blame, etc. The contractor is to assume all risks, and bear any loss occasioned by neglect or accident during the progress of the work, until the same shall have been completed and accepted by the engineer and architect. He is also to assume all blame or loss by reason of neglect of city or district ordinances, or from any other cause. The engineer in charge of the work shall have full power at any time during the progress of

the same, to reject any materials he may deem unsuitable for the purposes for which they are intended, or which are not in strict conformity with the spirit of these specifications. He shall also have the power to cause any inferior or unsafe work to be taken down and altered at the cost of the contractor.

Form of Bids.

In making bids, parties will state the total sum for the building complete.

They will also state the earliest time they can commence and complete the building.

Contract—Building and Construction.

Sewer.

Articles of agreement made and concluded this —— day of ——, A. D. ——, by and between the city of —— on the first part, and C. D., of the second part, witnesseth:

That for and in consideration of the payments hereinafter mentioned, to be made by the said party of the first part, the said party of the second part shall furnish all material and labor, and complete to the satisfaction and acceptance of the chief engineer and surveyor of the city of ——, all of the excavation, brick-work, filling in, repaving, and such other work as may be requisite to construct a sewer, upon the line of (*line of the sewer to be constructed*), and complete the same on or before the —— day of ——, in accordance with the following

Specifications.

Said sewer shall be circular in form, and built of brick, with a —— inch arch and counter arch, and have a clear inside diameter of —— feet and —— inches.

Excavations. The ground to be excavated in open trenches to the necessary width and depth, and of such lengths, at one time, as shall be directed by the surveyor. Such portions of the excavations not required for filling after completion of the brick work, to be hauled off and deposited in such localities as shall not interfere with future regulations of the city. The bottom to be hollowed out to the exact form and size of the lower section of sewer to be laid in it.

Adjacent property. Said contractor shall, at his own expense, shore up, sling, protect, alter, divert, restore, and make good, as may be necessary, all water pipes, gas pipes, sewers, drains, buildings, fences, or other properties, which may be disturbed or injured during the progress of the work.

Bad ground, running sand, water, etc. Said contractor shall, at his own expense, pump out, or otherwise remove any water which may exist in the trenches, and shall form drains or other works necessary for keeping the excavations clear of water during the progress of the work. In case of running sand, or other bad or treacherous ground, the work shall be proceeded with night and day without interruption, and the counter shall be laid in a timber cradle, if so directed by said surveyor.

The material excavated to be disposed of so as to be as little inconvenience as possible to the public traffic, or adjoining tenants, and, unless sanctioned by said surveyor, must not be thrown or deposited to obstruct the sidewalks, or the footway crossings at street intersections; and there must be at all times a space at least two feet in width, open for public use, and a safe bridgeway over the sewer trench, at least three feet wide, at all street crossings, and the gutters shall also be kept free from surface drainage.

The sides of the excavation shall be supported with suitable timber whenever necessary, the contractor to be held responsible for all damage which may happen to individuals or to the neighboring properties, from neglect of this precaution. In all cases in which the surveyor shall so direct, timber shoring shall be left and buried in the trench, without extra charge.

Material and construction. That said sewer shall be built of good, sound, hard-burnt bricks, uniform in length and size, with arch laid in mortar composed of clean, sharp gravel or sand and fresh-burnt lime, mixed in such proportions as shall be approved by the surveyor. The brick work must be well bonded, the joints to be struck flush with face of work, and, unless otherwise directed, the invert will be laid in good mortar or hydraulic cement, and the arch plastered on the outside with good mortar at least one-half inch in thickness. All centring to be furnished by the contractor.

All junctions and connections with drains or sewers to be made with a curve in the direction of the current of the sewer, with the largest admissible radius; to be given by the surveyor.

All sewers or drains met with or cut through shall be connected as directed, or if so desired, they shall be perfectly restored to the same condition as before the commencement of the work.

The ground shall be carefully filled in and the work backed up in a proper manner as it proceeds, and shall be properly puddled, after the completion of such lengths of the sewer as may be directed.

Inlets and man-hole shafts (the latter with nine-inch walls laid in cement) shall be constructed in such positions, and of such forms and dimensions as may be directed by the chief engineer and surveyor.

Signal lights. That said party of the second part shall properly enclose the said work, and place signal lights thereon at night.

Surfaces disturbed, etc. All paving, or other surface material which may have been disturbed, shall be replaced to the satisfaction and approval of the chief commissioner of highways (*or other proper officer, naming him*).

Tunneling. Any tunneling necessary, to be taken out of sufficient size to admit of requisite timbering, outside the sewer, leaving room for proper keying to insure stability: but in no case will tunneling be allowed, unless with the express sanction of the chief engineer and surveyor.

General Provisions, etc.

That said contractor shall be responsible for and pay all loss or damage, which may arise by reason of the prosecution of the said work; and in case of the happening of such loss or damage, the amount thereof shall be retained by the party of the first part out of any payment or payments due or to grow due hereunder.

That said contractor shall pay the charges of the surveyor and regulator of the district for furnishing the lines and levels, as directed in section —— of an ordinance entitled (*reciting the title of the ordinance*).

Compensation.

That said party of the second part will perform the work embraced in this contract, in conformity with existing ordinances, and to the satisfaction and acceptance of the chief engineer and surveyor; and also that the city of ——, through the chief commissioner of highways (*or other proper officer, naming him*), will pay in manner hereinafter specified, the following sums, and at the following rates:

For each and every linear foot of sewer constructed, inclusive of removing and replacing the paving-stones, excavating the material and refilling, —— dollars and —— cents.

For each and every linear foot of sewer, two and a half feet diameter, for inlet connection, chargeable under this agreement, —— dollars and —— cents.

For each and every man-hole, constructed with nine-inch wall, cast-iron curb and grating, and wrought-iron hinged cover, —— dollars and —— cents.

For each and every brick and stone inlet, with circular connection two and a half feet in diameter, not exceeding fifteen feet in length, —— dollars and —— cents.

For each and every cast-iron inlet, and connection not exceeding fifteen feet in length, —— dollars and —— cents.

That the prices above specified shall be in full compensation for all materials and labor required to put the same into the work herein contracted for, and complete the whole in all respects, as provided in this specification and contract.

Payments.

That the payments therefor shall be made by the chief commissioner of highways, upon estimates signed by the chief engineer and surveyor, in assessment bills prepared as specified in section 11 of an ordinance (*setting out the title of the same*), and warrants upon the city treasurer, to an amount as authorized by an ordinance, etc., in payment for the street intersections, man-holes, and legal deductions. All of which payments shall be received as so much cash, and be collected without recourse to said city of ——, but for the purpose of the better enabling them to collect the same, the name of the said city may be used, and all her legal remedies, whether by bill or otherwise employed.

That the work herein contracted for and noted in specifications hall be kept in good order by the party of the second part, for a term of three years after the

date of final estimate therefor, as provided in an ordinance (*or* resolution) approved (*or* passed), ——, and that in case of failure to comply with the requirements of this contract, by completing the work according to specification within the time herein specified, there may be deducted from the final estimate, for the use of said city of ——, the sum of *five dollars*, as stipulated damages, for each and every day the date of completion and acceptance may exceed the time fixed in this contract.

That in case the specifications, which are a part of this contract, or the directions of the chief engineer and surveyor, have not been complied with, the said chief engineer and surveyor is hereby authorized to withhold the final estimate until the work is properly and satisfactorily completed; or he shall make such deduction therefrom as, in his judgment, will compensate for, or repair any neglect on the part of the contractor.

That no payment will be made, except upon a certificate from the chief engineer and surveyor.

In witness, etc.

C. D.
The City of ——,
By —— (*Official signature and title.*)
Executed in presence of }
W. T., N. S. }

Contract—Building and Construction.

Turnpike Road.

This agreement, etc., witnesseth:

That A. B. has agreed with C. D., for the sum of —— dollars, to construct and finish a turnpike road, —— in width, in a good, substantial, and workmanlike manner, as surveyed and laid out, from —— to ——, on or before the —— day of ——, next ensuing.

Ascent, cuts, fills, grade, etc.

That in constructing said road over any hills that may be in said survey or route, said A. B. will cut the same down and fill the valleys between the same, removing all obstructions in such a manner that the ascent of any such hill shall not in any place be greater than four degrees from the base thereof.

That the sides of all cuttings which shall be made through any such hills shall be at an angle of twenty-two and one-half degrees, descending towards and ending at the bounds of said road.

Bridges, culverts, ditches, sluices, etc.

That said A. B. will at every brook, creek, gulley, ravine, and every other place where the same shall be necessary, erect and make good and sufficient bridges, culverts and sluices of suitable, solid, and substantial stone work for the passage of all water under the same.

That all ditches shall be made in the most efficient and suitable manner, with sufficient outlet, and that whenever said road is over hills that said A. B. will, at the distance of every ten or twelve rods, raise mounds in the road of sufficient height to turn off the water that may fall upon it to the sides thereof, so that said road may not be washed or gullied thereby.

Construction, etc.

That in constructing said road said A. B. shall proceed as follows: First (*state what*); second (*state what*), etc., etc. That he will crown it uniformly in the middle, so that the same shall be raised nine inches from the level thereof. That in soft or spongy ground he will raise it still more, as the situation of the road and circumstances may require. That in finishing said road where the land is loamy he will, after grading, laying and rolling, etc., deposit and spread at least six inches of gravel upon the surface of the same, finishing the same in a compact and uniformly firm surface, ready for use.

That in constructing said road over low lands they will raise and construct the same (as high as the highest water mark of the year —— last past, *or*) so high that water shall not overflow it at any season of the year, but that said road shall at all times remain dry, so that it may be travelled with ease and safety.

That said road shall, upon completion thereof, be free from all obstructions, stones, etc., and its surface uniform, and travel thereon safe and without annoyance from irregular or obstructed surfaces thereof.

Materials. That said A. B. shall take and apply all materials which they may find suitable for building said road, at all places within four rods width of said road as now surveyed and laid out. That all waste and waste materials as shall remain after the completion of said road may be scattered upon the land contiguous thereto, not exceeding, however, four rods width.

That said A. B. shall commence the construction of said road during the present month, and shall complete and finish the same on or before the month of ——.

That it shall be so completed and finished two rods (*or* —— feet) within such good, substantial, and workmanlike manner, uniformity, that horses, cattle, carriages, carts, drays, teams, and vehicles of every description, with customary loads, may, throughout its entire extent, and upon all and every part thereof, pass and travel with ease and safety.

That said A. B. shall receive said sum of —— dollars in payments as follows: (*giving terms, times and amounts*).

In witness, etc.

Contract—Construction and Interpretation.

Of Previous Contract.

This agreement, etc., witnesseth:

That a difference has heretofore arisen between the parties to these presents, in relation to their respective rights and obligations under a certain contract bearing date the —— day of ——, between them.

That said parties thereto have now come to a mutual understanding and agreement respecting all the matters in difference aforesaid, and for the government of themselves under the same henceforward, hereinafter in these presents set forth the same as declaratory of their respective rights and obligations, to wit:

1. That the first paragraph of said agreement is intended to set forth the date of making and parties to said agreement only.

2. That the second paragraph of said agreement is intended to, etc., etc. (*running thus through the entire agreement*).

In witness whereof, etc.

Contract—Charter Party.

General Charter.

This charter party, made and concluded upon in the city of ——, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, between M. R., of the —— of ——, of the burthen of —— tons, or thereabouts, register measurement, now lying in the harbor of ——, of the first part, and S. R., of the second part, witnesseth:

That the party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the deck, cabin, and necessary room for the crew and storage of provisions, sails, and cables), or sufficient room for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from P—— unto ——, on the terms following: The said vessel shall be tight, staunch, strong, and in every way fitted for such voyage, and receive on board during the aforesaid voyage the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board otherwise than from the said party of the second part, or agent. The said party of the second part doth engage to provide and furnish to the said vessel ——. And to pay to the said party of the first part, or agent, for the use of said vessel during the voyage aforesaid ($——), ——. It is agreed that the lay days for loading and discharging the vessel shall be as follows, commencing from the time the captain reports himself ready to receive or discharge cargo: ——. And that for each and every day's detention by default of said party of the second part, or agent, —— dollars per day, day by day, shall be paid by said party of the second part, or agent, to said party of the first part, or agent. The cargo or cargoes to be received and delivered alongside within reach of vessel's tackles.

A commission of —— per cent. upon the gross amount of this charter, payable by the vessel, is due to ——, upon the signing thereof.

To the true and faithful performance of all and every of the foregoing agreement, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, each to the other, in the penal sum of ——.

In witness whereof, we hereunto set our hands, the day and year first above written.

M. R.
Signed in the presence of } S. R.
W. T., N. S. }

CERTIFICATE OF COPY

We hereby certify this to be a correct copy of the original charter party in our possession.

Contract—Charter Party.

Cuba, or Porto Rico, etc. Charter.

This charter party, made and concluded upon in the city of ——, this —— day of ——, in the year of our Lord ——, between M. R., of the good ——, of ——, of the burthen of —— tons, or thereabouts, register measurement, now lying in the harbor of ——, of the first part, and S. & R., merchants, ——, of the second part, witnesseth:

That the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the deck, cabin, ——, and necessary room for the crew and stowage of provisions, sails and cables), unto the said party of the second part, for a voyage from —— to one or more ports in the island of ——, and back to the —— breakwater for orders to —— or ——, on the following terms: The said vessel shall be tight, staunch, strong, and in every way fitted for such a voyage, and receive on board during the voyage the merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish to the said vessel for the outward voyage a full cargo of lawful merchandise, or ballast, ——, for the homeward voyage a full cargo of sugar, and of molasses in hogsheads, with ten tierces or twenty barrels, either of which at charterer's option, to each 100 hogsheads for under deck, and —— hogsheads molasses on deck, vessel agreeing to carry out on deck one thousand hoops or fifteen hundred feet lumber to every two hogsheads molasses, ——, and to pay to the said party of the first part, his or their agent, for the use of the said vessel during the voyage aforesaid, as follows: *For outward cargo*, nothing in consideration of charterer paying all foreign port charges, including lighterage, pilotage, consul fees for deposit of ship's papers, and furnishing cargo or ballast to change ports ——. *For homeward cargo*, —— cents per 100 lbs. net custom house weight delivered for sugar under deck, and or —— per 110 gallons gross custom house gauge of casks of molasses delivered under deck, ——, and for the deck load —— per 110 gallons gross custom house gauge of casks of molasses delivered, —— freight payable in ——, without discount, or commission on proper delivery of homeward cargo.

It is agreed, that —— running lay days shall be allowed for loading and discharging the vessel in ——, commencing from the time the vessel is ready to receive and discharge cargo, and the captain reports himself to be so prepared, —— hours shall be allowed the party of second part to hand the captain orders at ——, commencing from the time the captain goes on shore to communicate his arrival. And for each and every day's detention, by default of the said party of the second part, or their agent, —— dollars per day, day by day, shall be paid by the party of second part, or their agent, to the party of the first part, or his or their agent.

The cargo or cargoes to be received and delivered according to the customs and usages of the respective ports, alongside within reach of vessel's tackles. Lumber to be rafted to the water's edge by captain, if required.

Time used in changing ports in —— to count in lay days.

Vessel to haul to wharf designated by charterers to load and discharge in the United States, and to employ their stevedore at customary rates.

Charterers agree to advance captain in foreign ports not exceeding —— dollars, if actually required by him for ship's disbursements, on account of this charter, free of commission or insurance.

Captain to sign bills of lading as required by charterers or their agents, without prejudice to this charter party.

To the true and faithful performance of this charter, we, the said parties, do hereby bind our heirs, executors, administrators, and assigns, each to the other, in the penal sum of estimated amount of charter.

In witness whereof, we hereunto set our hands the day and year first above written.

M. R., *Master.*
S. & R., *Merchants.*

Signed in the presence of }
W. T., N. S. }

CERTIFICATE OF COPY.

We hereby certify the foregoing to be a true and correct copy of the original stamped charter of ——, now on file at our office.

Place ——, Date ——. S. & R.

Contract—Charter Party.

The direct Port Form of Charter, as approved by the Philadelphia Maritime Exchange.

This charter party, made and concluded upon in the city of ——, the —— day of ——, in the year of our Lord, ——, between M. R., master and agent for the owners of the ——, of ——, built ——, at ——, of —— tons, or thereabouts, register measurement, now lying in the harbor of ——, ——, and guaranteed to class ——, at ——, of the first part, and S. R., of the second part, witnesseth:

That the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the deck, cabin, and necessary room for the crew, and storage of provisions, sails, and cables), for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from ——, to discharge at a safe port (where vessel can lie afloat), say to ——, on the terms following:

The said vessel shall be tight, staunch, strong, and in every way fitted for such a voyage, and receive on board the merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish to the said vessel a full and complete cargo of wheat and (*or*) Indian corn, say as much as she can reasonably stow and carry on the draft of water allowed by the surveyors appointed by the —— Board of Marine Underwriters, under whose inspection the vessel is to load; and, furthermore, it is hereby agreed that the vessel shall prepare for bulk and (*or*) bag grain, at her expense, according to the rules and regulations of the —— Board of Marine Underwriters, and shall furnish from them to charterers a certificate of proper lading before clearing at the custom house; and it is furthermore agreed that the party of the second part shall pay to the said party of the first part, or his agent, for the use of the said vessel during the voyage aforesaid, —— ( ) shillings and ——( ) pence British sterling, per quarter of 480 pounds delivered ——.

Freight, payable on right delivery of cargo, if discharged in the united kingdom, in cash in British sterling, if discharged on the continent, as above, by good and approved bankers' sight bills on London, without discount or allowance; and it is further agreed that the freight as per bills of lading, shall be taken without deduction in payment of this charter, any deficiency to be paid here by the charterers, in cash, less insurance, and any surplus over and above estimated charter to be settled here before vessel clears at the custom house by captain's draft in charterer's favor upon consignee, payable ten days after arrival of vessel at port of discharge. The master to call at broker's office as requested to sign bills of lading as presented, without prejudice to this charter party.

It is further agreed that —— ( ) running lay days, to commence when the vessel is all ready and prepared to load bulk grain, and written notice thereof given to charterers, shall be allowed for loading the vessel at ——, and discharging (days expended at —— to be indorsed on bills of lading). And if the vessel be longer detained, charterers to pay demurrage at the rate of —— ( ) pounds British sterling or its equivalent per day, payable day by day, to the party of the first part, or authorized agent; *Provided*, such detention shall happen by default of the said party of the second part or their agent. Vessel to employ charterer's stevedore at the usual customary rates for such labor, and to load at such elevator, elevators, wharf, or wharves as may be designated by the charterers, who are to pay the ordinary expense of towage after the first move. Cargo to be received and delivered alongside within reach of vessel's tackles. Lighterage, if any, at expense and risk of cargo. The charterer's responsibility under this charter to cease upon shipment of the cargo, but the vessel to have a lien thereon for all freight, dead freight,

demurrage, or average. Vessel is likewise to discharge in such dock or at such wharf, as may be specified by consignees, on arrival, provided no extra detention or expense is thereby incurred by the vessel. A commission of five per cent. on the amount of this charter is due and payable by vessel and owners upon signing hereof, vessel lost or not lost, to ——, whose agents at port of destination are to attend to ship's business on customary terms.

Funds, for ordinary expenses of vessel, if desired by master, to be advanced by charterers at port of loading, subject to commission and insurance only.

To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, each to the other, in the penal sum of estimated amount of freight.

In witness whereof, we have hereunto set our hands the day and year first above written.

M. R.
S. R.

Signed in the presence of }
W. T., N. S. }

Contract—Charter Party.

Mediterranean Out and Home Charter.

This charter party, made and concluded upon in the city of ——, this —— day of ——, A. D. ——, between M. R., of the good and coppered ——, called the ——, of ——, of the register measurement of —— tons, or thereabouts, and guaranteed to carry —— tons dead weight of 2,240 lbs, classed ——, Lloyds, now lying in the harbor of ——, of the first part, and S. R., of the second part, witnesseth:

That the said party of the first part agree on the freighting and chartering of the whole of the said vessel, including poop (with the exception of the cabin and necessary room for the crew and stowage of provisions, sails, and cables), unto the said party of the second part, for a voyage from New York, Philadelphia, or Baltimore, at charterer's option, to —— for discharging outward cargo ——. And thence for return cargo back, from another port as above, to either New York, Philadelphia, Boston, Baltimore, or a port in the united kingdom, at charterer's option. *All ports east of the west coast of Italy are excluded.* Ports of loading and discharging to be named on signing bills of lading for the respective cargoes. If home cargo is fruit and (*or*) other merchandise from Sicily, charterer has the privilege of using a second port there, but the time used for changing ports to count as lay days. Vessel to call at Gibraltar for orders, if required, for outward cargo only, allowing 48 hours for waiting for orders there; —— on the terms following:

The said vessel shall be tight, staunch, strong, and every way fitted for such a voyage, and receive on board during the voyage aforesaid the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board otherwise than from the said party of the second part, or —— agent.

The said party of the second part doth engage to provide and furnish to the said vessel a full and complete cargo of such lawful merchandise, as the charterers may require, for the voyage out and home, including petroleum and (*or*) its products, and marble in blocks, the latter, if any shipped, not to be more than about —— tons of twenty-five cubic Genoese palms each, customary mercantile Carrara measurement. If any piece of marble exceeds five tons, all extra expense for loading and discharging same to be paid by the party of the second part.

And to pay to the said party of the first part, or agent, for the use of the said vessel during the voyage aforesaid, the sum of —— in full for the round voyage, both out and home, of which ——, or its equivalent, is payable upon correct delivery of the outward cargo at port of discharge in the Mediterranean, and balance of amount of this charter, or its equivalent, to be paid upon correct delivery of the homeward cargo at the port of discharge.

Vessel to consign to charterer's friends at port of loading and discharge, paying one commission of two per cent. only on amount of this charter, payable at port of loading or discharge, at charterer's option.

Captain to sign bills of lading as presented, without prejudice to this charter party, and difference, if any, between the amount of bills of lading for the outward freight and the amount due vessel on the same is to be settled here in cash; if in captain's favor, before vessel sails; or if in charterer's favor, by captain's draft, due ten days after arrival of vessel at port of discharge; the rate of exchange and gold for outward freight to be taken at rates ruling at New York on the day of vessel's clearing at the custom house.

After leaving Gibraltar on homeward passage vessel to proceed to the northward of the Western Islands, and keep north of that latitude during homeward passage, unless absolutely forced south by stress of weather, in which case vessel's logbook shall furnish evidence of that fact. Charterers have the privilege of constructing ventilators over vessel's hatchway, at their own expense, and the master to keep the same open and hatches off in all weather that will not endanger vessel's safety; and the vessel is to be cleaned as customary previous to loading such homeward cargo. In case of head winds on arrival at Gibraltar with homeward cargo vessel to tow through the straits, charterer paying half towage.

The master to employ charterer's stevedore in loading the vessel, at the usual rates. Vessel to haul once for loading and discharging to customary loading and discharging berth, as ordered by charterer or agent; and for any subsequent hauling charterer to pay the towage.

If outward cargo is petroleum, vessel to load under inspection as to stowage of the authorized inspectors appointed by the charterer, free of charge to the vessel for such inspection.

For loading at port in the United States and foreign ports it is agreed —— running lay days shall be allowed, commencing from the time the vessel is ready, and written notice thereof to be given by the master twenty-four hours before the time to count, and customary despatch for discharging vessel and homeward cargo. Demurrage over and above the said laying days at —— per day, provided the detention shall happen by default of charterer or agent. Charterer has the privilege of re-chartering the vessel, and captain to sign any such re-charter, if required, without prejudice to this charter party.

The cargo is to be received and delivered as customary at the respective ports of loading and discharging, within reach of vessel's tackles.

Dangers of the seas and navigation of every nature and kind always mutually excepted.

Penalty for non-performance of this agreement amount of charter.

A commission of —— per cent. upon the gross amount of this charter is due and payable by the vessel to ——, upon signing hereof.

In witness, we hereunto set our hands, the day and year first above written.

M. R.
S. R.

Signed in the presence of }
W. T., N. S. }

Contract—Charter Party.

Charter for Orders, as approved by the Philadelphia Maritime Exchange.

This charter party, made and concluded upon in the city of P——, the —— day of ——, in the year of our Lord, ——, between M. R., master and agent for the owners of the ——, of ——, built ——, at ——, of —— tons, or thereabouts, register measurement, now lying in the harbor of ——, and guaranteed to class ——, at ——, of the first part, and S. R., of the second part, witnesseth:

That the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the deck, cabin, and necessary room for the crew, and storage of provisions, sails, and cables), for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from Philadelphia to Queenstown, Falmouth, or Plymouth for orders (which are to be given within forty-eight (48) hours after arrival of vessel

at port of call or lay days to count), to discharge at a safe port (where vessel can lie afloat), in the united kingdom, or on the continent, between Havre and Hamburg (both included), or to a direct port within the above limits, if named before vessel sails from Philadelphia, on the terms following:

The said vessel shall be tight, staunch, strong, and in every way fitted for such a voyage, and receive on board the merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish to the said vessel a full and complete cargo of wheat and (*or*) Indian corn, say as much as she can reasonably stow and carry on the draft of water allowed by the surveyors appointed by the P—— Board of Marine Underwriters, under whose inspection the vessel is to load; and, furthermore, it is hereby agreed that the vessel shall prepare for bulk and (*or*) bag grain, at her expense, according to the rules and regulations of the P—— Board of Marine Underwriters, and shall furnish from them to charterers a certificate of proper lading before clearing at the custom house; and it is furthermore agreed that the party of the second part shall pay to the said party of the first part, or his agent, for the use of the said vessel during the voyage aforesaid, if ordered from Queenstown, Falmouth, or Plymouth, to discharge at a port in the united kingdom, —— ( ) shillings and —— ( ) pence British sterling, per quarter of 480 pounds delivered: if ordered from Queenstown, Falmouth, or Plymouth, to discharge at a port on the continent as above, ten per cent. additional to be paid per quarter of 480 pounds delivered; if ordered to a direct port before vessel sails from P——, or if discharged at port of call, or at Cork, should vessel have called at Queenstown, a deduction of —— ( ) pence British sterling per quarter of 480 pounds, to be made from the rate the vessel would have received if ordered to that port via Queenstown, Falmouth, or Plymouth.

Freight, payable on right delivery of cargo, if discharged in the united kingdom, in cash in British sterling, if discharged on the continent, as above, by good and approved bankers' sight bills on London, without discount or allowance; and it is further agreed that the freight as per bills of lading shall be taken without deduction in payment of this charter, any deficiency to be paid here by the charterers, in cash, less insurance, and any surplus over and above estimated charter to be settled here before vessel clears at the custom house by captain's draft in charterer's favor upon consignee, payable ten days after arrival of vessel at port of discharge. The master to call at brokers' office as requested to sign bills of lading as presented, without prejudice to this charter party.

It is further agreed that —— ( ) running lay days, to commence when the vessel is all ready and prepared to load bulk grain, and written notice thereof given to charterers, shall be allowed for loading the vessel at P——, waiting orders at port of call (after expiration of 48 hours as above), and discharging (days expended at P——, to be indorsed on bills of lading). And if the vessel be longer detained, charterers to pay demurrage at the rate of —— ( ) pounds British sterling or its equivalent per day, payable day by day, to the party of the first part, or authorized agent; *Provided*, such detention shall happen by default of the said party of the second part or their agent. Vessel to employ charterer's stevedore at the usual customary rates for such labor, and to load at such elevator, elevators, wharf or wharves as may be designated by the charterers, who are to pay the ordinary expense of towage after the first move. Cargo to be received and delivered alongside within reach of vessel's tackles. Lighterage, if any, at expense and risk of cargo. The charterer's responsibilty under this charter to cease upon shipment of the cargo, but the vessel to have a lien thereon for all freight, dead freight, demurrage or average. Vessel is likewise to discharge in such dock or at such wharf, as may be specified by consignees, on arrival, provided no extra detention or expense is thereby incurred by the vessel. A commission of five per cent. on the amount of this charter is due and payable by vessel and owners upon signing hereof, vessel lost or not lost, to ——, whose agents at port of destination are to attend to ship's business on customary terms.

Funds, for ordinary expenses of vessel, if desired by master, to be advanced by charterers at port of loading, subject to commission and insurance only.

To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, each to the other, in the penal sum of estimated amount of freight.

In witness whereof, we have hereunto set our hands, the day and year first above written.

M. R.
Signed in the presence of } S. R.
W. T., N. S.

Contract—Charter Party.

Petroleum Charter, as approved by the Philadelphia Maritime Exchange.

This charter party, made and concluded upon in the city of P——, the —— day of ——, in the year of our Lord ——, between M. R., master and agent for the owners of the —— of ——, built ——, at ——, of —— tons, or thereabouts, register measurement, now lying in the harbor of ——, and guaranteed to class —— at —— of the first part, and S. R., of the second part, witnesseth:

That the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the deck, cabin, and necessary room for the crew, and storage of provisions, sails, and cables), for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from ——, to discharge at a safe port, where a vessel can lie afloat, say to ——, on the terms following:

The said vessel shall be tight, staunch, strong, and in every way fitted for such a voyage, and receive on board the merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish to the said vessel, a full and complete cargo of petroleum, in customary barrels, ——. And it is furthermore agreed that the party of the second part shall pay to the said party of the first part, or his agent, for the use of said vessel during the voyage aforesaid, —— ( ) shillings and —— ( ) pence for each and every forty (40) gallons, gross American gauge of barrels, with five per cent. primage thereon, per barrel delivered, whether full, part full, or empty, etc.

Freight, payable on right delivery of cargo, if discharged in the United Kingdom, in cash in British sterling; if discharged on the continent, by good and approved bankers' sight bills on London, without discount or allowance; and it is further agreed that the freight, as per bills of lading, shall be taken without deduction in payment of this charter, any deficiency to be paid here by the charterers, in cash, less insurance, and any surplus over and above estimated charter to be settled here before vessel clears at the custom house by captain's draft in charterer's favor upon consignee, payable ten days after arrival of vessel at port of discharge. The master to call at broker's office, as requested, to sign bills of lading as presented, without prejudice to this charter party.

It is further agreed that —— ( ) running lay days, to commence when the vessel is all ready and prepared to receive cargo at wharf designated by charterers, and written notice given them of same, shall be allowed for loading the vessel at P——, and customary despatch to be allowed for discharging cargo at port of discharge. And if the vessel be longer detained, charterers to pay demurrage at the rate of —— ( ) pounds British sterling, or its equivalent, per day, payable day by day, to the party of the first part, or authorized agent. *Provided*, such detention shall happen by default of the said party of the second part, or their agent. Vessel to load under inspection, as to stowage, of the authorized inspectors appointed by charterers free of charge to the vessel for said inspection, to employ charterers' stevedore at the usual customary rates for such labor, and to load at such wharf or wharves on the —— or —— rivers, where she can lie afloat, as may be designated by the charterers, and if required to move more than once charterers to pay the ordinary expense of towage. Cargo is to be received and delivered alongside within reach of vessel's tackles. Lighterage, if any at expense and risk of cargo. The charterers' responsibility under this charter to cease upon shipment of the cargo, but the vessel to have a lien thereon for all freight, dead freight, demurrage or average. Vessel is likewise to discharge in such dock, or at such wharf as may be specified by consignees, on arrival provided no extra detention or expense is thereby incurred by the vessel A commission of five per cent on the amount of this

charter is due and payable by vessel and owners upon signing hereof, vessel lost or not lost, to ——, whose agents at port of destination are to attend to ship's business on customary terms.

Funds, for ordinary expenses of vessel, if desired by master, to be advanced by charterers at port of loading, subject to commission and insurance only.

To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, each to the other, in the penal sum of estimated amount of freight.

In witness whereof, we have hereunto set our hands the day and year first above written.

M. R.
S. R.

Signed in the presence of } W. T., N. S. }

STOWAGE CERTIFICATE FOR PETROLEUM LADEN VESSELS.

Issued by the Board of Surveyors and Inspectors appointed by the Philadelphia Board of Marine Underwriters, and approved by the Board of New York Underwriters, Verein Bremer See-Versicherungs-Gesellschaften, and the Philadelphia agents of the London Lloyds' Liverpool, and Finland Underwriters.

SURVEYOR'S OFFICE.

This may certify, that we have surveyed for Messrs. ——, the stowage of the cargo, consisting of ——, of the —— tons register, bound from —— to ——. This vessel was well and sufficiently ballasted, and there was ample dunnage, boards, and planks, of the proper descriptions, used in the stowage of the cargo. The vessel now draws —— feet —— inches of water, is not overloaded, and, in our opinion, is in a seaworthy condition.

Approved by the Board of Marine Surveyors.

C. C., *Clerk.* S. R., *Surveyor.*

PETROLEUM BILL OF LADING.

Shipped in good order and condition, by ——, on board the ——, called the ——, whereof M. R. is master for this present voyage, and now lying in the port of ——, and bound for ——, which are marked and numbered as per margin, and are to be delivered in like good order and condition at the aforesaid port of ——, —— gallons (the dangers of the seas, fire, and collision only excepted), unto ——, or to —— assigns, he or they paying freight upon the said merchandise, at the rate of —— shillings —— pence per forty gallons, gross gauge of barrels delivered, with five per cent. primage and average accustomed, and all other conditions as per charter party dated ——.

In witness whereof, the master or purser of the said vessel hath affirmed to two bills of lading, all of this tenor and date, one of which being accomplished, the rest to stand void.

Dated in ——, this —— day of ——, A. D. ——.

Gauge and contents unknown; not accountable for leakage or breakage.

Freight payable on barrels or cases delivered full, part full, or empty.

If cases be shipped, vessel not to be accountable for rust.

Contract—Charter Party.

For Timber to Gulf Ports.

Place ——, Date ——.

It is this day mutually agreed between M. R., master of the good ship or vessel called the V., of the measurement of —— tons, or thereabouts, now ——, and S. & R., merchants:

That the said ship being tight, staunch, and strong, and every way fitted for the voyage, shall, with all convenient speed, sail and proceed to ——, and there load, from the factors of the said merchants or agents at such safe anchorage as they may direct, a full and complete cargo of square pitch pine timbers, or and deals, at merchants' option. Merchants to supply suitable timber or and planks for beam filling and broken stowage, at their option. Deck load, if required by the captain, to be supplied at full freight. No timber or deals to be cut without the written permission of the shippers, and the stevedore to be approved of by them. The cargo to be delivered alongside at merchants' risk and expense, and to be received by the master and secured with the ship's dogs and chains when so delivered, and to be then at ship's risk. Should the master order more timber alongside than the ship can carry, the expense of towing it back to the booms to be paid by the ship. The ship to discharge each lighter having lumber for cargo or broken stowage, without unreasonable detention, and to give charterer's agents written notice three clear days before broken stowage is required, not exceeding what she can reasonably stow and carry, over and above her tackle, apparel, provisions and furniture; and being so loaded, shall therewith proceed to (*state where*), or so near thereunto as she may safely get, and deliver the same on being paid freight as follows:

For timber	per load of 50 cubic feet calliper measure as customary at port of discharge.
For deals	per St. Petersburg standard hundred. 165 cubic feet.

All timber or and deals used for stowage and beam filling to pay two-thirds freight.

(The act of God, public enemies, fire, and all and every other danger and accidents of the seas, rivers, and navigation of whatever nature and kind soever, during the said voyage, always excepted.)

Freight to be paid as follows: One-third in cash on unloading and right delivery of cargo, and the remainder by good and approved bill, payable in London at four months' date following, or in cash, less two per cent., at merchants' option.

Cash for ships, ordinary disbursements, at port of loading to be advanced by charterer's agents at current rate of exchange, subject to cost of insurance and the customary two and a half per cent. commission, and to be deducted from first payment of freight.

For any money advanced to the master, he shall give a receipt on the bill of lading, and the charterers shall in no way be responsible for the appropriation of such advances.

—— working days are to be allowed the merchants (if the ship be not sooner despatched), for furnishing cargo, and said cargo to be unloaded as customary at port of discharge, and ten days on demurrage over and above the said lay days, at —— pounds per day.

Vessels to be addressed to ——, or their agents, at port of loading, paying them two and a half per cent. commission on gross freight for doing the ship's business.

This charter being concluded by ——, on behalf of another party, it is agreed that their liability shall cease as soon as the cargo is shipped, and the names of their principals given up.

Penalty for non-performance of this agreement, estimated amount of freight.

It is understood that the vessel insures at the regular rates on cargo, or is chargeable with the difference. Captain is not permitted to take any timber or deals on board beside the cargo, except on written permission of the shippers.

A commission of five per cent. is due —— by ship on signing this charter.

M. R., *Master.*

(*Witness.*) S. & R., *Merchants.*

Contract—Copyright Matter.

General Form.

See title ASSIGNMENTS, ante.

This agreement, made this —— day of ——, between A. B. (of ——, author) and C. D. (of ——, publisher), witnesseth:

That said A. B. shall, on or before the —— day of ——, complete (*or* compile) and furnish to said C. D. the copy for a work to be entitled ——.

That said A. B. shall copyright said work in his own name.

That said C. D. shall, on or before the —— day of ——, publish said work, and have the same ready for sale.

That said C. D. shall sell said work, paying said A. B. the sum of —— per cent. per copy for all

copies thereof sold, as follows: (*stating the terms and times of payment*).

That this agreement shall continue during the term allowed by law for the existence of a copyright, and the renewal thereof.

In witness, etc.

VARIOUS STIPULATIONS, ETC.

Advancements and reimbursement.

That said C. D. shall, in the meantime, advance said A. B. the following sums (*giving amounts and payments*), and no more.

Or, That said C. D. shall, from to time, during the completion of said manuscript, advance said A. B. such sums of money, the aggregate of which shall not exceed —— dollars, as follows:

That said C. D. shall reimburse himself from the first proceeds of the sale of said work, and failing with reasonable diligence so to do within —— from the publication thereof, shall, etc. (*as the parties agree*).

Accounting.

That said C. D. shall, at the date of each payment, at the same time give unto said A. B. a statement of the amount of sales during the time between the same and the last payment.

That said C. D. shall, on the —— day of ——, in each year, render unto said A. B. his full account of all sales of said —— for the year last past, and at all other times when by said A. B., in writing, demanded.

Advertisements.

That —— pages of said work shall, if necessary, be devoted to the advertisement of the interests of (*state what*) only, at the rate of —— dollars per page.

That said advertisements shall be canvassed for and solicited by ——.

That said A. B. shall receive —— per cent., and said C. D. —— per cent. of the proceeds of said advertisements.

That —— dollars shall be annually spent by said C. D. in advertising said work.

Arbitration, etc.

That all and every controversy, demand, dispute, and difference which shall hereafter arise, affecting or concerning the construction, or any portion or stipulation in this agreement contained, the quantity or quality of the subject-matter therein contained, the time or manner of any payment or payments, or the performance or non-performance of any stipulations therein contained: then and in such case the same shall be submitted and referred to (two credible persons, one to be chosen by each of said parties, they being authorized to select a third) any person said parties may agree upon, whose award (*or* the award of a majority of which) shall be binding and final.

Assignment.

That said A. B. will, after a sale of —— copies of said work, assign, transfer, and set over all his title and interest in and rights under this agreement and said work as required by law to said C. D., for the further consideration of —— dollars, payable as follows (*stating terms and times of payment*): *or*

That said C. D. will, after a sale of —— copies of said work, assign, transfer, and set over to said A. B. all his title and interest in, and rights under this agreement and said work, together with all the electrotype and stereotype plates, cuts, and illustrations, and all and every matter and material necessary thereto or connected therewith, for the sum of —— dollars, payable as follows (*stating time and manner, etc.*)

Copyright.

That said A. B. shall copyright said work in his own name as author and proprietor, and at his own expense.

That said C. D. shall copyright said work in his own name as publisher and proprietor, and at his own expense.

Cuts and Illustrations.

That said A. B. shall provide —— subjects, together with their appropriate illustrations for said work.

That said C. D. shall procure at the hands of competent and efficient engravers the execution of said illustrations in a purely artistic and workmanlike manner, subject to the approval of —— and ——.

Material and Finish.

That said work shall be printed on (*state the grade, kind, and tint of paper*), weighing —— pounds to the ream.

That the same shall be bound in the following styles *giving kinds, color, etc., etc., of binding*).

That said binding shall be ornamented and finished as follows: ——, etc.

Numbering.

That all books published shall be regularly numbered by a numbering machine as soon as bound and before delivery for sale or stock.

Payments.

That the payment of said —— shall be as follows (*stating the terms of each payment, the amount of each payment, and the time of each payment*).

Plates.

That said work shall be executed in electrotype *or* stereotype) plates, cast, formed, made, modelled, and molded after the manner known as the —— system, and in the best and most substantial manner.

That said plates shall be included in the terms of the assignment in this agreement provided for.

That said plates, if taken and sold under execution at any time hereafter, shall not carry with them any right now or hereafter to be vested in said C. D. by virtue of this agreement or otherwise.

Presentation Copies.

That said A. B. shall receive for presentation —— copies of said work free of all costs and charges for the same.

That said C. D. shall receive for presentation —— copies of said work free of all costs and charges for copyright fee of the same.

Publication.

That the copy for said work shall be ready for publication on or before the —— day of ——.

That said work shall be published on or before the —— day of ——.

That the right to publish and vend said work shall rest solely and only in said C. D., and shall not be transferable by any act soever, whether of said C. D. or by operation of law, and he shall be wholly and utterly incapable to transfer the same, by any act whatever; and should said C. D. at any time become incapable of exercising said right the same shall thereupon lapse to and vest solely in said A. B. and his legal representatives; *or*,

That the right to publish and vend said work shall vest in the said C. D. and his legal representatives during the full term of the copyright thereof, and its renewal if made.

Royalty—Amount and Payments.

That said A. B. shall, in the manner and times aforesaid, receive a royalty of —— per cent. (on the retail selling price) of every copy of said work published and sold.

That said royalties shall be payable on the first day of each month (*or* payable on the first days of January, April, July, and November) of each year.

That said A. B. shall receive a sum equal to the proportion of pages should the same be less than the number herein agreed upon, but no greater amount than that already agreed upon shall be paid if the number of pages exceed that herein agreed upon.

Another Form.

That said A. B. shall receive the following royalties:

—— per cent. (of the retail selling price) of the first —— thousand sold.

—— per cent. (of the retail selling price) of the —— —— thousand sold.

—— per cent. (of the retail selling price) of all copies thereafter sold.

That said royalties shall be payable, etc., as above.

Sales.

That said C. D. (*or* A. B.) hereby guarantees a sale of at least —— thousand copies of said work during the first year.

That the succeeding years the sales thereof shall not be less than —— thousand copies per year.

That failing the above sales said C. D. shall forfeit all rights by, in, and under this agreement.

That the amount of sales shall be in all cases verified by affidavit in the accountings herein stipulated to be made, and failing this, shall at all events once in each year be so made.

Shape and Size.

That said work, exclusive of contents and index, shall contain (*or* not exceed) —— pages.

That said work shall be in shape and size the same as that of a book entitled ——, published by ——, of ——.

That said work shall be in proportion as follows: length ——, breadth ——.

Territory Reserved.

That the following territory shall be reserved to the author's own disposition and use (*describing it*).

Time of Author.

That in the meantime he shall devote —— hours of the —— part of the day to the work aforesaid exclusively, and in nowise allow any matter to interfere with this portion of his agreement.

Title, Title-page, and Description.

That the title of said work shall be in the words and figures as follows, viz.:

That the same may be altered, abandoned, modified, or substituted at any time before publication upon the mutual consent of said parties: *or*

That no change or modification of any character whatever shall be made in the above-named title-page.

Type.

That said work shall be set in such type only as said parties shall mutually agree upon; *or*

That said work shall be set in such type only as said A. B. (*or* C. D.) shall agree upon; *or*

That said work shall be set in the type and style as follows (*giving the same minutely*).

Warranty, etc.

That said A. B. warrants said copy free from all and every liability from piracy, or otherwise, or in any way subject to any penalty, liability, or forfeiture under the laws relating to copyrights.

That said A. B. shall be liable to the extent of all penalties, liabilities, and forfeitures incurred through his carelessness in this behalf, or anywise in the premises, or throughout said entire work.

Contract—Copyright Matter.

General Form.

See title ASSIGNMENT, ante.

This agreement, made this —— day of ——, A. D. ——, between A. B., of ——, and C. D., of ——, witnesseth:

That A. B., for the consideration hereinafter mentioned, shall prepare a (*naming the subject*), to comprise —— volumes (*or* parts, etc.), which he shall complete for press as rapidly as practicable (*or* on or before the —— day of ——).

That the copyright of said work shall be secured by and in the name of —— (as author and proprietor, *or* proprietor).

That said C. D. shall publish, republish, and vend said ——.

That said C. D. shall give said A. B. for presentation —— of said work.

That said C. D. shall pay said A. B. for said work as follows: ——.

In witness whereof, said parties have hereunto set their hands this —— day of ——, A. D. ——.

A. B.
C. D.

Contract—Copyright Matter.

General Form.

See title ASSIGNMENT, ante.

This agreement, etc., witnesseth:

That A. B. shall, on or before the —— day of ——, furnish C. D. copy for a work entitled (*giving the title of the work*).

That A. B. shall copyright the same in his own name.

That C. D. shall, on or before the —— day of ——, publish the same (in the style to be agreed upon), and thereafter sell the same by subscription, paying A. B. —— per cent. of the subscription price therefor as the same is sold by him.

That the title-page of said work may at any time before publication be changed as assent of parties and circumstances require.

That after the expiration of —— (*or* after the sale of —— copies of said work) C. D. shall sell at least —— copies each succeeding year, or make up such deficiency at the expiration thereof, or in lieu thereof turn over all plates and release all title and interest in and rights under this agreement to said A. B. (*Signed*) A. B.

In witness, etc. C. D.

Contract—Copyright Matter.

Publication upon Joint Account.

This agreement, etc., witnesseth:

That said A. B. is proprietor of the following works, viz. (*describing them*),

That said C. D. shall become publisher of said works.

That the cost of manufacturing said works shall be made up by said A. B. by charging the printing plates, book and plate paper at first cost, the press work at —— cents per token, and the collecting and delivery at the usual cost.

That said works shall be delivered to C. D. in sheets to be folded and bound at cost price, and at his own cost and expense for materials and labor.

That said books shall be put up in the same style and quality, and uniform with the volumes of ——, formerly published by said A. B., a copy of which is herewith submitted.

That the expense of circulars and advertising said series of works shall be divided between said parties and limited to such an amount as may hereafter be agreed to. An accurate account of which expense shall be kept and rendered on the —— days of —— in each year.

That all copies of each new volume, not exceeding ——, given or presented for editorial purposes, shall be charged at cost as an item of advertising, and the amount thereof equally borne by said parties. An accurate account of which, and to whom given or presented, shall be kept and rendered at the time of accounting aforesaid.

That the profits of each volume shall be equally divided between said parties.

That said profit shall consist of the difference between the actual cost of manufacturing each volume and the wholesale price of the same, which shall be —— per copy.

That said C. D. shall sell said works at said wholesale price, saving only small lots of —— in number when the actual profits thereon shall be equally divided. An accurate account of all which, and to whom sold shall be kept, shall be truly kept and rendered at the time of accounting aforesaid.

That this agreement shall be in full force and binding for a term of five years from this date, and thereafter until one of said parties shall give to the other six months notice, in writing, signifying his wish to annul the same.

That in case no satisfactory arrangement can be made for the settlement of each party's interest an arbitrator shall be chosen by each party, and by said two chosen another shall be selected, the decision of whom or any two of them, in writing, shall be final, binding, and conclusive.

In witness, etc.

Contract—Employment.

Attorney and Clerk.

See title APPRENTICESHIP, ante.

Articles of agreement made and entered into this —— day of ——, A. D. ——, by and between A. B., of ——, attorney, and C. D., of ——, farmer (and I. D., his son), witnesseth:

That I. D. shall faithfully serve said A. B. as his clerk for the space of —— years, from the —— day of ——.

That he shall safely keep and not embezzle, misspend, purloin, or secrete any of the chattels, credits, effects, estate, goods, moneys, or writings received by him or committed to his care, or knowingly permit or suffer the same to be done.

That he shall not disclose or make known any secrets of his master or his master's clients, or any matter relating to his master's business or to his prejudice.

That he shall not absent himself from his master's service during said term without his consent, and that he shall in all things be faithful and true to his said master.

That said C. D. shall pay said A. B. the sum of five hundred dollars upon the (signing of this agreement) —— day of —— (*or*, as follows).

That said C. D. shall clothe and bear all expenses incident to ill-health of said I. D.

That said A. B., in consideration thereof, shall during said term instruct said I. D. in the profession of law and practice of an attorney in the —— court, etc., and in the meantime provide him with good and sufficient food and lodging, and allow him —— a year for washing his linens (and his income as notary).

It is further covenanted and agreed that in case said A. B. or I. D. dies within the first year of said term, then said A. B., or his legal representatives, shall repay to said C. D. the sum of four hundred dollars. And if either should die during the second year, then said A. B., or his legal representatives, shall repay said C. D. the sum of three hundred dollars, etc

In witness whereof, said parties have hereunto set their hands (and seals) the day and year first above written.

(*Signed*) A. B.
C. D.
[*Witness.*] I. D.

Contract—Employment.

Book-Keeper and Merchant.

This agreement, etc., witnesseth:

That said A. B. will, during a term of —— years from date hereof, dwell with, faithfully, perfectly, and truly keep the books and accounts of, and diligently serve said C. D.

That said A. B. will perform the reasonable directions of said C. D., and from time to time, during said term, upon request, make and deliver him a complete and perfect account, in writing, of all money received and paid out, and of all goods and commodities which he shall at any time during said term receive or deliver on account of said C. D.

That said A. B. will pay said C. D. all such sums of money received and due from the footing of every account.

That said A. B. will not disclose any of the secrets of his employment or business, nor matter concerning the business of, or to the prejudice of said C. D., nor of his correspondence to any person whomsoever.

That said A. B. will not destroy, embezzle, or waste any of the goods, moneys, or effects of said C. D. or of any other person intrusted to his care.

That said A. B. will not correspond with any person corresponding with his said employer, nor use any traffic or dealing for himself or any other person, or carry on or be interested in any other business or trade whatsoever, without the consent of the said C. D., in writing.

That said A. B. will not deliver upon credit any of the goods, merchandise, or moneys of said C. D., or any of his correspondents, to any person or persons whomsoever, without the express consent of said C. D.

That said C. D., in consideration of said services, shall pay said A. B. the yearly sum of —— dollars, in equal payments, on the days following, viz.:

That said C. D. shall, in further consideration of said services, during said time, provide said A. B. with sufficient and suitable board, lodging, and washing.

In witness whereof, etc.

Contract—Employment.

To Cultivate Land on Shares.

This agreement, etc., witnesseth:

That said A. B. will, on or before the —— day of ——, break, properly fix, and sow with ——, all that twenty acres of field belonging to, and lying immediately north of the dwelling-house and garden of said C. D., in the town of ——.

That one-half of the seed wheat shall be found by said C. D.

That when said crop shall be in fit condition, he will cut, harvest, and safely house it in the barn of said C. D.

That he will properly thresh and clean the same.

That the straw shall be equally divided between the parties.

That he will deliver one-half of said wheat, being the produce thereof, to said C. D., at the granary near his dwelling-house, on or before the —— day of ——.

That said A. B. shall perform all the work and labor necessary in the premises, or cause the same to be done.

In witness, etc.

Contract—Employment.

Clerk or Workman.

This agreement, etc., witnesseth:

That said A. B. shall enter the service of C. D. as clerk (*or* journeyman).

That said A. B. shall faithfully, honestly, and diligently perform the duties of a clerk (*or* journeyman) in the store (*or* shop) of said C. D., and well and truly obey all the reasonable commands and wishes of said C. D., during the space of —— from this date.

That he will guard the interests and keep the secrets of his employer, absenting himself only upon said employer's consent.

That said C. D., in consideration of said services, will feed, clothe, and care for said A. B., and pay him a yearly sum of five hundred dollars, in equal quarterly payments, on the first days of January, etc.

In witness whereof, etc.

Contract—Employment.

Engraving Set of Cuts, etc.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall, on or before the —— day of —— next, at his own cost and expense, provide good and suitable material, and engrave thereon (*state what, item by item*).

That said A. B. shall finish and deliver said cuts, in the order designated, within —— days next after every notice given for the delivery of the same.

That said C. D., in consideration thereof, shall pay said A. B., upon the delivery of every —— cuts, the sum of —— dollars.

In witness, etc.

Contract—Employment.

Engraving Steel Plates.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereafter specified, shall provide —— good and perfect steel plates, and will engrave thereon (*state what*), according to the plans, specifications, and drawings hereunto annexed.

That he will complete and finish the same in a workmanlike manner, and deliver them to said C. D., on or before the —— day of ——.

That in consideration therefor, said C. D. shall pay to said A. B., upon the delivery of said engraved plates, and all of them, the sum of —— dollars, in full payment and satisfaction therefor.

In witness whereof, etc.

Contract—Employment.

Freighting Ship or Vessel.

This agreement, made this —— day of ——, between A. B. & Co., factors and commission merchants, of the city of ——, of the first part, and C. D., owner and master of the sloop (*or* canal boat) Empire, of the second part, witnesseth:

That said party of the first part shall load and freight said sloop (*or* canal boat) during the ensuing season of navigation, to commence on the —— day of —— next.

That said sloop (*or* canal boat) shall be in readiness to receive her first lading, at the dock of said party of the first part, at slip No. ——, in the city of ——, aforesaid, on the last named date, and thereafter on her upward trips from —— to ——, and on her return trips from —— to ——.

That said party of the first part will pay said party of the second part, for carrying the same, on the delivery of each and every cargo in safe and sound condition, the following rates of compensation:

For down freight.

Coal, —— dollars per ton.
Dry goods, —— dollars per hundred.
Grain, —— dollars per hundred.
Household furniture, —— dollars per hundred.
Salt, —— dollars per barrel.

For up freight.

Butter, —— dollars per firkin.
Grain, —— " " hundred.
Flour, —— " " barrel.
Hay, —— " " bale.
Wood and willow ware, —— dollars per hundred.

That said party of the first part shall deliver all lading and freight to the party of the second part, at his sloop (*or* canal boat).

That said party of the first part shall not at any time require said party of the second part to carry or convey on his sloop (*or* canal boat) any timber or lumber (staves and headings excepted), carts, cars, or vehicles of any description, nor any horses, mules, cattle, swine, sheep, or animals of any description whatever.

That said party of the second part, in consideration of the premises, shall safely carry all such lading and freight as he shall receive from said party of the first part, and deliver them in as good and sound condition as received, according to the respective bills of lading furnished him by said party of the first part.

That said party of the second part shall pay all costs and charges of transportation, including toll, towage, wharfage, etc.

That said party of the second part shall discharge all lading and freight on the dock at his own cost and charge.

That said party of the second part shall ply regularly between —— and ——, with his said sloop (*or* canal boat) during the entire season of navigation above mentioned, and will not occupy more than —— days in making either an upward or downward trip, unless hindered or delayed by unavoidable accident.

In witness whereof, the parties have hereunto affixed their names the day and year first above written.

A. B. & Co.
C. D.

Executed in presence of
W. T., N. S.

Contract—Employment.

Freighting Vessel, etc.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall, with all expedition, forthwith make ready his vessel, V., and provide the same in all respects for a voyage to P., and shall receive on board the same, for said C. D., the following goods: (*naming them*).

That said A. B. shall, within —— days from date hereof, sail from this port outwards (the weather serving), and directly to P.

That within —— days after said vessel's arrival at V., said A. B. shall unlade and deliver said goods unto the factors of said C. D.

That the dangers of sea, public enemies, and restraint of foreign powers, only are excepted.

That said C. D., in consideration thereof, shall pay unto said A. B., for freight of said goods, at the rate of —— dollars, upon delivery and discharge of the same at V., as aforesaid, together with the accustomed average primage, and two-thirds of all port charges to grow due during said voyage, the other third part to be paid by said A. B.

In witness, etc.

Contract—Employment.

Furnace Manager.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, covenants and agrees well, truly, and faithfully to serve said C. D., and his legal representatives, at his furnace in ——, as his bookkeeper, manager, and overseer, in which occupation he is skilled, from the —— day of —— unto the —— day of ——.

That during said term said C. D. will, at all times, be ready to render just and true accounts of all work, matters, and things which have been or shall be done or performed at the furnace aforesaid.

That during said term said C. D. will not wilfully neglect or depart from said service or employment, nor do, suffer, or consent to any act or thing to the prejudice of said A. B., his interests, or said furnace, whatever.

That he will order and direct all workmen, servants, and persons employed in and about said furnace, in their duty, service, and work, to the utmost of his ability, knowledge, and skill, and for the greatest advantage and profit of said A. B.

That in consideration thereof, the said A. B. will pay said C. D., for his service during the term aforesaid, the sum of —— dollars, as follows, etc.

That said A. B. will find and provide said C D. with sufficient meat, drink, washing, and lodging, during said term.

That said A. B. will, at his own cost and charge supply said C. D. with all things necessary for carrying on the work of said furnace.

In witness, etc.

Contract—Employment.

Millwright, Carpenter, etc.

This agreement, etc., witnesseth:

That said A. B. shall, for a term of —— years from date hereof, work as journeyman, and well and truly serve the said C. D., in the business of carpenter, joiner, and millwright, and in all such other capacities and work as he, the said A. B., shall be in anywise capable of doing or performing, during the time aforesaid, and that to his best ability, judgment, and knowledge therein.

That during the continuance of said term said A. B. shall yearly work and perform the trade and business aforesaid for said C. D., as follows: From the 22d of March unto the 22d of September, from the hour of six in the morning until the hour of six in the evening; and from the 22d of September unto the 22d of March, from daylight unto sundown. Christmas, New Year's, fourth of July, days of national fast and thanksgiving and public service, Sundays, and the usual hours for breakfast, dinner, and supper excepted.

That said A. B. will in nowise, during the term aforesaid, absent himself from the service of said C. D., nor do, perform, or work any of said trade or business for the use, interest, or benefit of any other person or persons other than said C. D.

That said C. D. shall pay said A. B. therefor the sum of —— dollars per month, payable (monthly on the first day of each month, *or* weekly, at the end of each week).

That said C. D. shall provide said A. B. with suitable food and lodging (*or* in lieu thereof, —— dollars per week for the same).

In witness, etc.

Contract—Employment.

Ship Owner and Surgeon.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall, during the voyage of the ship S. from —— to —— and return, and during her continuance at all ports and places until the termination of said voyage, administer and apply unto said C. D., the master of said ship, and all the crew, company, and passengers of said vessel who shall be, or shall be taken on board thereof during said time, all such medicines, physic, and surgery as shall be proper and necessary, according to the best of his skill and knowledge.

That said C. D., in consideration thereof, shall fully provide the ship's medicine chest with all necessary drugs, medicines, and instruments of surgery, at his own cost and expense.

That said C. D. will furnish said A. B. with all necessary provisions, lodging in the cabin of said ship, and all other accommodations for his passage in said vessel during said voyage, at his own cost and expense.

That said C. D. will pay said A. B. —— dollars per month during said voyage, for said services.

In witness, etc.

Contract—Horse-Racing.

Horse Race.

This agreement, etc., witnesseth:

That A. B. shall, on the —— day of —— next, with a black gelding belonging to E. F., and commonly known as B. G., whether sick or well, run the five-mile race course at ——, against the gray gelding belonging to G. H., and commonly known as G. G.

That C. D. shall, on the —— day of ——, aforesaid, with said gray gelding, whether sick or well, run said five-mile race course against said black gelding.

That said horses shall each be (ridden *or*) driven in (saddle, harness, etc., *as the case may be*).

That if said black gelding comes first to the end of said course, according to the judgment of two disinterested persons, selected one by each of said parties running, for that purpose, then

said C. D. shall pay said A. B. five hundred dollars.

That if said gray gelding comes first to the end of said course, according to such judgment aforesaid, then said A. B. shall pay unto said C. D. the sum of four hundred dollars.

That said stakes shall be deposited in the hands of I. K. (of ——), to be paid to the winning party according to this agreement.

That if any failure shall be made in either of said horses running as aforesaid, the party undertaking for said horse shall forfeit and pay the sum of —— dollars (*or* lose his wager, and the whole of said wager shall be paid to the other of them, as if such horse had actually run and lost).

In witness, etc.

Contract—Horse-racing.

Rules and Subscriptions.

We, whose names are hereunto subscribed, in order to encourage a friendly meeting of the gentlemen of the county of ——, and also the breed of good horses, have severally agreed, and by these presents do this —— day of ——, to and with each other as follows:

That on or before the —— day of —— next a (*state the article to be run for*) shall be provided according to subscriptions hereunder written by A. B. as stakeholder or steward, etc., or his chosen representatives in this behalf, to be run for on the course at —— by any horse, mare, or gelding whatsoever that shall be entered for that purpose (except such horse, mare, or gelding as have won above the value of said —— at any one time), and that every such horse, mare, or gelding shall, etc. (run in harness, wagon, carry —— pounds weight, etc., *stating conditions, if any*).

Acceptance and entries for race. That no person shall run any horse, mare, or gelding for said (*here describe the stake to be run for*) that has not actually and *bona fide* been his own for two months next before the time of running.

That no horse, etc., shall run for said (*stake*) whose size, color, or mark and name (if any), together with the name of the owner, shall not be entered with the stakeholder (steward), or his representative, in a book or paper which shall be kept for that purpose, and such entry to be made at the request of the owner or his agent for that purpose, on the —— day of —— next, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at —— in said county, at which time and place every horse, etc., shall be shown, or will otherwise be excluded from all benefit of said (*stake*).

That for the entry of every horse, etc., shall be paid to the stakeholder (steward), or his representative in this behalf, the sum of —— dollars if a subscriber, and the sum of —— dollars if not a subscriber (such moneys to be wholly used and contributed towards said (*stake*), and also the additional sum of —— to the clerk for making said entries.

Construction of this agreement. That if any difference shall happen to arise about the true meaning of this agreement, or any part thereof, the same shall be determined by the majority of the subscribers then present, whose determination, in writing or otherwise, shall be conclusive and final.

Costs and expenses. That the stakeholder (*or* steward) or his representative aforesaid, shall before said —— day of ——, put the course and posts in good and sufficient repair, and upon proper vouchers or receipts for the same may deduct the charge thereof out of such moneys as he shall receive towards providing the said (*stake*), together with the charge of giving notice thereof in the newspapers, and all other charges relating to the same.

Distancing. That if any horse, mare, or gelding shall be distanced at any one of the said three heats, such horse, etc., shall not be allowed to run again, nor the owner thereof have any benefit of said (*stake*). If any horse, etc., shall happen to distance all the rest, then the owner of said horse, etc., shall have said (*stake*) without any more riding. If any horse, etc., who shall win two heats, and shall not be distanced the third heat, the owner of such horse, etc., shall have the said (*stake*).

Heats. That said (*article to be run for*) shall be won by running the best of three heats on said course (each heat being three miles or thereabouts, as said course is now laid out), and that half an hour shall be allowed to refresh said horses between each heat.

That if three several horses, mares, or geldings shall in running for said (*stake*) each win a heat, such three horses, etc., only shall be allowed to run the fourth heat, and such horse, etc., winning the fourth heat shall be deemed the winning horse, and the owner thereof shall win the (*stake*).

That the owner of any horse, mare, or gelding that shall run for said fourth heat may choose a judge, trier, or umpire (such judge, trier, or umpire not betting on either side) to judge which horse, etc., comes first to the distance and ending posts; providing he gives the name of such judge, etc., to the stakeholder (*or* steward) or his representative before the first time of starting.

Livery and keep of horses. That every such horse, mare, or gelding shall be kept in the city (*or* town) of —— aforesaid, at the stables of such persons only as shall contribute towards said (*stake*), from the day of entry to the day of running.

Riders weighing. That every person that shall ride for said (*stake*) shall at his alighting at every heat be obliged to weigh himself; and if thereupon he lacks (*or* exceeds) weight, or refuses to weigh, such person, or the owner of such horse, etc., shall lose the benefit of said (*stake*).

Spurts. That if any horse, mare, or gelding that shall run for said (*stake*) shall run on the wrong side of any post, etc., such horse, etc., shall immediately return to the same post, and run as he should have done, or shall lose the benefit of said (*stake*).

Start. That all horses, mares, and geldings shall be obliged to start between the hours of two and four o'clock in the afternoon; that the owner of such horse, etc., that is not ready to start by that time shall lose his benefit and share in said (*stake*), and the rest of the horses, etc., may start without him.

That notice of starting every time shall be given by drum, horn, trumpet, whistle, or otherwise, by the appointment of the stakeholder (steward) or his representative.

Subscribers' names.	$	c.	Subscribers' names.	$	c.

Contract—Insurance.

To effect or procure Insurance.

See title ASSIGNMENT, post.

This agreement, etc., witnesseth:

That (*stating the causes that make insurance necessary*).

That said A. B. will, because of said premises, insure or cause the same to be insured (in such companies as said C. D. shall designate).

That in default of said insurance, on or after the —— day of ——, said C. D. may effect the same at the costs and expense of said A. B. (and all costs and charges proper and necessary in effecting the same, together with interest thereon at the rate of —— per cent. per annum, shall be a lien upon and charge against said ——, to be included in and become a part of any judgment effected against the same by reason of the premises).

In witness, etc.

Contract—Insurance.

Renewal of Policy.

INSURANCE COMPANY OF ——.

No. ——.

In consideration of the sum of —— dollars, received of A. B. as premium on policy, No. ——, for —— dollars, the same is continued in force for the term of ——, from the —— day of ——, A. D. ——, at noon, until the —— day of ——, A. D. ——, at noon.

—— Ins. Co.,
By C. D., *Agent*.

Dated ——.

Contract—Law-Suits.

To bear Expenses equally.

This agreement, etc., witnesseth:

That A. B., C. D., and E. F. are about to commence an action for, etc. (*stating the grounds of the contemplated action*), against G. H., etc.; *or*

That an action for (*stating what*) has been brought against A. B., C. D., and E. F. by G. H., etc.

That each and every one of said (plaintiffs *or* defendants) shall pay his equal and respective share of the costs and charges thereof; *or*

That each and every one of said plaintiffs (*or* defendants) shall pay his full and proportionate share of all costs and charges thereof, such share to be governed by the proportion of his respective share or interest in the amount of the judgment recovered by or rendered against said parties.

In witness etc.

Contract—Law Suit.

To Bear Expenses Equally.

This agreement, etc., witnesseth

That A. B. and C D have set up a claim to a certain tract of land, founded upon the entry and survey of S. R.

That the bounds and limits of said land, by virtue thereof, appear to extend to, and are in and upon some of the respective lands of E. F., G. H., and I. K., which lie adjacent and next said survey.

That said E. F., G. H., and I. K. have an older and better title thereto.

Or, That the lands of said E. F., G. H , and I. K are not within the bounds or limits of said survey.

That by reason of the premises an action or suit is likely to arise and be instituted.

That if any action or suit shall be commenced against any or either of said E. F., G. H. and I. K., or any or either of them, at any time or times hereafter, then each and every one of them shall bear and pay their respective shares and parts of all costs and damages, arising by reason thereof.

In witness, etc.

Contract—Leasing.

To Assign Lease.

This agreement, etc., witnesseth:

That one A. B., by his conveyance, dated the —— day of ——, leased unto said C. D. his ——, situated in ——, and described as follows, to wit. (*describing the premises*), with power to sub-let or assign said premises or lease.

That said C. D. shall, on or before the —— day of ——, at the costs and charges of said E F., by an instrument in writing (*or* by indorsement upon said lease) assign, transfer, and set over all his title and interest in and rights under said lease, to said E F., during the residue of the term of said lease, subject, however, to the rents, covenants, and agreements therein contained.

That said E. F., in consideration therefor, shall, etc. (*state what*)

In witness, etc.

Contract—Leasing.

Of Dwelling

See LANDLORD AND TENANT, LEASE, post.

This agreement, etc., witnesseth:

That A. B. shall let unto C. D., and C. D. shall hire of A. B., a certain house and lot of ground, situated (*describe premises*), for one year from the first day of April next, and for such longer time after the expiration of said one year as said parties shall agree, and until the end of three months after notice shall be given by either party for leaving said premises, for the yearly rent of —— dollars, payable (monthly, on the first day of each month, *or* quarterly, on the first days of July, October, January, and April).

In witness, etc.

Contract—Leasing.

Of Dwelling and Store.

See LANDLORD AND TENANT, LEASE, post

This agreement, etc., witnesseth:

That said A. B. shall, by an instrument in writing, executed on or before the —— day of —— next, lease to said C. D. the store, dwelling-house and lot numbered ——, on —— street, in the town of ——, for a term of —— years from the date of said lease, at the yearly rent of —— dollars, payable (monthly, in advance, *or* quarterly, on the first days of January, etc., of each year), clear of all taxes and assessments.

That said lease shall contain covenants on the part of said C. D., or his representatives, to pay rent (except in case said premises are destroyed by fire —rent is to cease until they are rebuilt), and all taxes and assessments, to keep said premises in good repair (damages by fire excepted), not to carry on any offensive business upon the same, and to peaceably deliver up possession of said premises at the expiration of said term.

That said lease shall also contain covenants on the part of said A. B., or his representatives, for quiet enjoyment; to renew said lease at the expiration of the term aforesaid, at the request of said C. D., to be made fifteen days prior to such expiration, for a further term of —— years; and that in case said premises shall be destroyed by fire, said A. B. shall forthwith proceed to rebuild the same.

That the costs and charges of making, executing, and recording said lease, and duplicate thereof, shall be equally borne and divided between the parties to this agreement.

In witness whereof, etc.

Contract—Leasing.

Dwelling-House and Furniture.

This agreement, etc., witnesseth:

That said A. B. shall, for the consideration hereinafter mentioned, and on or before the —— day of —— next ensuing, lease unto said C. D. the dwelling and premises situate in ——, and described as follows: (*describing it by metes and bounds, or number street, etc.*), together, also, with the use of all and singular the furniture belonging to said dwelling, comprised, described, and mentioned in the schedule hereunto annexed and signed by said parties, for a term of ——, at the yearly rent of —— dollars, clear from all taxes, rates, and assessments whatever (except the land tax).

That said C. D. shall, in consideration thereof, pay said yearly rent as follows: (*stating payments etc.*)

That said C. D. shall, during said term, bear and pay his full proportion (of ——) of the expense of cleansing and keeping in repair said premises, the common sewer or drain therefrom unto the street adjacent, and keep said premises and furniture in good condition, and so deliver the same at the expiration or sooner determination of said term (reasonable wear and tear only excepted)

That said C. D. shall not, during said term, or his occupancy of said premises, permit or suffer any part of said furniture or fixtures to be removed therefrom (except for repairs).

That said C. D. shall not let or underlease said premises to any person or persons whatsoever, during said term, without the consent of said A. B. having first been obtained, in writing.

That said premises shall not be used during said term to carry on the trade or business of soap maker, butcher, etc., nor for the sale of intoxicating liquors, etc., or any of them, or any noisome or offensive trade or business whatsoever, in, upon, or about the same.

That on the non-payment of any of said rents, or the non-performance or violation of any covenant or provision herein contained, said A. B. may, upon —— days' notice, re-enter and possess himself of said premises, and from the goods and effects of said C. D. therein may reimburse himself by execution or order of sale of all costs and expenses of whatsoever kind, caused by virtue of such re-entry, the amount of which may be included in any judgment for possession of said premises, or otherwise.

That said C. D. shall have quiet enjoyment of said premises, during said term, upon payment, as aforesaid, of said yearly rent, and the observance and performance of the agreements and covenants herein contained.

In witness, etc.

Contract—Lodgings

Housekeeper and Lodger.

See LANDLORD AND TENANT, LEASE, post.

This agreement, etc., witnesseth:

That said A. B. has let to said C. D. the entire first floor and one room in the attic story, with the use of the offices, and of the yard for drying linen, beating carpets or clothes, of the dwelling-house No. ——, on —— street, in the city of ——, for a term of ——, from date hereof, at a yearly rent of —— dollars, payable monthly (in advance), to said A. B.

That at the end of said term, or upon default of any payment, said C. D. shall deliver up to said A. B., or his legal representative, on request, the quiet and peaceable possession of said premises, and leave them in as good condition as when he took possession thereof, reasonable wear (*or* destruction from fire or inevitable accident) excepted.

In witness whereof, etc. A. B.
C. D.

Contract—Lodgings.

Housekeeper and Lodger.

This agreement, etc., witnesseth:

That said A. B., in consideration of the rents hereinafter mentioned, has let for a term of —— from date hereof, to C. D., two rooms up one pair of stairs, in the front part of the dwelling-house of said A. B., situated (*describe premises*), together with the furniture at present standing therein, to wit (*give items of furniture, etc.*)

That said C. D., in consideration thereof, shall pay said A. B. the yearly rent of —— dollars, to be paid quarterly, to wit, on the first days of January, April, July, and October.

That said C. D., at the end of said term, or in case of any default in payment, shall, at the request of said A. B., immediately yield and deliver up to him the peaceable and quiet possession of the said room, together with the whole furniture which he on his first entrance thereon and at all times thereafter, of said A. B., there found and possess in good and sufficient condition and order, reasonable wear and tear only excepted.

In witness, etc.

Contract—Lodgings.

Housekeeper and Lodger.

This agreement, etc., witnesseth:

That said A. B. shall let, and said C. D. shall hire, the following rooms in the dwelling-house, situated (*describing location*), to wit (*designating them*).

That said rooms shall be properly lighted, heated, and supplied with hot and cold water, as follows:

North room.—Gas, —— burners, capable of supplying —— feet per hour.

Heat, by register (*or* steam apparatus) capable of supplying from —— to —— degrees of heat at pleasure and continuously.

Water, washstand (*or* bath), etc., in abundance in all seasons, hot water from —— a. m. to —— p. m.

Etc., throughout the entire suite.

That said A. B. shall paint and paper said rooms as follows, viz.

That said A. B. shall furnish and provide all windows and hall-doors of said rooms with —— curtains, wire screens, and blinds.

That said A. B. shall provide all doors, windows, and blinds with safe and substantial locks and fastenings, retaining no duplicate keys of the same whatever.

(That said A. B. shall furnish said rooms as follows: *describing the furniture throughout each room.*)

That said A. B. shall provide a private bell at the main entrance of said building, and thereon furnish facilities for the engraved name of said C. D. to be substantially fixed.

That said A. B. shall at all times keep the halls and stairways leading to said rooms comfortably and neatly furnished, and free from all dirt and dust, and odors from cooking, laundry-work, and all and every impure or offensive smell, and at all times to keep the air therein fresh and pure, and that during the cold and chilly seasons of the year to keep the same warm and comfortable.

That said A. B. shall at all times keep the front walks, gutters, fences, yard, lawn, railings, shrubbery, and entrance of said dwelling clean and wholesome.

That said A. B. shall at all times neither permit nor allow any unwholesome accumulation of refuse, or rubbish, garbage, or decaying matter to accumulate or remain in, about, or upon said premises, or in any manner suffer or permit any uncleanness or noisome or unwholesome odors to pervade said premises by reason thereof.

That said A. B. shall deliver or cause to be delivered at said rooms all and every card, message, letter, paper, parcel, package, or other thing left to the address of said C. D., or any member of his household, guests, visitors, or servants, forthwith, and without delay, and without disturbing, going through, or molesting the same.

That for any violation or material omission in providing all things herein agreed by said A. B., of this agreement, said A. B. shall, upon notice in writing, make complete reparation, and in addition pay said C. D. double the amount of injury sustained by reason thereof; or the same shall thereafter be retained out of the rents hereinafter mentioned.

That in case of controversy over the amount of injury sustained, or any part of this agreement omitted, then said A. B. and C. D. may each of them choose one disinterested person, who may select a third, the decision of which, or any two of them, shall in such matter be binding and final.

That if said A. B. shall fail to designate such person, then the one selected by said A. B. shall select another in the same manner and with like effect as said A. B. should have done, and thereafter proceed in like manner and with like effect as aforesaid.

That said C. D. shall in consideration thereof pay said A. B. the yearly rent of —— dollars, payable (monthly, *or* quarterly, in advance, *or otherwise*) as follows, etc.

In witness, etc.

Contract—Manufacturers and Agents, etc.

Between Manufacturer and an Agent, Broker, Factor, or Commission Merchant.

This agreement, etc., witnesseth:

That said A. B., in consideration of the covenants and agreements hereinafter entered into by said C. D. & Co., shall act as agent or factor, etc., for said C. D. & Co., and their survivors, in the selling, vending, etc., at ——, in ——, for the term of —— years from the date hereof, as hereinafter provided.

CONDUCTING BUSINESS.

That said A. B. shall carefully deposit and preserve, in the shop or warehouse for the time being made use of for the purpose of said agency business, all such goods, wares, and merchandise as may be sent or transmitted to him by said C. D & Co.

That in managing and conducting said agency said A. B. shall use his best endeavors and skill to procure the greatest possible sale of (*state the kind of goods*), and all other goods which he shall be employed to sell as such agent or factor, etc., either for ready money, or to persons of responsibility and substantial credit.

That in selling upon credit said A. B. shall be circumspect and cautious, and make due inquiries from reliable and respectable persons, whether such persons applying for credit are solvent and fit to be trusted.

That said A. B. shall not give credit to any person or persons for a greater length of time than ——, without the consent of said C. D. & Co., or their survivors, in writing.

That said A. B. shall not, without like consent, sell to any person on credit to a greater amount than —— dollars.

That said A. B. shall, in conducting said agency, conform to and govern himself by such orders, instructions, and directions as he may from time to time receive from the said C. D. & Co.

That said A. B. in all cases where he shall receive no special orders or directions shall act in such manner as he shall judge most to the advantage of said C. D. & Co., etc.

That said A. B. shall from time to time account for and transmit to said C. D. & Co. all moneys, bills, and securities for money received from the sale of said goods.

That said A. B. shall keep books of account in which shall be made correct, customary, and plain entries of all goods received from said C. D. & Co., of all goods sold, to whom, and whether for cash or credit, and likewise of all other matters and things as in anywise concern said agency business.

That said A. B. shall carefully preserve all said books of account, books, documents, papers, and writings in anywise concerning said agency business (in a fire-proof safe, by said —— to be provided), and upon the final adjustment, settlement, and close of said agency busi-

ness shall deliver and give up said books, etc., uninjured, undefaced, and unobliterated to said C. D. & Co.

That said A. B. shall from time to time on the first day of each and every month, send and transmit to said C. D. & Co. a full, clear, and correct statement in writing of all orders both taken and executed, of all goods received, of all goods sold, to whom and whether for cash or credit, and likewise of all other matters, transactions, and things as in anywise concern said agency business, and which shall have transpired during the preceding month.

That said A. B. shall, on the —— day of each and every year (unless either of said days shall be Sunday, and in that case on the day following) take stock, make an inventory of all stock, etc., on hand, and accurately cast up all books of account, so that the state and condition of said agency business shall clearly appear therefrom.

That said A. B. shall, out of the commission (salary, *or* wages) hereinafter agreed to be paid him, find and provide a clerk who writes a good hand, and understands accounts and book-keeping, for the purpose of constantly assisting him in the management of said agency business.

That said A. B. shall, out of said commission (salary, *or* wages) aforesaid, find and provide a porter for the purpose of assisting him in said business.

That said C. D. & Co., or any of them, shall at all seasonable hours of the daytime have free access to said books of account, and to all other books, papers, documents, and writings in anywise concerning said agency business, and to take copies and extracts from the same or any of them.

Determination of Agency, etc.

That in case said A. B. shall at any time before the expiration of said term of —— years be desirous of giving up said agency business, he shall give six months' previous notice in writing of such intention to said C. D. & Co., or their survivors, to be left at their (*or* his) usual places of abode.

That in case said C. D. & Co. shall at any time before the expiration of said term of —— years, be desirous of withdrawing said agency business from said A. B., they shall give six months' previous notice in writing of such intention to said A. B., to be left at his usual place of abode (shop *or* warehouse).

That at the expiration of said six months said agency business shall be determined and dissolved, and final settlement and transfer of all remaining goods, moneys, securities, etc., made.

Expenses, etc.

That all expenses relating to the conducting of said business, cost of carriage, gas, store, and water rents, sprinkling streets, etc., shall be borne as follows, viz.

Losses.

That said A. B. shall not be answerable for any loss or damage which may happen any goods or merchandise sent to him during its transit and before it shall come to his care and custody, nor for any loss or damage which may happen to the same which has actually come into his hands and custody, and which shall be sent by said A. B. to any customer by any of the usual means of delivery or otherwise, unless said A. B. shall have neglected to enter in the proper book of the office the company or carrier, and receive his receipt upon the delivery of such goods or merchandise, and the remedy against the proper party is thereby made so uncertain that the loss cannot be remedied.

That for any other loss or damage which may happen to any goods or merchandise committed to his charge or care, unless such loss or damage be the result of or happens through his wilful negligence or omission.

Other Agents or Factors, etc.

That said C. D. & Co., or their survivors, shall not employ any other person or persons as an agent or factor, etc., during such time as said shall act as agent or factor, etc., aforesaid.

Other Business.

That said A. B. shall devote his whole time and attention to said agency, and shall not engage in the business of ——, or in any other business whatsoever, either on his own account or as an agent or factor, etc., and either alone or in copartnership with any person or persons whomsoever.

Place of Business.

That said A. B. shall carry on and conduct said agency business at the (shop, *or*) warehouse of said C. D. & Co., at ——, in ——, or in such other (shop, *or* warehouse, in —— aforesaid, as they, or their survivors may appoint or direct for that purpose.

Salary, Commission, or Wages.

That said C. D. & Co., in consideration of the true and faithful performance of the agreements and covenants entered into by said A. B., shall (yearly) pay, or cause to be paid, unto said A. B, the following salary or wages (*or* commission), viz.: (*stating wages, salary, or commission, as the case may be*).

Stationery, etc.

That said C. D. & Co. shall pay said A. B., once every ——, all such sum and sums of money as he may have necessarily paid, laid out, and expended for and on account of stationery, paper, books, copy books, files, letter press, postage, etc., etc., made use of in the said agency business.

In witness, etc.

Contract—Manufacturing.

This agreement, etc., witnesseth:

That said A. B. shall, at his own expense, manufacture (*state what*), of the same quality of material and workmanship, and in all other respects according to (*name the pattern agreed upon between said parties*) the description and design hereunto annexed.

That said A. B. shall deliver the same to said C. D. at ——, on the —— day of —— (*or* —— months, *or* weeks herefrom).

That said C. D., in consideration thereof, shall pay said A. B., at the rate of —— dollars per —— (after —— from the delivery thereof).

That all —— not manufactured agreeably to said (pattern, *or*) description and design shall be rejected by said C. D., and taken back by said A. B., who shall manufacture a like quantity agreeably to the provisions of this agreement.

In witness whereof, etc.

Contract—Manufacturing.

Barrels.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall make, or cause to be made, for said C. D., at the cooper shop of said C. D., in the town of ——, two thousand good, hard, well-seasoned flour barrels, the staves and heading to be of white oak timber, and the hoops of black-ash, either round or square, as the said C. D. shall direct.

That the materials therefore are to be furnished by said A. B., at his own cost and charge.

That said A. B. shall have the free and uninterrupted use of the tools in said shop, without paying anything for the same.

That in consideration thereof, said C. D. shall pay said A. B. the sum of twenty-five cents each for said two thousand barrels, as follows:

That upon the completion of each one hundred barrels, said A. B. shall receive the sum of twenty-five dollars.

In witness whereof, etc.

Contract—Manufacturing.

Boots.

This agreement, etc., witnesseth:

That A. B. shall within (*state what time*) from the date hereof, make and deliver to said C. D. ten thousand pair of boots, from —— calfskin, of the —— quality, and of the following sizes: (*here give the sizes*).

That in consideration therefor, said C. D. shall pay to said A. B. —— dollars for each pair of boots, upon the completion and delivery of said ten thousand pairs, if the same shall be delivered within the time aforesaid.

In witness whereof, etc.

Contract—Manufacturing.

Bricks.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall, within six months from the date hereof, and with good and sufficient materials, make, or cause to be made, and deliver at ——, in——, —— thousand hard, well-burned, and substantial and merchantable bricks (by actual count), of the grade commonly known as —— brick.

That said brick, when burnt, shall all and every one be full four inches broad, eight and three-quarters inches long, and two and one-half inches thick.

That said A. B. shall, at his own costs and charges, deliver in such parcels and quantities, from time to time, at the house of said C. D. (*or otherwise, as agreed*), in ——, as the same shall be demanded, or occasion require, for carrying on his buildings there.

That said C. D., in consideration thereof, shall pay to said A. B. —— dollars for every thousand of said bricks, made and delivered as aforesaid, in payments as follows: (*giving terms, time, and amount of payments*).

In witness, etc.

Contract—Manufacturing.

Patented Articles.

This agreement, etc., witnesseth:

That said A. B. is the (inventor and) proprietor of an invention for (*state what*), and proprietor of letters patent issued therefor by the United States of America, bearing date the —— day of ——.

That said A. B., for the consideration hereinafter mentioned, does hereby give, grant and transfer unto said C. D., during all the residue of the term of —— years yet unexpired (together with all such future terms as may hereafter be granted, by virtue of any new patent or renewal of said patent by this agreement sold, *or* otherwise), full authority and power, license and liberty, truly and without restraint, to make, produce, manufacture, barter, sell, and convey the same, by wholesale or retail, within the following territorial limits, to wit (*describe territory*).

That said A. B. shall not, at any time during the residue of said term, or any such future term, give, grant, or transfer any authority, power, license, or liberty whatsoever to any other person, to make, manufacture, produce, barter, sell, and convey the said articles, in any manner whatsoever, within the territory aforesaid, without the consent of said C. D., in writing.

That in case any person shall infringe said letters patent, or in any manner violate any right thereunder, within said limits (actually or constructively), the said C. D. shall, for his own use and benefit, and at his own costs and expenses, prosecute the same (if necessary, in the name of said A. B.), to final judgment. And for this purpose said A. B. hereby constitutes said C. D. his lawful attorney, irrevocably, with full power of substitution and revocation, hereby ratifying and confirming all things which he may lawfully do in the premises.

That said C. D., in consideration thereof, shall pay unto said A. B. the sum of —— dollars, in payments as follows, etc.

That said payments shall be evidenced by the corresponding number of promissory notes, in sums equal to said payments, of even date herewith, maturing on the respective days of payment, and bearing interest at the rate of —— per cent. per annum, from maturity until paid.

That said notes shall be secured by a mortgage on (*state what*).

Or, That said C. D., in consideration thereof, shall pay unto said A. B. —— per cent. of the retail price of all said —— so manufactured, bartered, and sold, said per cent. to be due and payable on the —— days of —— in each year, at which time said A. B. shall render an account of all sales and transfers made during the —— last past.

In witness, etc.

Contract—Manufacturing.

Shoes.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall, at his own expense, make and manufacture, and deliver at ——, on or before the —— day of ——, for said C. D., —— dozen ladies' shoes, of —— leather, of —— quality, and according to the samples and pattern agreed between said parties and in sizes from 3 to 7.

That said C. D., in consideration thereof, shall pay said A. B. at the rate of —— per pair, —— days (*or* months) from and after the delivery of said shoes as aforesaid.

That if any of said shoes shall not be made in conformity with said pattern, and for that reason shall be rejected by said C. D., then said A. B. shall receive and take back the same, and in their stead deliver a like quantity to said C. D. in conformity with the pattern aforesaid.

In witness, etc.

Contract—Obstructions.

To Window Lights, etc.

This agreement, etc., witnesseth:

That on the south side of the dwelling-house of A. B., situated in ——, in ——, there are two ancient window lights.

That said window lights have been totally obstructed by a dwelling-house lately erected by C. D. upon his lands adjoining thereto.

That said A. B., for a consideration of ——, hereby agrees that said window lights shall and may forever remain obstructed as aforesaid, hereby releasing said C. D. and his legal representatives from all actions, claims, controversies, demands, and suits whatsoever on account thereof.

In witness, etc.

Contract—Partnership.

General Form.

This agreement, etc., witnesseth:

That said A. B., C. D., E. F., and G. H. shall associate themselves together in the trade of buying, wholesaling, and retailing all sorts of goods, wares, and merchandise belonging to the trade and business of ——.

That said partnership shall continue from the date of this agreement for and during the term of ten years next ensuing.

That to this end and purpose the said A. B. has contributed as stock the sum of one thousand dollars; and said C. D. the sum of one thousand dollars; and the said E. F. the sum of one thousand dollars; and the said G. H. the sum of one thousand dollars, to be used, invested, and employed in common between them, to their general advantage in the management of said business.

That said parties shall not, at any time hereafter, use, follow, or exercise said business or occupation, or any other, during said term, to their private benefit or advantage, but shall, at all times during said term, with their utmost skill and ability, conduct and act only for their mutual advantage with said stock and for its increase.

That said parties shall discharge all rents and expenses of said business equally between them.

That all profit, gain, and increase that shall arise by reason of said joint business shall be equally divided between them, share and share alike.

That all losses and decrease that shall happen in said business, by reason of bad debts, or otherwise, shall be borne and paid equally between them, share and share alike.

That there shall be kept, during said term and joint business, just and true books of account, wherein each of said partners shall enter and set down the money by him received and expended, the goods, wares and merchandise by him bought and sold, and all other matters and things concerning said partnership, so that either of said partners may at any time have free access thereto.

That said partners shall, once every three months, upon the request of any one of them, make and render to each other, or his legal representatives, a true and perfect account of all profits and gains by them made, and of all losses sustained; and also of all receipts, disbursements, and other things whatsoever concerning said partnership, and thereupon shall cancel, adjust, pay, and deliver unto each other their equal shares of the profit so made, if any.

That at the end of said term of ten years (if said partnership be not sooner determined, in which case) the said partners, or their survivors, shall make a final and true account of all things as aforesaid, and in all things well and truly adjust the same.

That upon making such account of stock, goods, wares, and merchandise, and the profit,

gain, and increase thereof which remain, the same shall be equally divided between them, or their survivors, share and share alike.

In witness, etc.

[*Witnesses.*]

Contract—Partnership.

General Form—Various Clauses.

See title PARTNERSHIP, post.

This agreement, made this —— day of ——, between A. B. (of ——), C. D. (of ——), and E. F. (of ——), witnesseth:

That said parties shall associate themselves together in the business of (*state what*) only.

That said business shall be commenced on the —— day of —— and be concluded on or before the —— day of ——. It shall, in the meantime, be concluded by either the bankruptcy, death, or insolvency of either of the parties, or by their mutual consent.

That said business shall be carried on, continued and maintained in —— only.

That the capital of said partnership shall be furnished as follows:

A. B., —— dollars in money, —— dollars in real estate, as per schedule marked A, hereunto attached, and —— dollars personal property, as per schedule B, hereunto attached.

Etc., etc.

C. D., —— dollars in money, —— dollars in promissory notes, copies of which are set forth in the schedule hereunto attached, marked C.

E. F., —— dollars, etc.

That all said real and personal estate shall be considered between said partners, as being the several and separate property of the partner contributing the same.

Accounting.

That there shall be a settlement of all partnership accounts at least once in each year, at which times the same shall be adjusted, and all balances converted into bills payable or receivable, which bills shall be negotiable and payable at ——, in —— days from their date, and bearing interest, etc.

Arbitration.

That at any time hereafter, and before the accounts between said parties concerning said partnership shall be finally settled and closed, any difference or dispute that shall arise between them, or any of them, concerning the true construction of these presents, or any covenant or thing herein contained, or any accounts to be stated or settled in pursuance hereof, or any fact, matter, or thing relating to said partnership or the concerns thereof, shall be submitted and referred to the determination and award of three arbitrators chosen, two of which shall be chosen by the parties in difference, which two shall select a third, and the decision and award of any two of them, in writing, shall be final, binding, and conclusive.

Assignment of Partner's Interest.

That neither of said parties shall, without the consent of all the others, in writing, sell or assign his share or interest in said partnership and joint trade and business to any person or persons whomsoever.

(Where there is a right reserved to either party to assign his interest in the partnership, if he abuses it by assigning it to an incompetent person, from whatever cause, a court of equity may interfere by injunction.[a])

That either of said parties may, at any time, upon —— notice, in writing, to all the others, sell and assign, by writing, his share or interest in said partnership trade and business, to any competent, solvent, and responsible person whomsoever.

Business Management.

That the —— branch of said business shall be managed by A. B.; in his absence by C. D., and in the absence of both by E. F.

That the —— branch of said business shall be managed by C. D., and in his absence by E. F.; in the absence of both by the foreman of said department.

That the —— branch of said business shall be managed by E. F., and in his absence by whoever said A. B. and C. D. may at the time designate.

Buy or Sell.

That upon the dissolution of said partnership either party may, in writing, make an offer to the other parties to buy their, or sell his own, entire interests in said partnership effects, at a certain specified price.

That thereupon and within —— days thereafter said parties shall signify by writing, to said party proposing, their acceptance or rejection of his offer, and failing so to do within that time said party proposing may within —— days buy or sell at his own option and according to his said proposal.

Capital Stock.

Increase and Limit.

That neither of said parties shall draw out any part of the profits of said concern without the consent, in writing, of the others of them, until the capital shall exceed the sum of —— dollars, which sum of —— dollars shall be set apart during the term of said partnership as a joint capital for the purposes of said concern. When, however, said capital shall exceed the sum of —— dollars, then either party may take out the whole or any part of his share of the profits appearing to his credit.

Amounts and Limit allowed Partners.

That each of said parties may draw from the cash of the joint stock the sum of —— dollars (monthly *or* quarterly) for his own use, to be charged on account, and neither of them shall draw any further sum for his own separate use without the consent of the others in writing.

That any such further sum taken with such consent shall draw interest at the rate of —— per cent. per annum, and shall be payable, together with interest due, within —— days after notice in writing given by the other of said parties.

That neither of said parties shall be entitled to or draw from the joint stock at any time more than his share of the profits of the business then earned after adjustment of expenses and losses.

Interest.

That if at the expiration of each year a balance of profits shall be found due to either partner he shall be at liberty to withdraw said balance, or he may leave the same in the business, if the other partners consent thereto: in which case he shall be allowed interest on such balance at the rate of —— per cent. per annum, and thereafter when said balance is to be withdrawn —— notice shall be given of its intended withdrawal.

Cashier or Receiver.

That the principal clerk for the time being shall be the cashier and general receiver of all the money belonging to said joint business and partnership, and shall pay therefrom all demands ordered by said parties; and shall from time to time pay the surplus cash to such bankers as said partners shall designate.

Continuance of Partnership.

It is hereby agreed that the partnership evidenced by the within articles of agreement shall be continued upon the same terms and under the same provisions and restrictions as are therein contained for the further term of —— from the —— day of —— next.

Credit.

That neither of said parties shall sell or credit any goods, wares, or merchandise belonging to said joint business or partnership to any person or persons after notice in writing from the other of said parties that such person or persons are not to be credited or trusted.

Decease.

That in case of the decease of any one of said partners before the expiration of said term of ——, said partnership shall cease and be dissolved as to such partner only, and said joint business and partnership may be carried on and conducted by the surviving partners for all the residue of said period of ——, upon the same conditions and terms, and subject to the same stipulations and terms as are herein contained.

That said surviving partners shall be respectively interested in the share of the deceased partner and the profits arising therefrom, in the same relative proportions in which they are interested in the other and remaining shares of said business concern.

That within —— days after the share of said deceased partner shall be withdrawn from said joint trade the same shall be replaced by the surviving partners in the same proportions in which they respectively are to be interested in the profits arising from the share aforesaid.

Determination or Dissolution.

That if either of said parties shall be declared a bankrupt, or file any petition for the benefit of the insolvent

[a] Story Partn. § 183 n. 2; Id. § 311.

debtors' act, or enter into any general composition with his creditors, or the greater part in value thereof, or shall for his own use, or any purpose other than for the immediate use of said partnership concern, accept, draw, indorse, or make any bill of exchange or promissory notes in the name of said firm, or shall suffer his share in the partnership effects to be attached or taken in execution for any private debt, then the others of said partners may within —— days after the same shall have come to their knowledge give said party so acting notice in writing, personally or by leaving the same at his last place of abode, announcing a dissolution of said partnership.

That thereupon said partnership shall be determined and dissolved in the same manner as if the whole of said term had expired; and the party giving such notice shall be at liberty to insert a notice of such dissolution in the —— or any other newspaper printed and of general circulation in ——, and to subscribe and affix the name of such party as well as his own to such notice; this authority to be irrevocable.

Division of Duties.

That A. B. shall confine and devote all his attention, skill, and time to the business of said firm as salesman and superintendent of the —— department of said business.

That C. D. shall confine and devote all his attention, skill, and time to the business of said firm as ——, etc., in —— department of said business.

Etc., etc.

Expulsion of Members.

That for gross misconduct, bankruptcy, insolvency, etc. (*specifying the cause*), the partner guilty thereof may forthwith be expelled by said firm, and his accounts and interests, if adjustable by said firm, shall be settled as soon as the same can be conveniently done, not exceeding, however, —— from the date of such expulsion.

Firm-Name.

That the name and style of said firm shall be "The B. D. and E. Company."

Indorsement, Signature, etc.

That neither of said parties shall, during the existence of said partnership, without the consent of the other being first obtained, enter into any bond, conveyance, covenant, judgment, or other obligation, become bail or surety, accept any bill, make any note, or indorse any or either of the same for himself or any other person whatsoever, or for said firm, without the consent of the others having been first obtained.

Majority.

In the absence of any stipulation to the contrary, each partner, no matter what his interest in the stock is, has an equal voice with the others, and the necessary consequence of this rule is, that the majority must govern.[a] They must, however, act bona fide, and the minority have a right to be consulted.[a]

That in all matters respecting the general transactions of the affairs and management of the business of said partnership, the wish and opinion of a majority of said partners shall govern and be binding upon the whole of said partners.

New Partners.

That in case said A. B., etc., should think it prudent to admit an additional partner into said partnership concern generally, or into the —— branch of said concern only, he (*or* they) shall be at liberty to do so.

That such party so admitted shall be in all respects bound by all the agreements, stipulations, and provisions herein contained, as though he had been a party hereto, so far as the same shall or may be applicable, and except as to the proportion of his share and interest in the increase and profits thereof.

That said party so admitted shall, when thereunto required by any or either of said partners, at his own expense enter into a covenant to perform and observe all and every agreement, stipulation, and provisions in this agreement contained.

Profits and Losses.

That all profits and losses shall be apportioned according to the capital furnished by each of said partners, and in no other manner.

Release of Debts.

That neither of said parties shall, without the consent of the others, release or compound any debt or demand, due or payable to them on account of their said partnership, except for so much as shall actually be received and brought into the cash and stock account of said partnership concern.

Retiring Partner.

That said parties, or either of them, retiring from said business and partnership shall not at any time or times hereafter, either alone, or jointly with, or as agent or representative of any person or interest whatsoever, or upon any account or pretence set up, exercise, carry on, be interested in, or encourage said trade or business of ——, within —— miles from ——, aforesaid, or encourage any opposition to said trade or business carried on by his or their successors in the same, nor do anything to the prejudice thereof, nor disclose or make known any of the accounts, secrets, or transactions of or relating to said partnership.

That if said parties or party so retiring shall do any act in breach or violation of this covenant, then such party shall thereupon immediately pay unto his successors the sum of —— dollars, liquidated, fixed, and ascertained damages, for said breach and its consequences.

Settlements.

That at the expiration of said term a settlement shall be made in either of the following modes, to be agreed upon, verbally or in writing, within one week of the date of said expiration:

1. By turning all the assets of said firm into cash, and, after paying all the liabilities of said partnership, to divide such moneys as remain in proportion to the several interests of the parties; *or*

2. By one or more of said partners purchasing all the property or shares of the others at a valuation (to be made by three disinterested persons, each chosen by one of the partners for that purpose).

3. By all the property of the partnership being appraised by appraisers chosen as aforesaid, and after paying the partnership debts the remainder to be divided in the proper proportions.

In witness, etc.

Contract—Partnership.

Active and Dormant or Silent Partner.

This agreement, etc., witnesseth:

That said A. B. and C. D. have joined themselves together as partners, under the firm name and style of A. B. & Co., for the purpose of carrying on the business of ——, at ——, in ——, for a term of —— years from the date hereof, unless sooner dissolved by act of the parties or by operation of law.

That said C. D. shall furnish to said partnership a sufficient stock of suitable goods, wares, and merchandise for commencing business, not exceeding —— dollars, and not less than —— dollars, to be charged to said partnership at first cost, and from time to time, as such stock shall be reduced, to renew and replace the same upon like terms.

That said A. B. shall not, without the express consent of said C. D., purchase or procure on account of, or for the purposes of said partnership concern, any goods, wares, or merchandise, in the line of said joint business, or otherwise, from any other person than the said C. D., nor in any manner other than is provided in this agreement, unless specially authorized by the consent of said C. D., in writing.

That said A. B. shall take upon himself the sole care and management of said joint business, attend to all sales, and devote his care, diligence, and labor exclusively to the superintendence of the same.

That said A. B. shall, from time to time, and as often as required by said C. D., remit to him all moneys received from such sales, on the joint account, after deducting the actual and necessary expenses in the prosecution of said business, and at all times, whenever required by said C. D., shall exhibit the books and accounts in relation thereto.

That said A. B. shall not, during said term of —— years, use, follow, or exercise said business, or any other, for his own private benefit or advantage, but that he will, at all times during the continuance of said partnership, conduct and perform in all things to the best of his knowledge, skill, and ability, to the joint benefit and advantage of both parties.

[a] Story Partn. § 123.

That all gain, profit, and increase that shall arise from said joint business and partnership shall, from time to time, during said term, be equally divided between them, share and share alike, and that all losses that shall happen to said business and partnership by bad debts, etc., or otherwise, shall be borne and paid equally between them, share and share alike.

That at the end of said term of —— years, or upon a sooner termination of said partnership, as aforesaid, the stock and profits which may be then upon hand, and all other property of said partnership shall, after the payment of all debts of said partnership, be equally divided between said A. B. and C. D., or their survivors or legal representatives.

In witness, etc.

Contract—Partnership.

Between Merchants in Different Countries.

This agreement, made this —— day of ——, between A. B., of New York city, in the State of New York, United States of America; C. D., of the city of London, in the kingdom of Great Britain; E. F., of the city of Berlin, in the German Empire, and G. H., of the city of Paris, in the republic of France, witnesseth:

That said parties shall, for the term of —— years, carry on the joint business of ——, at the places, by the respective parties, and under the respective styles and firm names, as follows, viz.:

A. B. in said city of New York, under the firm name and style of A. B. & Co.

C. D. in said city of London, under the firm name and style of C. D. & Co.

E. F. of said city of Berlin, under the firm name and style of E. F. & Co.

G. H. of said city of Paris, under the firm name and style of G. H. & Co.

That the capital stock of said partnership concern shall be provided by said parties in the following proportions, viz.:

A. B., the sum of —— dollars, cash.
C. D., the sum of —— dollars, etc., etc.
E. F., the sum of —— dollars, etc.
G. H., the sum of —— dollars.

Accounts. That said parties shall be just and true to each other, and shall give just and true account to each other, upon request, of all their partnership concerns.

That proper books of account shall be kept at the several counting houses of said parties at New York, London, Berlin, and Paris, or in some place which shall be from time to time appointed by them, in which shall be entered all the transactions and concerns of said joint trade, according to the usual course and practice of merchants, and to which books any of said partners, or any other persons by him or them authorized, shall have free access for all matters respecting their trade and dealings, at all seasonable times, and may take copies thereof.

Advances on Consignment, Credit, Purchase, etc. That none of said partners shall enter into any purchase, transaction, or engagement, or make any advance upon consignments on account of this partnership, or trust any person with goods, or otherwise, to the amount of —— dollars or upwards, without the concurrence and approbation of the others of them.

That none of said partners shall enter into or make any purchase, transaction, or engagement, or make any advance whatsoever, on consignments, or trust any person with goods, or otherwise, to any amount whatever, after notice from the other partners not to do so.

Advances, Increase, Surplus. That if any of said partners shall contribute any further sum of money into said concern, or permit his gains to remain therein, to a greater amount than his proper share thereof, he shall receive interest for such surplus, after the highest rate in any manner lawfully allowed at the place where the same shall so remain or be contributed, and the stock in trade shall, from time to time, be a security to such partner for any such advance and interest. If there shall not be sufficient stock in trade to answer the same, the other partners shall each, from their own respective private estates, be liable to make good such advances and interest.

Allowances for Entertainment. That each of said partners shall be allowed the sum of —— dollars per annum out of said concern, before any division or distribution of gain shall take place, to be devoted to the entertainment of strangers, etc., etc., at their respective places of business.

Application to Business. That each of said partners shall, to the best of their respective skill and ability, diligently apply himself in and about the business of said concern, and the management, profit, and advantage thereof.

Attachment and Executions. That none of said partners shall permit or suffer said joint stock, or his share or interest therein, to be in any way charged, encumbered, attached, or taken in execution for his own private and particular debts.

Bills of Exchange, Promissory Notes, or other Engagements. That none of said partners shall, for his own private use, or for any other purpose than the immediate use of said partnership, make, draw, subscribe, indorse, or accept any bill of exchange or promissory note, or other engagement, in the name of said partnership, or by the means of which said partnership shall become bound, engaged, or liable, nor to pay or apply any such partnership moneys or effects, except on account of said concern, under a penalty of forfeiting treble the amount of such bill, note, or other engagement, or the money so paid or misapplied, to the other partners, to be paid by or deducted from the share of gains or capital of the concern of the offending party, and divided between the other partners in the proportions that they are entitled to the profits arising from said copartnership business.

Decease. That if any or either of said partners shall happen to die during said partnership, then his personal representatives shall become thereby interested in said concern, only until the —— day of —— next ensuing said decease, when said partnership concern, as to the part, share, and interest of said deceased partner, but no further or otherwise, shall absolutely cease and determine.

That if all said partners shall die during said term said partnership shall absolutely cease and determine, as to all said partners, and the account, division, and partition hereinafter mentioned shall be made in the same manner as is therein provided for.

Dissolution. That if any or either of said parties shall desire to put an end to said partnership, at the expiration of the third year thereof, he or they, on giving one full year's notice, in writing, to each of the other partners, shall be at liberty to do so, for which purpose such notice shall be repeated at the interval of —— days, by registered letter, to each of the places of residence and business of the other partners. Said notice shall be deemed and considered to date from the delivery of the second or last of said notices at the post office of the sender.

That at the expiration of said notice, or at any subsequent time therein named, said partnership concern shall absolutely cease and determine as to all said partners, and the same account, division, partition, and payment as is herein provided shall be made.

Outside Business. That neither of said partners shall, during this partnership, either by himself or in partnership with any other person or persons, or any other persons or interests, enter into, engage in, or carry on any business or employment distinct and outside of the said concern, without the consent, in writing, of the other partners, having first been obtained for that purpose. *Provided, however*, that said A. B. shall be at liberty to engage in any other concern or commercial undertaking that he may think proper, other than that of a merchant or commission agent, in any of said places in which said partnership business shall be carried on.

Profit and Loss. That said parties shall be interested in the joint stock of said partnership concern, and in all gains and profits therefrom in the proportions of their contributions to the capital stock (*or* in equal proportion share and share alike), and all debts, leases, rent, taxes, wages, and all other charges and expenses, incident to said concern shall be borne and paid in the same proportions.

Real Estate. That if any real property, lands, tenements, or hereditaments shall be purchased with the moneys or effects of said partnership, the same shall be considered and held as the joint property of said partners in the proportions hereinbefore mentioned.

Releases. That none of said partners shall release or discharge any debt owing to said concern, above the sum of —— dollars, without the consent of the other partners.

Settlement and Partition of Partnership Effects, etc. That within three calendar months from the expiration of said term of —— years, or after the determination of said partnership in any of the events in this agreement mentioned, or as soon thereafter as can be, said parties, or their representatives, shall state and adjust a final account, in writing, of all the partnership estates and effects, and thereupon a division or partition thereof shall be made between said partners respectively, or their representatives, in such proportions as they shall be fairly and equitably entitled thereto, according to the terms of this agreement, due care being first taken for the payment of all partnership debts.

That each of said parties, or his representatives, shall, on the request, and at the costs of the others of them respectively, make unto said others an assignment of their respective shares of said estate and effects, which shall be allotted to them, and invest them with full power to collect, receive, and recover the same, and that none of said partners shall afterwards release, discharge, or compound any debts or demands which shall have been allotted to the others of them, or their representatives, without their respective consent, in writing.

Yearly Statement. That said partners, respectively resident in New York, London, Berlin, and Paris, shall yearly, on the —— day of ——, or as near thereby as circumstances will admit, make up a particular statement, in writing, of all goods, credits, property, estate, and effects then being in or belonging to said concern, at said places respectively, and of all debts and duties then owing therefrom, and shall transmit the same, or a copy thereof, to each of the other partners by the first opportunity, and shall enter the said statement or account in a book to be kept for that purpose, and subscribe the same, which book shall be kept with the other books of account, and which account shall not be opened or called in question unless an error shall be found therein to the amount of —— dollars, in any one year.

That thereupon said parties respectively shall be at liberty to draw their respective shares of the profits of the preceding year, according to the proportions above mentioned. Subject, nevertheless, to the sums allowed for the entertainment of strangers as aforesaid.

Contract—Partnership.

Relinquishment or Separation of Interest.

This agreement made, etc., witnesseth:

That said A. B., C. D., and E. F. are partners doing business as ——, at ——, under the firm name and style of B., D. & F.

That the said E. F., for the consideration hereinafter mentioned, does by these presents, sell, grant, and convey unto said A. B. and C. D. all debts and sums of money which are due and owing unto said parties jointly, and all his right, title, interest, property, claim, and demand whatsoever, in and to all said debts or any of them, and also all and singular the agreements, bills, bonds, conveyances, judgments, specialties, and writings whatsoever for and concerning the same, all of which are set forth and mentioned in the schedule hereunto annexed, marked "A.," to have and to hold the same unto them, the said A. B. and C. D., forever, with full power to ask, demand, sue for, and recover the same in their own name, or otherwise, and to receive, receipt for, release, compound and discharge any sum or sums of money or other matter in said schedule mentioned.

That said E. F. shall not, at any time hereafter, willingly do or suffer any act or thing to hinder, let, or disturb them, the said A. B. and C. D., in the premises, but shall, upon reasonable request upon him, execute, and deliver said parties such other sufficient letters of attorney for the recovery and collection of said debts, etc., as by said parties, or their counsel learned in the law, shall reasonably advise and require.

That said A. B. and C. D., in consideration thereof, shall, on or before the —— day of —— next, discharge and pay all debts and sums of money as are due and owing by said partnership concern to any and all its creditors, for or by reason of their said joint trade and partnership.

That said A. B. and C. D. shall, on or before the —— day of —— next, obtain for said E. F. sufficient general releases and other discharges in law from all creditors whose names are mentioned and set forth in the schedule, hereunto annexed, marked "B."

That said A. B. and C. D. shall at all times hereafter save and keep harmless and indemnified said E. F. against all and every person and persons whatever, to whom said parties or either of them are indebted in relation to said partnership, and of and from all actions, charges, costs, damages, executions, judgments, and demands whatsoever, which has heretofore, or shall at any time hereafter, arise and come against said E. F., or any of his lands, tenements, goods, chattels, or effects, or any part thereof, for or by reason of any matter or thing respecting or relating to said partnership.

In witness, etc.

Contract—Partnership.

Retiring from Business.

This agreement, etc., witnesseth:

That said A. B. has for some time past been engaged in, and is about to retire from, the business (*or* trade) of ——, at ——, in ——.

That said C. D. shall continue said business (*or* trade) under the covenants, restrictions, and agreements hereinafter contained.

That an inventory and appraisement has been taken and made of the stock, the value of which is —— dollars, and fixtures, the value of which is —— dollars, and entered in two receipt books, and is subscribed by both of said parties, each of whom retain custody of one of said books.

That said C. D. shall during the term of five years (computed from the date of this agreement), if said parties shall live so long, trade with said stock, manage and improve the same, in such manner, however, as said A. B. shall direct:

UPON TRUST, NEVERTHELESS,

1. To pay and discharge all taxes which now are or shall hereafter be imposed upon said C. D. on account of said house and trade.

2. To pay said A. B. or his assigns, yearly and every year during said term of five years, if said parties shall live so long, one clear annuity or yearly sum of —— dollars, without any abatement or deduction whatsoever.

3. To retain the overplus and profits which shall arise from trade and dealing for his own sole use and benefit, as a recompense and satisfaction for his care and trouble in the management and sale of said stock.

And the said C. D., in consideration of the premises, shall apply himself diligently to the care and management of said stock trade and business, according to his best skill, abilities, and discretion, and apply and dispose of the money which shall arise from the sale thereof, and all the profits of his trade and dealings, to answer and discharge the trusts hereby reposed in him.

That said C. D. shall make complete and perfect entries in the proper books of account of all goods sold, all moneys paid and received by him, and permit the same to be inspected by said A. B. at all times.

That on the —— day of ——, of each year during said term, or oftener if required by said A. B., said C. D. shall take a full account of said stock then remaining in trade, and of the profits and sales, and deliver the same to said A. B., and make a true manifest of the condition thereof.

That he will not, during said term of five years, buy, sell, or in any manner deal or trade in his own name or that of any person save the said A. B., nor do any act whatsoever whereby said stock or any part thereof shall suffer, or become liable to attachment or execution.

That at the expiration of said term of five years said C. D. shall deliver up to said A. B. the stock then remaining, for his own use and benefit, to the value of —— dollars; losses by bad debts, decay of goods, and other inevitable casualties excepted.

In witness whereof, etc.

Contract—Party Walls.

This agreement, etc., witnesseth:

That said A. B. is the owner of the lot and storehouse, No. ——, on —— street, in the town of ——.

That said C. D. is the owner of the lot adjoining the same on the north side thereof.

That said C. D. is about to erect a brick storehouse upon said last-named lot.

That in the erection of said storehouse the said C. D. shall use the north wall of the storehouse of said A. B. for the purpose of a party wall.

That in consideration of the sum of —— dollars the receipt of which is hereby acknowledged, the said C. D., or his legal representatives, shall and may, freely and lawfully, in a workmanlike manner, make use of and continue the use of said wall as a party wall forever.

That if it shall hereafter become necessary to repair or rebuild any portion of said party wall, the expense of such repairing or rebuilding shall be borne equally by said A. B. and C. D. or their representatives or assigns.

That whenever said party wall or any portion thereof shall be rebuilt it shall be erected on the same spot where it now stands, and be of the same size, and the same or similar materials, and of like quality, with the present wall.

That this agreement shall be perpetual, and at all times construed as a covenant running with the land, and that no part of the fee of the soil upon which the wall of said A. B. now stands shall pass to or be vested in said C. D., his heirs or assigns.

In witness whereof, etc.

For form of ACKNOWLEDGMENT see that title.

Contract—Party Walls.

This agreement, etc., witnesseth:

That said A. B. is the owner and in possession of a certain lot (*or* parcel) of ground situated in ——, and described as follows, to wit (*describing it by metes and bounds*).

That said C. D. is the owner and in possession of a certain lot (*or* parcel) of ground situated in ——, adjoining the property of A. B, aforesaid, and described as follows, to wit (*describing it as above*).

That said A. B. has erected (*or* is about to erect) on his own premises aforesaid, and along the division line of the above mentioned lots (*or* premises) a brick building —— in length, —— stories high, and —— from the front of said premises, etc., etc.

That said C. D., and his legal representatives or assigns, shall at all times hereafter (*or* thereafter) have the full liberty, right, and privilege of joining to said —— wall, above and below the surface of the ground, and along the whole or any part of the length of said wall any building which he or his legal representatives or assigns may see fit, or have occasion to erect, and for said purpose to sink joists into said wall —— inches in depth, but no further, and to use and enjoy said wall, or any part thereof, as well as all buildings by them erected.

Provided, however, that before proceeding to join any other buildings to said wall, and before making any use thereof, or breaking into the same, said C. D., his legal representatives or assigns, shall pay, or secure to be paid, to said A. B., or his legal representatives or assigns, one-half value of the said wall, or so much thereof as shall be joined or used as aforesaid (which value shall be affixed and assessed by ——, *or* at the rate of —— dollars per ——).

In witness whereof, etc.

Contract—Performance, etc.

Limited in Terms and Amount.

This agreement witnesseth:

That A. B. shall, etc. (*stating what shall be done*).

That A. B. shall pay said A. B. therefore the sum of —— dollars, as follows, etc. (*stating terms, times, and amounts of payment*).

That in no event shall this agreement be altered, modified, or in anywise or particular varied, except by indorsement thereon by writing annexed thereto.

(*Signed*) A. B.
C. D.

Dated ——.

Contract—Performance, etc.

Performance for Payment.

This agreement, between A. B. and C. D., made this —— day of ——, A. D. ——, witnesses:

That A. B. shall (*state what A. B. shall do*).

That in consideration thereof, C. D. shall pay said A. B. —— dollars, as follows (*state time, place, number, and amount of payments*).

(*Signed*) A. B.
C. D.

Contract—Performance, etc.

Performance for Performance.

This agreement, between A. B. and C. D., made this —— day of ——, A. D. ——, witnesses:

That A. B. shall (*state the subject-matter, or object of the agreement*).

That C. D., in consideration thereof, shall (*here state what C. D. shall do or perform*).

(*Signed*) A. B.
C. D.

Contract—Purchase.

Cordwood.

This agreement, etc., witnesseth:

That said A. B. shall sell to said C. D. all the cordwood that shall come from all trees now growing and standing on a certain piece of rough ground situated in ——, and described as follows, to wit (*describing it by metes and bounds*).

That said A. B. shall permit and suffer said C. D., at his own cost and expense, to cut said cordwood and convert it into charcoal in the northwest corner of said land, and for that purpose to use the turf and earth in said corner, but not elsewhere, and thereafter to take and carry away said wood so converted into charcoal from off said premises the most convenient way leading to the —— road.

That said C. D. shall, on or before the —— day of —— (*or* in charcoal at —— per bushel, *or* in cordwood at —— per cord, etc., etc.), pay said A. B therefor at the rate of —— cents per cord for all said wood so cut, to be measured at the cutting thereof, and an account made every —— during the time the same is being cut and converted as aforesaid.

That said C. D. shall commence said cutting on or before the —— day of ——, and complete the same on or before the —— day of ——, and to have converted the same into charcoal or otherwise, so as to have fully removed from said premises on or before the —— day of —— next.

Contract—Purchase.

By Several Jointly.

This agreement, etc., witnesseth:

That A. B., of ——, C. D., of ——, and E. F., of ——, or some one of them, shall purchase all that tract or parcel of land situated in ——, in ——, now owned and in possession of G. H.

That if any one or more of said parties shall purchase said land, that each and every one of said parties shall pay his respective proportion of the purchase money.

That all charges and expenses shall be borne by each of said parties in equal proportions.

That such purchase shall be for the joint and equal benefit of each of said parties (and conveyed in their joint names).

That the purchase money for said land shall not exceed the sum of five thousand dollars.

In witness whereof, etc.

Contract—Reassignment.

Real Estate Assigned.

This agreement, etc., witnesseth:

That said A. B. by an agreement with one C. D. (of ——), bearing date the —— day of ——, agreed to convey to him a certain tract of land situate, etc. (*copying the description from the former agreement*).

That said A. B., by an agreement with said E. F., contracted for the erection of a building on said land for a consideration of one thousand dollars, five hundred dollars thereof to be paid six months from the date of said building contract, and the remainder in six months after the completion of said building.

That said C. D., by an assignment bearing even date with the day and year of the agreement last mentioned, assigned all his title and interest in and rights under the agreement first above mentioned to said C. D. as collateral security for the punctual performance of said building contract.

That if said A. B. shall faithfully perform all his agreements and covenants with said E. F. in and concerning said building contract, then said E. F. shall reassign and set over all the interest he has acquired in said premises by virtue of said assignment from said C. D.

That in case of default or nonperformance of any or all the conditions and provisions of said building contract, then said E. F. shall become absolutely seized and possessed of said premises, and entitled to all the rights of said C. D. therein.

Provided, however, that if said C. D. shall within thirty days after said default tender said E. F. the amount or amounts due, or performance required, according to said contract, then the said E. F. shall reassign and transfer said premises to said C. D.

In witness, etc.

Contract—Sale.

Of Animals.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall sell and deliver on the —— day of —— next, to said C. D., at his store in ——, one yoke of four year old oxen.

That said C. D., in consideration thereof, shall pay said A. B. sixty dollars upon the delivery of said oxen.

In witness whereof, etc.

Contract—Sale.

General Form.

This agreement, made this —— day of ——, A. D. ——, between A. B. (of ——, farmer), and C. D. (of ——, merchant), witnesseth:

That said A. B. (in consideration of the agreement hereinafter contained, to be performed by C. D.), agrees to sell and deliver to the said C. D., at his storehouse in —— (*here specify the goods, their quantity and quality*), on or before the —— day of ——, A. D. ——.

That said C. D. (in consideration thereof) agrees to pay to the said A. B. the sum of —— dollars per —— for the said ——, immediately upon the completion of the delivery thereof.

Witness our hands, this —— day of ——, A. D. ——.

A. B.
C. D.

Contract—Sale.

Bond and Mortgage.

This agreement, etc., witnesseth:

That said A. B. and his wife W., on the —— day of ——, executed a mortgage and a bond bearing even date therewith, to said C. D., for the purpose of securing the payment of the sum of four hundred dollars, in four years from the —— day of ——, with interest annually, from the date first aforesaid.

That said mortgage was duly recorded in the office of the clerk (recorder, *or* register of deeds), of —— county, in book 10 of mortgages, at pages 512 and 513, on the —— day of ——, at —— o'clock A. M.

That said C. D., for the consideration hereinafter mentioned, shall sell, transfer, assign, and set over to said E. F. said mortgage and bond accompanying the same, together with all the said C. D.'s title and interest in and rights thereunder when the payments hereinafter specified shall have been made.

That said E. F., in consideration of the premises, shall pay or cause to be paid unto said C. D. the sum of four hundred dollars, in the manner following, viz.: fifty dollars upon the execution and delivery of this agreement, and three hundred and fifty dollars in two equal annual payments from the date hereof, with —— per cent. interest.

That if said E. F. shall, at any time prior to said times agreed upon, elect to pay the whole sum agreed to be paid, with legal interest thereon, he shall have the right so to do, and said C. D. shall immediately, upon said payment, transfer, assign, and set over unto said E. F. the bond and mortgage aforesaid.

In witness whereof, etc.

Contract—Sale.

Coal.

This agreement witnesseth:

That A. B., for a consideration hereinafter mentioned, shall sell and deliver to C. D., free of all cost, charge, and expense, one thousand bushels of —— coal, from time to time, from the —— day of —— unto the —— day of ——, in such quantities and at such times as said C. D. shall require, the whole to be delivered on or before the last named date.

That C. D., in consideration thereof, shall pay unto said A. B. therefor the sum of —— per bushel, one-half to be paid in such goods, wares, and merchandise as are manufactured and sold by said C. D., and the remaining half in cash, on or before the last mentioned date.

In witness whereof, etc.

Contract—Sale.

Goods at Appraised Value.

This agreement, etc., witnesseth:

That said A. B. shall, for the consideration hereinafter mentioned, sell and convey unto said C. D. all and singular the household goods, furniture, fixtures, stock in trade, chattels, and effects contained in and belonging to the dwelling and store now occupied by said A. B., at ——, in —— (as per schedule hereunto annexed).

That said goods, furniture, fixtures, stock in trade, chattles, and effects shall be appraised by E. F. and G. H. (*or* any other two disinterested persons chosen one by each of said parties), and in case they differ in such appraisement, then a third indifferent person, chosen by them, shall determine the same, and their valuation, with its differences adjusted by said person, if delivered in —— days, in writing, shall and will be taken as the value of the same.

That said A. B., immediately upon such valuation being made, shall make and deliver an absolute bill of sale of all said goods, furniture, fixtures, stock in trade, chattels, and effects, and give possession thereof to said C. D., at the price the same shall be appraised at as aforesaid.

That said C. D., in consideration thereof, shall accept said property at said price and on the delivery of said bill of sale, and shall pay said A. B. a sum of money at which said property is appraised as aforesaid.

In witness, etc.

Contract—Sale.

Of Goods in Store.

This agreement, etc., witnesseth:

That said A. B., in consideration of the covenants hereinafter contained, will purchase of said C. D. all his stock of goods, wares, and merchandise now being in his store, in the town of ——, together with all the fixtures thereto belonging, an account of the same to be taken by the parties hereto in the presence of each other.

That said A. B. shall pay for the same at the invoice price, saving such of said goods as are damaged.

That all damaged goods and the fixtures aforesaid shall be valued by two disinterested persons, one of whom is to be selected by each of the parties to this agreement, and said A. B. shall pay for the same the value or price that said appraisers may agree and put upon them as a fair valuation of the same.

That said A. B. shall, within five days after the value of said goods, wares, merchandise, and fixtures is ascertained as aforesaid, pay a sum equivalent to said value to said C. D.

That said C. D., in consideration thereof, agrees to sell and deliver said A. B. said goods, wares, merchandise, and fixtures as aforesaid, and make, execute, and deliver to said A. B. a good and sufficient bill of sale and conveyance thereof, upon receipt of said last mentioned sum.

In witness whereof, etc.

Contract—Sale.

Of Goods in Grocery Store.

This agreement, etc., witnesseth:

That said A. B. shall sell to said C. D., and said C. D. shall buy of said A. B., all the stock of goods and groceries, wares, and merchandise belonging to said A. B., and now in the grocery store occupied by him, on lot No. ——, on the

corner of —— and —— streets, in the town of ——, together with all furniture and fixtures therein; and also all goods, wares, merchandise, grain, meats, vegetables, and produce of every name and nature bought or contracted for by the said A. B. and intended for sale in said grocery.

That the stock of goods, wares, and merchandise is to be inventoried to said C. D. at the original cost, without including transportation expenses, deducting any depreciation on account of damage, wear or tear.

That the furniture and fixtures shall be inventoried at their fair cash value by the parties to this agreement, and if they cannot agree as to such valuation, or the deductions aforesaid, the same shall be determined by the appraisal of E. F., G. H., and I. K., or any two of them.

That the grain, meats, vegetables, and produce shall be invoiced at their original cost.

That said invoices and inventories shall be completed within ten days from the date hereof, and the property above specified thereupon immediately delivered to said C. D.

That said C. D., in consideration of said premises, shall execute and deliver said A. B., in lieu of the purchase money for said property, and in full payment therefor, his promissory notes, in such several sums as said A. B. shall direct, payable at the —— bank, ——, six months after date, with interest at the rate of —— per cent. per annum, etc., etc. (and indorsed by E. F., of ——, etc.)

That said A. B. shall not, at any time hereafter, engage directly or indirectly, or concern himself in the carrying on or conducting the grocery business within one mile of the said premises.

That the stipulations aforesaid are to apply to and bind the heirs, executors, and administrators of the respective parties, and in case of failure said parties bind themselves each to the other in the sum of —— dollars, as fixed and settled damages, to be paid by the failing party.

In witness whereof, etc.

Contract—Sale.

Of a Horse.

This agreement, etc., witnesseth:

That said A. B. shall sell to said C. D., and said C. D. shall purchase of said A. B., his dark bay horse, etc. (*adding other points of description*), and to warrant said horse to be well broken, kind, and gentle, both under the saddle and in single and double harness, to be sound in every respect and free from every vice, for the sum of one hundred dollars, to be paid by said C. D. on the —— day of —— next, when said horse shall be delivered to said C. D.

In witness whereof, etc.

Contract—Sale.

Real Estate.

This agreement, etc., witnesseth:

That A. B. (of ——), in consideration of the sum of —— dollars now paid, and —— dollars to be paid when a deed is executed, shall, on the —— day of —— next, sell and convey unto C. D. (of ——), his heirs and assigns, real estate situated in —— and described as follows, to wit: (*describing it*), together with all the appurtenances thereunto belonging.

Dated ——. (*Signed*) A. B.
C. D.

Contract—Sale.

Real Estate.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall, by good and lawful deeds, well and sufficiently grant, bargain, sell, convey, and assure unto said C. D., his heirs and assigns, in fee simple, free of all incumbrances, all that part and parcel of land situate in ——, and bounded and described as follows: (*here describe the premises by metes and bounds*).

That said C. D., in consideration thereof, shall well and truly pay or cause to be paid to said A. B., his executors, administrators, or assigns, the sum of —— dollars, in the manner following, viz.:

—— dollars on the execution of this agreement.

—— dollars on the —— day of —— next.

—— dollars on the —— day of —— next.

The remaining —— dollars on the —— day of —— next.

That said sums of money unpaid shall bear interest at the rate of —— per cent. per annum from date until paid.

That the payment of said several sums of money shall be a condition precedent to the execution and delivery of the deeds of conveyance aforesaid.

In witness, etc.

Contract—Sale.

Real Estate.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall sell and convey to said C. D. all that part and parcel of land situated in ——, as known and designated on the recorded plat of said ——, as, etc. (*describing it according to the record*).

That said A. B. shall execute and deliver to said C. D. a warranty deed containing the usual covenants of warranty, that said premises are free, clear, and discharged of and from all and every incumbrance whatsoever.

That said C. D., in consideration thereof, shall pay said A. B. the sum of —— dollars, as follows:

—— dollars upon the execution and delivery of said deed.

—— dollars, payable at ——, on the —— day of —— next.

—— dollars, payable at ——, on the —— day of —— next.

Said payments to be secured by promissory notes for the same, bearing interest at the rate of —— per cent. per annum, which notes shall be secured by a mortgage on said premises.

That if any default be made in fulfilling this agreement, or any part thereof, said A. B. or his legal representatives may consider this agreement of no effect and annulled, and dispose of said land or otherwise, as though this agreement had never been executed.

In witness, etc.

Contract—Sale.

Real Estate—Farm and Mill Property.

This agreement made, etc., witnesseth:

That said A. B. shall, for the consideration hereinafter mentioned, grant, sell, and convey unto said C. D., his heirs and assigns forever, the following described real estate, situated in ——, in —— county, and State of ——, described as follows (*describing the same by metes and bounds*).

To have and to hold the same, together with the tenements, buildings, and their appurtenances, goods, chattels, and effects, as follows, to wit:

One dwelling-house (*describing it*), together with all furniture, fixtures, apparel, etc., described in the schedule hereunto annexed, marked "A."

One grist mill (*describing it*), together with all tools, machinery, fixtures, furniture, etc., described in the schedule hereunto annexed, marked "B."

One saw mill (*describing it*), together with all the tools, etc. (*as above*).

One woollen mill (*describing it*), together with all the tools, etc. (*as above*).

And also all the goods, chattels, and effects, growing crops, farm utensils, etc., etc., described in the schedule hereunto annexed, marked "E."

That said C. D., in consideration thereof, shall pay said A. B. the sum of —— dollars, as follows:

—— dollars upon the execution of this agreement.

—— dollars, payable at ——, on the —— day of —— next.

—— dollars, payable at ——, on the —— day of —— next.

Etc., etc.

That all said deferred payments shall be evidenced by the promissory notes of said C. D., bearing interest at the rate of —— per cent. per annum from date until paid.

That said notes shall be secured by a mortgage given by said C. D. to said A. B. upon said premises.

That said premises shall in the meantime be kept fully insured, at the cost and expense of and by said C. D., in good and responsible companies, to be approved by said A. B., to whom the policies thereon shall be forthwith assigned.

That said C. D. shall take possession of said premises on the —— day of —— next.

In witness, etc.

Contract—Sale.

Real Estate in Fee.

This agreement, etc., witnesseth:

That said A. B., in consideration of the sum of —— dollars, to be paid as hereinafter mentioned, shall, on or before the —— day of —— next ensuing, well and sufficiently grant, sell, release, convey, and assure unto said C. D., his heirs and assigns, all that tract or parcel of land situated in ——, etc., and described as follows, to wit (*describing it by boundaries*).

That said conveyance shall be at the costs and charges (excepting only counsel fees) of said C. D., and by such conveyances and assurances as he or his counsel may reasonably require, and shall contain the usual covenants that said premises, at the time of such conveyance, are free from all demands and incumbrances whatsoever (except, etc.), and all other usual and reasonable covenants.

That said C. D., in consideration thereof, shall well and truly pay or cause to be paid unto said C. D., his heirs, executors, or administrators, the aforesaid sum at the time of executing said conveyance.

In witness, etc.

Contract—Sale.

Real Estate—Private Contract.

This agreement, etc., witnesseth:

That said A. B. shall, on or before the —— day of —— next, on the receipt of the sum of —— dollars, and at the costs and charges of the grantee, convey unto said C. D., by deed, with a covenant of general warranty and against incumbrance, and with other usual covenants and agreements, all that tract or parcel of land situated in ——, and described as follows, to wit (*describing it*).

That said C. D., on the execution of said conveyance, shall pay said A. B. the sum of —— dollars.

That said conveyance shall be prepared at the expense of said C. D., to the approbation of the respective counsel of said A. B. and C. D.

That all taxes and expenses in respect to said premises in the meantime shall be paid by said A. B.

That if said conveyance shall not be executed and the purchase money paid on or before the —— day of ——, then said C. D. shall pay interest for the same from said last-mentioned day unto said A. B. at the rate of —— per cent. per annum until said sum is paid.

In witness, etc.

Contract—Sale.

Real Estate—Remainder or Reversion.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter named, shall sell to said C. D. the remainder or reversion in fee which will take effect upon the death of E. F. in all that part or parcel of land situated in ——, and described as follows, to wit (*describing it by its surveyed boundaries*).

That said A. B. shall, within —— days from the date hereof, make and deliver to said C. D. an abstract of the title of said premises.

That said A. B. shall on the —— day of —— next, and on receiving from said C. D. the sum of —— dollars, and at the costs and charges of said grantee, execute a good and sufficient conveyance to the said C. D. in fee of the remainder and reversion aforesaid.

That said conveyance shall be prepared at the expense of said A. B., and that the same shall be settled and approved by said parties and their respective attorneys or solicitors, and that each of said parties shall pay the fees of his own attorney, conveyancer, counsel, or solicitor.

In witness, etc.

Contract—Sale.

Real Estate—By Warranty Deed, Damages Fixed.

See *Agreement for Purchase of Real Property*, below, and title BOND FOR DEED, post.

This agreement, made this —— day of ——, A. D. ——, by and between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, for the consideration hereinafter mentioned, covenants and agrees to sell and convey unto said party of the second part, his heirs and assigns, all the following described real estate situated in the county of ——, and State of ——, to wit (*describing it*).

That said party of the second part, in consideration thereof, covenants and agrees to pay unto the said party of the first part, for the same, the sum of —— dollars, as follows (*stating the time place, number, and amount of payments*).

That said party of the first part, on receiving said sum and sums of money, at the time and in the manner aforementioned, shall, at his own expense, execute and deliver to said party of the first part, a good and sufficient warranty deed, conveying (and assuring) unto said party of the second part (an indefeasible estate of inheritance, in fee simple, of and in) all and singular the above described premises, with the appurtenances, and warrant that the same are free (clear, discharged, and unincumbered of and) from all (former and other grants, titles, charges, estates, judgments, taxes, assessments and) incumbrances, of whatever nature or kind soever.

That said party of the first part is to retain possession of said premises until the —— day of ——, A. D. ——, when the same shall be delivered up to said party of the second part, upon his compliance with the agreements hereinbefore contained:

That said party of the second part shall pay all taxes or assessments becoming chargeable to or upon said premises after delivery of possession thereof as aforesaid.

That if default be made in fulfilling this agreement, or any part thereof, by or on behalf of said party of the second part, this agreement shall, at the option of said party of the first part, be forfeited and determined, and said party of the second part shall forfeit all payments made by him on the same, and such payments shall be retained by said party of the first part in full satisfaction, and in liquidation of all damages, by him sustained, and he shall have the right to re-enter and take possession of said premises.

That all covenants and agreements herein contained shall extend to and bind the respective heirs, executors, administrators, and assigns of said parties.

In witness whereof, etc. A. B
[*Witnesses.*] C. D

Contract—Sale, etc.

Real Estate—With Stipulation.

This agreement, etc., witnesseth:

That said A. B., in consideration of the sum of —— dollars, to be paid him by said C. D., at or before the delivery of this agreement, and the further sum of —— dollars, to be paid as hereinafter mentioned, does hereby (for himself, his heirs, executors, and administrators) agree with C. D. (his heirs, executors, and administrators) that he will at his own (*or* said C. D.'s) costs and charges (except fees of counsel), on or before the —— day of —— next, grant, bargain, sell, convey, release, and assure to said C. D. and his heirs (*or* to whom he shall appoint or direct) all that tract or parcel of land situated in ——, in the State of ——, with covenants, to be therein contained, that the said premises, at the time of such conveyance, are free from all incumbrances and demands whatsoever (excepting, etc., *stating what*), and all other usual and reasonable covenants.

That said C. D. (for himself, his heirs, executors, and administrators) agrees with said A. B. (his heirs, executors, and administrators) that said sum of —— dollars shall (well and truly) be paid at the time of executing said conveyance.

(That for the true and faithful performance of all and every covenant and agreement aforesaid, said parties bind themselves, their heirs, executors, and administrators, each to the other in the penal sum of —— dollars.)

Approval by Counsel.

That if the counsel of said C. D. shall not approve of the title of said A. B. to said premises, this agreement shall be void.

Approval by Counsel and Approval by Buyer on View, etc.

That in case the counsel of said C. D. shall not approve of the title of said A. B., or in case said C. D., on his view thereof, will not proceed in the purchase thereof, and shall within one month from the date hereof give notice in writing to said A. B. that he will not purchase said premises, then, and in either case, these presents shall be absolutely void, and said A. B. shall, within —— months next ensuing, repay or cause to be repaid unto said C. D. said sum of —— dollars, paid as aforesaid, together with legal interest for the same from the date of its payment until the date of its repayment.

Delay or Default of Either Party.

That if by reason of any delay, default or neglect on the part of said A. B. or his counsel or agents, said conveyance is not ready and tendered to said C. D. on or before said —— day of ——, said A. B. shall pay and allow to said C. D. —— interest for said sum of —— dollars, to be computed from the —— day of ——, until the —— day of ——.

That if by reason of any delay, default or neglect on the part of said C. D., such conveyance shall not be executed on or before the —— day of ——, then no such interest shall be paid or allowed by said A. B. during the time of such delay.

Fire.

That in case any of the buildings upon said premises, or any part thereof, shall be damaged or destroyed by fire, the same shall be repaired or rebuilt as soon thereafter as possible, and that in the meantime said A. B. shall pay the sum of —— dollars, in lieu of said C. D. being deprived of the use thereof, and the damage occasioned in such repairs or rebuilding.

Insurance.

That said A. B. shall, in the meantime, keep said buildings fully insured in good and responsible insurance companies, and upon the execution of said conveyance to assign all policies of insurance to said C. D., and failing so to insure, said C. D. may effect such insurance, deducting all costs and charges therefor from said last named payment.

Non-performance by One Releases the Other.

That if either party shall neglect to perform his or their parts of the covenants and agreements herein contained, then and in such case the other party shall in nowise be obliged to perform his covenants and agreements or any of them herein contained, but shall at his own option be fully discharged from the same.

Purchase Money, etc.

That said C. D., upon the execution of said conveyance according to the true intent of this agreement, shall pay or cause to be paid unto said A. B. said sum of —— dollars in full, for the purchase of said premises;

Or,

That said C. D. may retain out of said purchase money the sum of ——, for the purpose of paying off the sum of ——, secured by a mortgage on said premises given by said A. B. to one E. F., bearing date the —— day of ——, when said sum shall become due by virtue of the terms of said mortgage.

Title Proving Defective, etc.

That in case the said A. B. cannot make out a good title to, and execute a good and valid conveyance of said premises, on or before the —— day of ——, then said (*naming the right secured*), and every part thereof, shall remain a security to said C. D. for the repayment of said sum of —— dollars paid as aforesaid, together with lawful interest thereon until the repayment thereof.

That in addition thereto, all rents as said C. D. shall have received out of said premises shall be allowed by said A. B. in part payment of the same and interest.

Waste and Underletting.

That said C. D. shall not in the meantime cut down any timber or trees, or commit any damages or waste whatever, in or upon any part of said premises, or suffer the same to be done, nor grant any new leases of said premises or any part thereof, without the consent of said A. B. or his legal representatives in writing.

Contract—Sale.

Stock and Good-will with Restraint.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall sell to said C. D. all the stock of goods, wares and merchandise belonging to said A. B., now in the —— store, occupied by him in ——, together with all furniture and fixtures thereunto appertaining, and also all goods, wares and merchandise bought or contracted for by said A. B., and intended for said store, together with the good-will of the business heretofore carried on there by said A. B.

That said stock of goods, wares and merchandise shall be inventoried by said A. B. at its original cost, and excluding all costs for carriage or transportation, and making deduction for depreciation in value from damage, wear, tear or other causes. That all the furniture and fixtures shall be inventoried at their fair cash value.

That said inventory shall be completed within —— days from the date hereof, and the property above specified thereupon immediately delivered to said C. D.

That said A. B. shall not, at any time hereafter within —— from said place of business now occupied by him, engage directly or indirectly, either as agent, principal, servant, or otherwise, in carrying on, conducting, or being interested in said business of ——.

That said C. D., in consideration thereof, shall pay said A. B. the sum of —— dollars, as follows:

—— dollars upon the delivery of said goods, wares, merchandise, furniture and fixtures.

—— dollars on the —— day of —— next, in full payment therefor, which sum shall be secured by the promissory note payable at ——, and bearing interest at the rate of —— per cent. per annum, from date, until paid.

Contract—Sale.

Shares of Stock in Corporation.

This agreement, etc., witnesseth:

That said A. B. shall sell and convey to said C. D., on or before the —— day of —— next, one hundred shares of the capital stock of the —— company, now owned and held by said A. B., and standing in his name on the books of said company, and to execute unto said C. D. all assignments, conveyances and transfers necessary to assure the same to him, his heirs and assigns.

That said C. D., in consideration thereof, shall pay unto said A. B. for each and every share of said stock the average market price of the same for and during twenty days preceding the —— day of —— aforesaid, to be determined by the sales made at the board of brokers in the city of ——.

In witness whereof, etc.

Contract—Sale.

Shares of Stock in a Corporation.

This agreement, etc., witnesseth:

That said A. B. shall sell, transfer and convey to said C. D., on the —— day of ——, one thousand shares of the ——, now owned by said A. B., and standing in his name on the books of said company, and to execute and deliver to said C. D. all necessary assignments, conveyances and transfers concerning the same.

That said C. D. shall pay said A. B. therefor, —— dollars for each share of said stock, on the —— day of —— next.

In witness whereof, etc.

Contract—Sale.

Timber Growing.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall sell unto said C. D. all and singular the timber-trees and other trees, being upon a certain tract of land in ——, and bounded as follows (*stating the bounds*), all of which are marked with the letter "T," and being of the kind and number as follows:

One hundred white oak trees, marked with the letter "T."

One hundred and thirty —— trees, etc.

That said C. D. shall, between the —— day of ——, and the —— day of —— next, have authority

by himself or servants to fell said trees, and to lay and piles barks of said oak-trees upon said premises to dry.

That said C. D shall have full liberty to carry off said wood, trees, boughs, lops and tops of the whole of said wood in the usual manner, and without interruption during said time.

That said C. D. shall have full authority and liberty, by himself, or servants, agents, or workmen, and other persons to whom he may sell said timber and wood, etc., to dig sawpits, and break up and saw said timber into convenient lengths for removal or use during said time.

That said C. D., in consideration thereof, shall pay said A. B., or his legal representatives, the sum of —— dollars, in the manner following, viz. (*giving terms, times and amounts of payments*).

That said C. D shall mend and repair all fences, hedges, and enclosures, and all places broken or otherwise damaged or destroyed in felling, hewing, or carrying away said timber, etc., within the time limited as aforesaid.

In witness, etc.

Contract—Sale.

Trees—Fruit

This agreement, etc., witnesseth:

That said A. B. shall sell and deliver to said C. D., at his dwelling-house in ——, one thousand apple trees, three hundred peach trees, two hundred plum trees, one hundred pear trees, etc., all in good order for transplanting, in the month of May next, at the following prices, to wit:

For each hundred apple trees, twenty dollars.

For each hundred peach trees, fifteen dollars.

Etc., etc.

That said C. D., in consideration thereof, agrees to purchase said trees in the quantities and for the prices aforesaid, and to pay said A. B. the price therefor in cash upon the delivery of said trees.

In witness whereof, etc.

Contract—Sale.

Vessel Enrolled.

This agreement, etc., witnesseth:

That said A. B., owner of the brig or vessel called the "Dolphin," of four hundred tons burthen, or thereabouts, in consideration of the sum of —— dollars, lawful money of the United States of America, to me paid before the delivery of these presents, the receipt of which is hereby acknowledged, does by these presents bargain, sell, and convey said brig or vessel, together with the anchors, boats, bowsprit, cables, masts, sails, and all other accessories, appurtenances, necessaries, and paraphernalia thereunto belonging, or in anywise appertaining, to said C. D.

That the certificate of enrolment of said brig or vessel is as follows (*here copy the certificate*).

That said A. B. shall warrant and defend said brig or vessel, and all the above-mentioned accessories, appurtenances, necessaries, and paraphernalia against the claims of all and every person or persons whomsoever.

In witness whereof, etc.

Contract—Sale.

Wheat

This agreement witnesseth:

That A. B. shall, at his own cost and expense, deliver to C. D., at ——, on or before the —— day of ——, five hundred bushels of good, clean, and merchantable —— wheat.

That said C. D. shall, within three months after such delivery, pay unto said A. B. the sum of —— (per bushel) therefor.

(*Signed*) A. B.
C. D.

Dated ——.

Contract—Sale.

Wheat

This agreement, etc., witnesseth:

That said A. B. has this —— day of ——, sold to C. D —— bushels of good, clean, merchantable winter (*or* spring) wheat of the first quality, to be delivered to said C. D. free of all charges or expense whatsoever, at ——, on or before the —— day of ——.

That said C. D. shall pay or cause to be paid to said A. B. therefor within —— days (*or* months) from such delivery, the sum of —— dollars.

In witness whereof, etc.

Contract—Sale.

Of Wood or Stone.

This agreement, etc., witnesseth:

That said A. B., for the consideration hereinafter mentioned, shall sell to said C. D. five hundred cords of seasoned maple and hickory cord-wood, and deliver and securely pile the same on the left bank of the —— river (*or* canal), immediately east of the —— bridge, in the town of —— (*or* one thousand perches of good quarry-stone suitable for building, and deliver and card the same on the south side of the vacant lot, No. ——, on —— street, in the town of ——).

That said C. D., in consideration thereof, shall pay said A. B. the sum of —— for each and every cord (*or* perch) aforesaid, upon the complete and final delivery thereof.

In witness whereof, etc.

Contract—Security.

Change of Mortgage Security.

This agreement, etc., witnesseth:

That said A. B. has this day conveyed to said C. D., E. F., and G. H., by warranty deed, ten acres of land situate on the southeast corner of Front and Eighth streets, in the town of ——, for the consideration of one thousand dollars.

That in order to secure the payment of eight hundred dollars in eight annual payments, with interest, from this date, said C. D., E. F., and G. H. have executed to said A. B. a mortgage upon said premises.

That said C. D., E. F., and G. H. intend to divide said premises into town lots, and sell and dispose of the same.

That said C. D., E. F., and G. H., and their legal representatives, shall at all times hereafter have the right of changing the security above mentioned by substituting instead of the same, or of any part thereof, the like security on other real estate of at least equal value.

That upon said substitution said A. B., or his legal representative, shall, upon request, forthwith execute and deliver said C. D., E. F., and G. H. good and sufficient releases, discharging said mortgage, or the lien upon any portion of the premises therein described.

In witness, etc.

Contract—Shipping Seamen.

Articles of Agreement between Master and Seamen in the Merchant Service of the United States, required by Act of Congress approved June 7th, 1872.

Any erasure, interlineation, or alteration in this agreement will be void, unless attested by a shipping commissioner, consul, or vice-consul, to be made with the consent of the persons interested.

United States of America.

U. S. Shipping Commissioner for the Port of ——.
Office at No. —— —— Street.

It is agreed between the master and seamen, or mariners, of the ——, of which —— is at present master, or whoever shall go for master, now bound from the port of —— to (*here the voyage is to be described, and the places named at which the ship is to touch, or, if that cannot be done, the general nature and probable length of the voyage is to be stated, and the port or country at which the voyage is to terminate*).

Scale of Provisions to be allowed

and served out to the crew during the voyage, in addition to the daily issue of lime and lemon juice and sugar, or other anti-scorbutics in any case required by law.

	Bread—lb.	Beef—lb.	Sugar—oz.	Water—qts.
Sunday,				
Monday,				
Tuesday,				
Wednesday,				
Thursday,				
Friday,				
Saturday,				

Substitutes.

One ounce of coffee, or cocoa, or chocolate may be

substituted for one-quarter ounce of tea, molasses for sugar, the quantity to be one-half more, one pound of potatoes or yams, one-half pound of flour or rice, one-third pint of peas or one-quarter pint of barley, may be substituted for each other

When fresh meat is issued, the proportion to be two pounds per man, per day, in lieu of salt meat.

Flour, rice, and peas, beef, and pork may be substituted for each other, and for potatoes onions may be substituted.

General Conditions.

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties and to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the said ship, and the stores and cargo thereof, whether on board, in boats, or on shore, by night or by day, and in consideration of which service to be duly performed, the said master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed or above scale. And it is hereby agreed, that any embezzlement or wilful or negligent destruction of any part of the ship's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same And if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency, said incompetency to be decided upon by the shipping commissioner And it is also agreed, That if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the ship in a quiet and orderly manner, or to the said shipping commissioner, who shall thereupon take such steps as the case may require And it is also agreed, That we, the said mariners, are to load and discharge the cargo if required. (*Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law*)

No sheath knives nor grog is allowed, and none to be brought on board by the crew, and if any liquor is found secreted on the person of, or among the effects of the crew, the same is to be disposed of as the master may direct, and no profane language is permitted on board.

Signature.	Birthplace	Age	Height Ft.	Height In.	Description Complexion	Description Eyes	Description Hair	Wages per Month. $	Wages per Month. c	Wages per Run. $	Wages per Run. c
1 S. P.											
2 M. N.											
3. Etc											

Advance Wages. $	Advance Wages. c	Time of Service. Mo.	Time of Service. Ds.	Hospital Money. $	Hospital Money. c	Whole Amount Wages. $	Whole Amount Wages. c	Wages Due. $	Wages Due. c	Money Advanced Abroad. $	Money Advanced Abroad. c

Place and Time of Entry. Place.	Place and Time of Entry. Time.	Sections.	Time at which to be on board	Ship's Com's Signature or Initials	Allotment payable to	Conduct and Qualification.

Etc.

9-6 N. H 164; 4 Id. 533; 5 Pick. 306; 9 Vt. 289, 2 Id. 48; 5 Hamm. 58; 22 Mass. 114; 2 Pick. 379; 24 Vt. 189; 6 Md. 213; 20 Penn. St. 260; 9 Barb. 202; 10 Id 309; 9 Gratt. 633, 3 Seld. 349; 2 Denio, 403, S. C.; 1 Comst. 581, 2 Carter, 535; 37 Penn. St. 210. 9-12 Pick. 541.

Contract—Subscription.

Subscription is the placing of a signature at the bottom of a written or printed engagement It is the act by which a person contracts, in writing, to furnish a sum of money for a particular purpose, as, a subscription to a charitable institution, a subscription for a book and the like.

When several promise to contribute to a common object, desired by all, the promise of each may be a good consideration for the promise of others? In general, subscriptions on certain conditions in favor of the party subscribing, are binding when the acts stipulated are performed.

Place ——, Date ——.

We, the undersigned, agree to pay the amounts set opposite our names, to (*naming the person or corporation, as* A. B, *or* the trustees of the —— church, in ——, *etc*), for (*here state the object or thing, as a* ——, *or* the erection of a house of worship for said church, at ——, in ——, *etc.*

Subscribers.	Subscribers.

Contract—Towing Boats.

This agreement, etc, witnesseth:

That said party of the first part, in consideration of the covenant hereinafter contained, shall provide suitable teams, with safe and skilful drivers, and tow the boats belonging to said party of the second part regularly plying between —— and ——, and not exceeding —— in number during the entire season of navigation, to commence on the —— instant.

That said party of the second part, in consideration of the premises, shall pay or cause to be paid to said party of the first party, for each and every running trip so made by their boats, as aforesaid, the sum of —— dollars.

That two boats of said party of the second part shall leave —— on the —— day of ——, and three shall leave on the —— day of ——, provided the canal shall be navigable at those times, and if not so navigable then as soon thereafter as it shall become so.

That at the times of departure from —— or —— during the remainder of the season of navigation shall depend upon the convenience of said party of the second part, with the proviso, however, that not more than —— boats shall leave either end of the route, or more than —— boats pass any station on the same during any period of twenty-four hours.

That when said boats are laden to the burthen of —— tons they shall be towed at the rate of —— miles per hour, running time. When light, carrying not more than —— tons freight, they shall be towed not less than —— miles per hour, as aforesaid.

That said party of the second part shall furnish and provide the drivers employed by said party of the first part with suitable meals on board, at regular hours, relieving them in the charge of their teams at such times by one of the hands engaged on said boats.

That whenever any boat of said party of the second part is detained on account of the carelessness or negligence of the agents, drivers, or servants of said party of the first part, a deduction shall be made from the compensation of said party of the first part, as aforesaid, at the rate of —— dollars per hour during the time of each detention, except after the first day of October next such deduction shall be —— dollars per hour.

That said party of the second part shall pay said party of the first part, or to their regularly authorized agent or agents, the sum of —— dollars compensation, to be paid as aforesaid on the —— day of each and every month during the season of navigation, subject, however, to all necessary deductions on account of detentions, as aforesaid.

That within —— days after the final close of navigation said parties, by themselves or their

agents, shall meet at the office of said party of the second part and examine, close, and settle their respective accounts, and pay and fully discharge all balances which may be found due or owing upon such examination and settlement by reason of the premises.

In witness whereof, etc.

Contract—Work.

General Form.

This agreement, etc., witnesseth:

That said A. B. shall execute and perform in a thorough and workmanlike manner the following work, viz.: (*describing it*).

That said A. B. shall be responsible for all materials delivered and receipted for.

That said work shall be commenced on the —— day of ——, and be completed on the —— day of ——, and delivered free from all mechanics' or material men's or other liens, on or before the —— day of ——, at ——.

That said C. D. shall pay said A. B. therefor the sum of —— dollars, as follows.

That in case of any disagreement in reference to the performance of said work, all questions of disagreement shall be submitted to E. F., G. H., and I. K., the award of whom or a majority of them shall be final and binding upon all parties.

In witness whereof, etc.

Contractors. See CONTRACTS.
Controversy. See PRACTICE.
Contusion. See MEDICAL LAW.
Convention. See LEGISLATION.
Conversion. See PRACTICE.

CONVEYANCES. See ACKNOWLEDGMENT; AGENCY; ASSIGNMENTS; ATTORNEYS; CONTRACTS.

Abstracts of Title are brief accounts of all the deeds upon which titles rest, and judgments and instruments affecting such titles. A synopsis of the distinctive portions of the various instruments which constitute the muniments of title.[a]

The evidences of title are usually conveyances, wills, orders or decrees of courts, judgments, judicial sales, sales by officers appointed by law, acts of the legislature and of Congress.[b]

CONVEYANCES. The abstract of conveyances should show:

1. Date.

2. Character (*whether an absolute or conditional conveyance; as, in fee, mortgage, or a lease*).

3. Names and residence of parties, and if executors, administrators, guardians, trustees, corporations, officers, or the like.

4. All recitals which materially affect the title.

5. The testatum clause. This part of the conveyance embraces:

1. Name of grantor. 2. Name of grantee and words of limitation; as, to "C. D., his heirs and assigns," or, to "C. D. and his assigns," or, to "C. D. and E. F., and the heirs of C. D." 3. The consideration. 4. The description of the premises or parcels. This is generally done by giving the premises at large in the abstract of the first conveyance, and in subsequent conveyances to note each variation. 5. The habendum—carefully and accurately stated.[c] 6. The declaration of uses, trusts, limitations, or special agreements, if any. 7. Powers. If a settlement is made in pursuance of articles, or an appointment by virtue of a power, an inspection should be made of the articles or power. A deed executed by attorney should be produced with evidence that the power of attorney was recorded, and that the principal was alive when the deed was executed. 8. Covenants which may affect the vendee, and especially exceptions against incumbrances. 9. By what parties the deed is executed, the fact of signing, sealing, attestation and acknowledgment, and recording, as required by statute.

If any of the deeds in the chain of title are quit-claim, the reason therefore should be ascertained.

WILLS. In abstracting wills it is necessary to consider:

1. The date of the testator's death.

2. The court in which the probate is made. The date of letters testamentary, and any change in the executors or administrators, by death, removal, or otherwise.

3. Any charge imposed by the payment of debts, legacies, etc.

4. The persons to whom the lands are devised.

5. Words of limitation, modification, conditions, charges on the devisee, etc.

6. Facts which operate a partial revocation of the will; as, the birth of a child, or the subsequent alteration of the estate inconsistent with the terms of the will.

Codicils should be given in the order of their dates.

ORDERS OR DECREES. Orders or decrees material to the title should be abstracted.

JUDGMENTS. A party claiming title to real estate under an execution must show:

1. A valid judgment.

2. A levy and sale as required by law.

3. A deed. The sheriff's deed must, in general, recite the substance of the execution, the names of the parties, the action, the amount, and the date of the rendition of the judgment by virtue of which the estate was sold, and be executed and acknowledged as required by law.

Judicial sales made by officers, executors, administrators, guardians of minors, lunatics, etc.:—

1. Must be examined for the appointment and authority of the person making the sale, and whether his authority continued in force till the sale.

2. The service of summons, notice, or other process, upon all defendants, or persons interested.

3. The appointment of guardians *ad litem* for minors when necessary.

4. The order of sale and its confirmation.

5. The deed.

Other sales include those by assignees or commissioners of insolvents, or assignees of bankrupts, and tax sales. In the latter case, the proper records should be examined with the utmost care, in order to detect any omission or defect in compliance with all the requisitions

a-See Preston Abstracts; Curwen Abstracts; Oliver's Conveyancing; Wharton Dict. 2d Lond. Ed. b-3 Western Law J. (N. S.) 339–346. c-Id. citing 1 Preston Abstracts, 100.

of the statute; in the former case, the leading points are the authority of the assignee, etc., the order of sale and its confirmation, and the deed.

Acts of the legislature may be considered in the same manner as private conveyances. The abstract should show:

1. The date of the act.
2. The title of the act.
3. The recitals of the act.
4. The enacting clause in its own terms.
5. A strict compliance with the terms of the act.

TITLES BY DESCENT. In the absence of deeds, pedigree should be ascertained, authenticated, and incorporated.

INCUMBRANCES. Incumbrances may be as follows:

1. Judgments in the county where the land lies.
2. Judgments in the United States courts.
3. Executions from other counties.
4. Mortgages.
5. Liens of the creditors of deceased persons.
6. Dower.
7. Decrees in chancery.
8. Action pending.
9. Taxes.
10. Mechanics' liens.
11. Lien of executor, administrator, guardian, or agent, who pays taxes upon the estate.
12. Leases.
13. Equity of a vendee in possession.
14. Lien of a vendor for purchase money.
15. Caveats in case of a contested will.
16. Rents assigned in lieu of dower.
17. The levy of a distress warrant upon the property of certain debtors of the United States.[d]

ABSTRACT OF TITLE FORMS.

Abstract of Title—General Form.

Abstract of title of lot No. ——, on —— street (*or* avenue), in ——, in —— county, State of ——, *or* of the northwest quarter section ——, range ——, township —— (east *or* west of the —— meridian), in —— county, State of ——.

1. The United States of America to ——:

Patent dated ——, filed ——, recorded in vol. —— of the records of ——, conveys said lot (*or* parcel of land) to ——.

2. —— to ——.

Warranty deed ——, filed ——, recorded in vol. —— of the records of ——, acknowledged before ——, a (*title of the officer*) of —— county, State of ——.

3. —— to ——, etc., partition, etc., describing as above.

4. —— to ——, etc., tax deed, etc., mortgage, etc.

5. —— to ——, etc., judgment, etc.

6. Etc., etc.

State of ——, —— county, ss.

I, the undersigned, certify the foregoing to be a full, true, and complete abstract of the record of all conveyances and instruments affecting the property therein described, as the same appears upon the records of said county, the circuit and district courts of the United States for the district of ——, and the —— court of said county; and that no judgment, tax, mechanics' or other liens of record in said county (except, etc.) exist against said property.

In testimony whereof, I have hereunto set my hand (and —— seal), the —— day of ——, A. D. ——.
(*Date.*) (*Signature.*)

Abstract of Title—General Form.

Abstract of title of lots Nos. —— and ——, on —— street (*or* avenue), in ——, in —— county, State of ——, from the —— day of —— unto the —— day of ——.

Title assumed by consent of parties, good unto the date of the first records thereof.

First record, and in fee, with general warranty, from A B. to C. D., consideration ——, executed and acknowledged, is made the —— day of ——, in vol. ——, p. —— of deed record, No. ——, of —— county aforesaid.

Deed.—General warranty, from C. D. to E. F., consideration ——, executed and acknowledged ——, recorded ——, in vol. ——, p. —— of deed record, No. ——, of said county aforesaid.

Deed.—Special warranty, from E. F. and W. his wife to G. H., consideration ——, executed and acknowledged —— (wife being separately examined) ——, recorded ——, in vol. ——, p. ——, of deed record, No. ——, in said county.

Agreement to sell, convey, and warrant, from G. H. and W. his wife to I. K., consideration ——, executed and duly acknowledged ——, recorded in vol. ——, p. ——, conveyance record "A." of said county.

G. H., died ——, leaving W., his said wife, and four minor children, C., L., D., and N.

G. N. appointed and qualified guardian of said children.

Order of probate court of said county to said guardian to convey said premises in conformity with said agreement.

Guardian's deed from G. N., guardian of C., L., D., and N., minor heirs of G. H., deceased, to I. K., consideration ——, executed and acknowledged ——, recorded in vol. ——, p. ——, of deed record, No. ——, of said county.

Conveys all estate of deceased free from his allowances, debts, etc.

Subdivided into lots by I. K., surveyed by S. R., surveyor of said county, and numbered from —— to —— inclusive, and plat recorded in vol. ——, p. ——, of deed record, No. ——, of said county.

Will of I. K. devises lots, numbered from —— to ——, and —— to ——, and —— to —— inclusive, to J. K., L. K., and M. K., his sons, and lots numbered ——, to his wife W. Will proved ——, and recorded in vol. ——, p. ——, of record of wills in the office of ——, in said county.

Deed from E. X. and T. R., executors of said will, for lots numbered from —— to ——, and —— to ——, and —— to ——, as designated on the recorded plat of said subdivision, to J. K., L. K., and M. K., executed and acknowledged ——, recorded in vol. ——, p. ——, of deed record, No. ——, of said county.

Deed with covenants of warranty from J. K., L. K., and M. K. to N. O., of lots numbered —— to ——, and —— to ——, and —— to —— inclusive, as designated on said sub-division, consideration ——, executed and acknowledged ——, and recorded in vol. ——, p. —— of deed record No. ——, of said county.

Mortgage from N. O. and W. his wife to P. Q. of lots numbered —— to ——, and —— to ——, and —— to ——, inclusive, as known and designated in said subdivision, to secure the sum of ——, payable ——, executed and acknowledged ——, recorded in mortgage record No. ——, of said county.

Declaration (complaint, *or* petition) of P. Q. for foreclosure filed ——.

Answer of N. O. and W. his wife, filed ——.

Replication (*or* reply) of P. Q., filed ——.

Judgment of foreclosure and order for sale decreed ——.

Appeal taken to —— court ——.

Judgment of court below affirmed, ——.

Sale made under order of —— court, on the —— day of ——.

Report of sale of said lots to R. S. or the sum of ——, filed and approved —— and deed ordered made ——.

Deed by S. F., sheriff of —— county aforesaid, conveying said lots to R. S. Consideration ——, executed and acknowledged ——, recorded in deed record No. ——, of said county.

Escheat of said lots to the State of —— aforesaid, the —— day of ——, by death of said R. S., he being an alien.

[d] Acts Congr March 3, 1795: May 15, 1820.

Affidavit of A. A. annexed, that said R. S. was unmarried at the date of his death.

An Act entitled "An act to release the interest of the people of the State in lots numbered from —— to ——, and —— to ——, and —— to ——, inclusive, in ——, in —— county, as known and designated as the —— sub-division of said ——, conveyed by S. F., sheriff of said county, to R. S., and which escheated on his death to his son S. S. Approved (*or* passed ——)." Laws ——, p. ——. Releases all the estate, right, title, and interest of the people of this State acquired by escheat upon the death of said R. S. in and to said premises to his son S. S.

Deed, general warranty with full covenants from S. S. and his wife, conveying said lots to T. U. Consideration ——, executed and acknowledged (wife separately examined) ——, recorded in deed record No. ——, of said county.

Etc., etc.

Opinion concerning title to said lots, numbered from —— to ——, etc.

From an examination of the transfers above mentioned I am of the opinion:

That all said transfers and the acknowledgments thereof have been duly and legally made (excepting only, etc.)

That no incumbrances attach at this date upon said premises (except, etc., *stating what, if anything*).

That said T. U. is seized of an indefeasible estate in fee simple in said premises (subject only to, etc., *stating what, if anything*).

That, etc.

Date ——. (*Signature of Conveyancer, or Counsel.*)

ASSIGNMENTS. See that title, ante.

CONVEYANCES are transfers of the title of land from one or more persons or corporations to another or others. It is the instrument of writing for effecting such transfer.

Absolute conveyances of real property[e] are either original (primary) or derivative (secondary). Original conveyances are by exchange, feoffment,[f] grant, lease, and partition. Secondary conveyances are by assignment, confirmation, defeasance, and surrender. See these titles, below.

Conditional conveyances of real property are by mortgage. See MORTGAGE, below.

Conveyances deriving their force from statutes of uses are: Bargains and sale, covenants to stand seized, deeds to lead or declare the uses of other more direct conveyances, deeds of revocation of uses, and lease and release.[g]

Conveyances by matter of record are: By common recovery, by fines, by grants (as by patents) of lands, and by private acts of the legislature.

Derivative (*or Secondary*) conveyances are those which presuppose some other conveyance precedent, and only serve to alter, confirm, enlarge, restrain, restore, or transfer the interest granted by such original conveyance.[h]

Fraudulent conveyance is a conveyance the object, tendency, or effect of which is to defraud another, or the intent of which is to avoid some duty or debt due by or incumbent on the party making it.[i]

All conveyances made with intent to defraud creditors are void. Voluntary conveyances are not so construed, where the subsequent purchaser has notice, especially if there be a good consideration.[j] But although such conveyances are void as regards purchasers and creditors, they are valid as between the parties.[k]

Original (*or Primary*) conveyances are those by which the benefit or estate first arises or is created, as by gift, grant, lease, exchange, partition, etc.[l]

Voluntary conveyances are transfers of estate made without any adequate consideration of value.

Whenever a voluntary conveyance is made, a presumption of fraud properly arises. This presumption may be repelled by showing that the transaction on which the conveyance was founded virtually contained some conventional stipulations, some compromise of interests, or reciprocity of benefits, that point out an object and motive beyond the indulgence of affection or claims of kindred, and not reconcilable with the supposition of intent to deceive a purchaser.

But unless so repelled, such a conveyance, coupled with a subsequent negotiation for sale, is conclusive evidence of a statutory fraud.[m]

A distinction is made between previous and subsequent creditors; such a conveyance is void as to the former, but not as to the latter.[n] And a conveyance by a father who, though in debt, is not in embarrassed circumstances, who makes a reasonable provision for a child, leaving property sufficient to pay his debts, is not *per se* fraudulent.[o]

Gifts of goods and chattels, as well as of lands, by writing or otherwise, made with intent to delay, hinder, and defraud creditors, are void as against the person to whom such frauds are prejudicial.[p]

As between the parties such conveyances are in general good.[q] And when it has once been executed and delivered, it cannot be recalled, even where an unmarried man executes a voluntary trust deed for the benefit of future children; nor can he relieve himself from a provision in the conveyance to the trustee under which the income of the trust properly is to be paid to him in the discretion of a third person.[r]

ACKNOWLEDGMENT. See that title, ante, where the precise legal requisites and practical forms in general use in each of the States, Territories, and Canadas are given.

ASSURANCE. Any instrument which confirms the title to an estate, or is legal evidence

e-1 N. Y. 290, 294. f-Gifts of corporeal hereditaments by transmutation of possession, Watk. Conv. 183. g-12 Washb. R. Prop. 600 *et seq.* h-2 Sharsw. Bl. Comm. 324.* i-2 Kent. Comm. 440; 4 Id. 462. j-2 Gray, 447. k-6 Watts, 429, 453; 5 Binn. 109; 1 Yeates, 291; 3 W. & S. 255; 4 Ired. 102; 9 Pick. 93; 20 Id. 247, 354; 1 Ohio, 469; 2 South. 738; 2 Hill (S. C.) 488; 7 Johns. 161; 1 W. Bl. 262. l-2 Sharsw. Bl. Comm. 310;* 1 Stephen Comm. 466. m-5 Day, 223, 341; 1 Johns. Cas. 161; 4 Johns. Ch. 450; 3 Conn. 450; 4 Id. 1; 4 Johns. 536; 15 Id. 14; 2 Munf. 363. n-8 Wheat. 229; 3 Johns. Ch. 481. And see 6 Ala. (N. S.) 506; 9 Id. 937; 10 Conn. 69; 1 Md. Ch. Dec. 507; 2 Gray, 447. o-4 Wheat. 27; 6 W. & S. 97; 4 Vt. 389; 6 N. H. 67; 11 Leigh. 137; 5 Ohio, 121. p-3 Johns. 481; 1 Halst. 450; 5 Cow. 87, 8 Wheat. 229; 11 Id. 199; 12 S. & R. 448; 1 Rawle. 231; 9 Mass. 590; 11 Id. 421; 4 Me. 52; 2 Pick. 411; 4 M'Cord, 294; 1 Const. 180; 2 Nott. & M'C. 334; Coxe, 56; Hare & Wall Sel Dec 33-69. q-2 Rand. 384; 1 Johns. Ch. 329, 336; 1 Wash. C. C. 274. r-2 Mylne & K. 496; see 2 Moll. Ch 257.

of the transfer of property, is called an assurance.[s] Common assurances are deeds or conveyances which make safe or assure to a man the title to his estate, and this whether they are instruments of conveyance or to charge or discharge.

"Further assurance" is a phrase frequently used in covenants when a covenantor has granted an estate, and it is supposed that some further conveyance may be required; he then enters into a covenant for further assurance, that is, to make any other conveyance which may lawfully be required. See COVENANTS, below.

ATTESTATION is the act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as a witness.[t]

Conveyances at common law did not require attestation in order to be valid.[u]

Attestation of conveyances is required in many of the States, in others it is not necessary.

The attesting witness need not see the grantor write his name; if he sign in the presence of the grantor, and at his request, it is sufficient.[v] Where there are statutory regulations on the subject, they must be complied with.

Wills must be attested by competent and credible witnesses,[w] who must subscribe their names attesting in the presence of the testator.[x]

See attestation clauses in ASSIGNMENTS; CONTRACTS, ante.

BACKSIDE is the yard at the back part of or behind the house, and belonging thereto. This term was formerly much used, both in conveyances and pleading, but now is seldom used, and occurs only in conveyances which repeat an ancient description.[y] See YARD, below.

BARGAIN AND SALE is a contract or bargain by the owner of land in consideration of money or its equivalent paid, to sell land to another person called the bargainee, whereupon a use arises in favor of the latter, to whom the seizin is transferred by force of the statute of uses.[z] In consequence of the consideration paid, and the bargain made by the vendor, of which the conveyance was evidence, a use was raised at once in the bargainee; to this use the statute of uses transferred and annexed the seizin whereby a complete estate vested in the bargainee.[a]

All things, for the most part, that may be granted by any deed may be granted by bargain and sale, and an estate may be created in fee, or for years.[b] There must have been a valuable consideration,[c] though it need not be expressed.[d]

The proper and technical words to denote a bargain and sale are "Bargain and sell," but any other words that are sufficient to raise a use upon a valuable consideration are sufficient,[e] as, for example: "Make over and grant,"[f] "Release and assign."[g]

BEARING DATE. These words are frequently used in conveyancing to introduce the date which has been put upon an instrument, and to designate some instrument to which reference is made. For example: Whereas, by an instrument of writing, bearing date the —— day of ——, C. D. did, etc.

BEHOOF is advantage, benefit, profit, use, service.

BIPARTITE is the being in two corresponding parts; two similar conveyances, one for each party. The usual form of introduction is: "This conveyance (*or* indenture) bipartite between A. B. of the one part and C. D. of the other part, witnesseth," etc.

BONDS. See title OBLIGATIONS, post.

BY ESTIMATION. See ESTIMATION, below.

CONFIRMATION. Where a conveyance has been informally made it may be confirmed by a valid conveyance confirming the voidable one. See CONTRACTS, ante.

CANCELLATION is the act of crossing out or obliterating a writing; the manual operation of destroying or tearing a written instrument.[h]

COVENANTS are subject to the same rules as other contracts, in regard to the qualification of parties, the assent required, and the nature of the purpose for which the contract is entered into. See CONTRACTS, ante. No particular words are necessary to raise a covenant, express or implied.[i] Describing lands in a deed as bounded on a street of a certain description raises a covenant that the street shall be of that description,[j] and that the purchaser shall have the use thereof,[k] and binds subsequent purchasers from the grantor.[l]

—— *To convey* are those by which the covenantor undertakes to convey to the covenantee the estate described in the covenant under certain circumstances.[m] It is satisfied only by a perfect conveyance of the kind bargained for,[n] and not satisfied where an imperfect conveyance has been accepted.[o]

—— *For further assurance* are those by

[s]-2 Bl. Comm. 294. [t]-3 P. Wms. 254; 2 Ves. Ch. 454; 1 Ves. & B. Ch. 362; 3 A. K. Marsh, 146; 17 Pick. 373. [u]-1 Wood Conv. 354; 2 Bl. Comm. 307; 3 Dane Abr. 354; Cheeves, 273; 12 Met. Mass. [v]-2 Bos. & P. 217. [w]-2 Greenl. Ev. 691; 9 Pick. 350; 1 Burr. 414; 4 Burn. Eccl. (Phill. Ed.) 116. [x]-7 Harr. & J. 61; 3 Harr. & M'H. 457. 1 Leigh. 6; 1 Maule & S. 294; 2 Curt. Eccl. 320; 3 Id. 118; Carth. 79; 2 Greenl. Ev. § 678. And see 13 Gray, 103; 2 Cush. 342; 1 Ves. Ch. 11; 2 Washb. R. Prop. 682. [y]-Chitty Pr. 177; 2 Ld. Raym. 1399. [z]-2 Washb. R. Prop. 128. [a]-Id. 128, *et seq*. [b]-2 Co. 54; Dyer, 309. [c]-2 Washb. R. Prop. 130; 5 Ired. 30; 7 Vt. 522; 13 B. Mon. 30; 9 Ala. 410; 1 Harr. & J. 527; 1 W. & S. 395; 16 Johns. 515; 1 Cow. 622 Cro. Car. 529; Cruise Dig. 107. [d]-10 Johns. 456; see 2 Washb. R. Prop. 134; 1 Sandf. Ch. 259; 4 Den. 201; 19 Wend. 339; 7 Vt. 522; 1 Penn. 486; 1 Mo. 553; 2 Overt. 261. [e]-2 Wood Conv. 15. [f]-3 Johns. 484. [g]-8 Barb. 463; see 2 Wash. R. Prop. 620; Shep. Touchst. 222. [h]-1 Eq. Cas. Abr. 409; Roberts Wills, 367, n. As to the effect of cancelling an unrecorded deed, see Gilbert Ev. 109; Greenl. Ev. § 265; 1 Me. 78; 10 Mass. 403; 11 Id. 337; 9 Pick. 105; 4 N. H. 191; 2 Johns. 82; 4 Conn. 450; 5 Id. 86, 262; 4 Yerg. 375. And see generally on this subject, 4 Bouv. Inst §§ 3917, 3922; Jarman Wills; Roberts Wills; Gilbert Ev.; Greenl. Ev.; 4 Kent. Comm. 531. [i]-12 Ired. 145. [j]-7 Gray, 563. [k]-5 Md. 514; 23 N. H. 261. [l]-7 Gray, 83. [m]-14 Penn. St. 308; 19 Barb. 639; 4 Md. 498; 11 Ill. 194; 19 Ohio, 347. [n]-19 Barb. 639. [o]-4 Md. 498.

which the covenantor undertakes to do such reasonable acts, in addition to those already performed, as may be necessary for the completion of the transfer made, or intended to be made, at the requirement of the covenantee. It relates both to the title of the vendor and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts for supplying any defects in the former as to remove all objections to the sufficiency of the latter.[p] The covenantor, in the execution of his covenant, is not required to perform unnecessary acts.[q]

—— *Against incumbrances* are those having for their object security against those rights to, or interests in, the land granted, which may subsist in third persons, to and thus diminish the value of the estate, though consistently with the passing of the property by the deed of conveyance. The mere existence of incumbrances constitutes a breach of this covenant,[r] without regard to the knowledge of the grantee.[s] The covenantee may extinguish the incumbrance and recover therefor at his election, in the absence of an agreement.[t] The measure of damages is the injury actually sustained.[u]

—— *Not to sue* are those entered into by a party who has a cause of action at the time of making it, by which he agrees not to sue the party liable to such action. A limited covenant not to sue, by which the covenantor agrees not to sue for a limited time, does not operate a release; and a breach must be taken advantage of by action.[v] A perpetual covenant not to sue (or one by which the covenantor agrees not to sue the covenantee at any time) operates as a release to the covenantee, and may be set up as such.[w] But such a covenant with one of several jointly and severally bound will not protect the others so bound.[x] And a covenant by one of several partners not to sue cannot be set up as a release in an action by all.[y]

—— *For quiet enjoyment* are assurances against the consequences of a defective title, and of any disturbances thereupon.[z] When it is general in its terms the covenantor stipulates at all events[a] to indemnify the covenantee against all acts committed by virtue of a paramount title;[b] not, however, including the acts of a mob,[c] nor a mere trespass by the lessor.[d] But this rule may be varied by the terms of the covenant, as where it is against acts of a particular person,[e] or "those claiming or pretending to claim,"[f] or molestation by any person.[g] It occurs most frequently in leases,[h] and is there held to be raised by the words grant, demise, lease, yielding and paying, give, etc.,[i] and exists impliedly in a parol lease.[j] It is frequently replaced in conveyances by the covenant of warranty.[k]

—— *Of seizin* (or possession) are assurances to the grantee that the grantor has the very estate, both in quantity and quality, which he professes to convey.[l] A covenant for indefeasible seizin is everywhere held to run with the land,[m] and to apply to all titles adverse to the grantors.[n] A covenant of seizin of whatever form is broken at the time of the execution of the deed if the grantor has no possession either by himself or another, and no rights can pass to the assignee of the grantee.[o] The existence of a life estate,[p] a material deficiency in the amount of land,[q] non-existence of the land described,[r] the existence of fences or other fixtures on the premises belonging to other persons who have a right to remove them,[s] concurrent seizin of another as tenant in common,[t] adverse possession of a part by a stranger, constitutes a breach of this covenant. But the covenantee cannot recover against his grantor when the covenantee purchased knowing that he had no good title.[u]

—— *To stand seized to uses* are covenants by means of which, under the statute of uses, a conveyance of an estate may be effected.[v] Such a covenant cannot furnish the ground for an action of covenant broken. And the consideration for such a covenant must be relationship, either by blood or marriage.[w] As a mode of conveyance it has fallen into disuse, though the doctrine is often resorted to by courts in order to give effect to the intention of the parties who have undertaken to convey lands by deeds which are insufficient for the purpose under the rules required in other forms of conveyance.[x]

—— *Of warranty* are assurances by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title.[y] Such covenants give the covenantee and grantee the benefit of subsequently

[p]-Platt Cov. 341; see 2 Washb. R. Prop. 648; 10 Me. 91; 4 Mass. 627; 10 Cush. 134. [q]-Yelv. 44; 9 Price, 43; see title REAL PROPERTY, Incumbrances, post. [r]-2 Washb. R. Prop. 658; 20 Ala. 137, 156. [s]-2 Greenl. Ev. § 242; 27 Vt. 739; 8 Ind. 171; 10 Id. 424. [t]-4 Ind. 533; 19 Mo. 480; 25 N. H. 369; 25 Id. 229. [u]-7 Johns. 358; 16 Id. 254; 5 Me. 94; 34 Id. 422; 12 Mass. 304; 3 Cush. 201; 20 N. H. 369; 25 Id. 229. [v]-Carth. 63; 1 Show. 46; 2 Salk, 573; 6 Wend. 471; 5 Cal. 501; see 29 Ala. N. S. 322. [w]-Cro. Eliz. 623; 1 T. R. 446; 8 Id. 486; 2 Salk. 375; 3 Id. 298; 12 Mod. 415; 7 Mass. 153; 16 Id. 24; 17 Id. 623; 3 Ind. 473; and see 11 S. & R. 149. [x]-12 Mod. 551; 8 T. R. 168; 6 Munf. 6; 1 Conn. 139; 4 Me. 421; 2 Dana, 107; 17 Mass. 623. [y]-3 Perr. & D. 149. [z]-Platt Cov. 312. [a]-11 East. 642; 1 Mod. 101. [b]-Platt Cov. 313; Lev. 83; 8 Id. 305; Hob. 34; 4 Co. 80, *b.*; Cro. Car. 5; 3 T. R. 584; 6 Id. 66; 5 Duer, 464; 2 Jones, 203; Busb. 384; 3 N. H. 260. [c]-19 Miss. 87; 2 Strobh. 366. [d]-10 N. Y. 151. [e]-Cro. Eliz. 212; 5 M. & S. 374; 1 B. & C. 29; 2 Ventr. 61. [f]-10 Mod. 383; 1 Ventr. 175. [g]-See 21 Miss. 87. [h]-1 Washb. R. Prop. 325. [i]-1 Per. & D. 360; 9 N. H. 222; 15 N. Y. 327; 6 Bingh. 656; 4 Kent Comm. 474, n. [j]-20 Eng. L. & Eq. 374; 3 N. J. 260; see 1 Duer, 176. [k]-2 Washb. R. Prop. 661. [l]-Platt Cov. 306. [m]-2 Vt. 328; 2 Dev. 30; 4 Dall. 439; 5 Sneed, 123; 14 Johns. 248; 14 Pick. 128; 10 Mo. 467. [n]-2 Washb. R. Prop. 656. [o]-2 Johns. 1; 2 Vt. 327; 5 Conn. 497; 14 Pick. 170; 1 Met. Mass. 450; 17 Ohio, 60; 8 Gratt. 397; 4 Cranch, 430; 36 Me. 170; 24 Ala. N. S. 189; 4 Kent. Comm. 471; 2 Washb. R. Prop. 656. [p]-Rawle Cov. 52. [q]-1 Bay, 256; see 24 Miss. 597. [r]-1 N. Y. 564; 7 Penn. St. 122. [s]-12 Me. 389. [t]-7 Johns. 376. [u]-Rawle Cov. 111–114; 8 Pick. 547; 22 Id. 490; 6 Cush. 127. [v]-Burton R. Prop. 136, 145. [w]-2 Washb. R. Prop. 129, 130; see 2 Seld. 342. [x]-2 Washb. R. Prop. 155, 156; 2 Sanders Uses, 79, 83; 4 Mass. 136; 18 Pick. 397; 22 Id. 396; 5 Me. 232; 11 Johns. 351; 20 Id. 85; 5 Yerg. 249. [y]-2 Jones, 203; 3 Duer, 464

acquired titles,[z] to the extent of their terms[a] (but not if an interest actually passes at the time of making the conveyance upon which the covenant may operate);[b] in case of a term for years as well as conveyances of greater estates,[c] as against the grantor and those claiming under him,[d] including purchases for value.[e] And this principle does not operate to prevent the grantee's action for breach of the covenant, if evicted by such title.[f]

When general, this covenant applies to lawful adverse claims of all persons whatever. When special, it applies only to the particular person or claims to which its operation is limited or restricted.[g] A limitation may arise from the nature of the subject-matter of the grant.[h]

The covenant of warranty, until broken, passes with the land to the heir of the grantee; or if the land be assigned or conveyed, it passes to the assignee, and when broken, the heir or assignee injured by the breach can, in his own name, maintain an action against the warrantor, and may maintain an action against every intermediate warrantor, and prosecute the same to judgment. A judgment against one will be no bar to a suit against another. A satisfaction is the only bar.[i] To constitute a breach, there must be an eviction by paramount title,[j] which may be constructive.[k] And it is sufficient if the tenant yields to the true owner, or if, the premises being vacant, such owner takes possession.[l]

The action for breach should be brought by the owner of the land, and, as such, assignee of the covenant at the time it is broken,[m] but may be by the original covenantee, if he has satisfied the owner.[n]

The form of the covenant of warranty in common use is as follows: "And I (*or* we) the said (*here give name of grantor or grantors*) for myself, my (*or* ourselves, our) heirs, executors, and administrators, do covenant with said (*here give grantee or grantees' names*), his (*or* their) heirs and assigns, that I (*or* we), my (*or* our) heirs, executors, and administrators, shall WARRANT and DEFEND the same to said (*repeat grantees' names*), his (*or* their) heirs and assigns forever, against the lawful claims and demands of all persons (*or* of all persons claiming by, through, or under me [*or* us], but against none other, *or any other special covenant*).

DATE. Written instruments generally take effect from the day of their date, but the actual date of execution may be shown, though different from that which the instrument bears. Though the date is not of the essence of the instrument it is essential to the identity of the writing by which it is proved.[o] If a written date be an impossible one, the time of delivery must be shown.[p]

When the place is mentioned in the date of a deed the law presumes, unless the contrary appears, that it was executed at the place of the date.[q]

DEEDS are absolute conveyances; instruments of writing by which lands, tenements, or hereditaments are conveyed for no *less* an estate than for life, and which the grantee holds in his own right, subject to no superior, nor to conditions. As to their requisites, see DEED FORMS, below.

—— *To declare uses*, are deeds made after a fine or common recovery to show the object thereof.

—— *To lead to uses*, are deeds made before a fine or common recovery to show the object thereof.

—— *Poll*, are deeds made by a single party only. That is, only the party making it executes it or binds himself by it as a deed.[r] Its purpose is merely to transfer the rights of the grantor to the grantee. A deed poll is an instrument of one part only, an indenture is an instrument of two parts. See INDENTURES, below.

In form this instrument begins: "Know all men by these presents that I, A. B., have given, granted, and enfeoffed, and by these presents do give, grant, and enfeoff," etc.

DEFEASANCE may be effected in two ways: 1. By a separate instrument (if not prohibited by statute), which defeats the force or operation of some other conveyance or estate. 2. By a clause in the same instrument or conveyance which defeats the force or operation the conveyance or estate. In the first case it is called a "defeasance," in the latter a "condition."[s]

The defeasance may be subsequent to the deed in case of things executory,[t] but must be a part of the same transaction in case of an executed contract.[u] Yet where the instrument of defeasance is executed subsequently, in pursuance of an agreement made at the time of making the original conveyance, it is sufficient,[v] as well as where the conveyance and defeasance bear different dates, but are delivered at the same time.[w] The instrument of defeasance

z-11 Johns. 91; 13 Id. 316; 14 Id. 193; 9 Cow. 271; 6 Watts, 60; 9 Cranch, 43; 13 N. H. 389; 1 Ohio, 190; 3 Id. 107; 3 Pick. 52; 13 Id. 116; 24 Id. 324; 3 Met. 121; 13 Me. 281; 20 Id. 260. a-12 Vt. 39; 3 Met. 121; 9 Cow. 271; 34 Me. 483. b-3 McLean C. C. 56; 9 Cow. 271; 12 Pick. 47; 5 Gratt. 157. c-Burton R. Prop. § 850; Wms. R. Prop. 229; Wash. *b.* R. Prop. 478; 4 Kent Comm. 261, *n.*; Cro. Car. 109; 1 Ld. Raym. 729; 4 Wend. 502; 1 Johns. Cas. 190. d-2 Washb. R. Prop. 479, 480. e-14 Pick. 224; 24 Id. 324; 5 N. H. 533; 13 Id. 389; 5 Me. 231; 12 Johns. 201; 13 Id. 316; 9 Cranch. 53; see 4 Wend. 619; 18 Ga. 192. f 1 Gray, 195; 25 Vt. 635; 12 Me. 499. g-2 Washb. R. Prop. 665. h-8 Pick. 547; 19 Id. 341; 5 Ohio, 190; 9 Cow. 271. i-5 Ohio, 154; 14 Id. 118. j-Rawl. Cov. 221; 6 Barb. 165; 5 Harr. 162; 11 Rich. 80; 13 La. An. 390, 499; 5 Cal. 262; 4 Ind. 174; 6 Ohio St. 525; 26 Mo. 92; 17 Ill. 185; 36 Me. 455; 14 Ark. 309. k-12 Me. 499; 17 Ill. 185; 5 Hill, 599; 4 Mass. 349; 8 Ill. 162; 5 Ired. 393. l-5 Hill, 599; 4 Mass. 349; 8 Ill. 162; 5 Ired. 393; see 4 Halst. 139. m-4 Johns. 89; 19 Wend. 344; 2 Mass. 455; 7 Id. 144; 3 Cush. 219; 10 Me. 81; 5 Monr. 357; 12 N. H. 413. n-5 Cow. 137 10 Wend. 184; 2 Met. Mass. 618; 5 Monr. 357; 1 Conn. 244; 1 Dev. & B. 94; 10 Ga. 311; 26 Vt. 279. o-2 Greenl. Ev. § 12, 13, 489, n.; 8 Mass. 159; 4 Cush. 403; 1 Johns. Cas. 91; 3 Wend. 233; 31 Me. 243; 17 Eng. L. & Eq. 548; 2 Greenl. Cruise Dig 618, n. p-Shepp. Touchst. 72; Cruise Dig C. 2, § 61. q-Plowd. 7, *b.* r-2 Washb. R. Prop. 588. s-Com. Dig. Defeasance. t-Co. Litt. 237, *a.*; 2 Saund. 43. u-Co. Litt. 236, *b.*; 1 N. H. 39; 3 Mich. 482; 7 Watts, 401; 21 Ala. N. S. 9. v-2 Washb. 489. w-12 Mass. 463; 13 Pick. 411; 18 Id. 540; 31 Penn. St. 131; 7 Me. 435; 13 Ala. 246.

must, in law, be of as high a nature as the principal conveyance.[w] Defeasance of deeds conveying real estate are generally subject to the same rules as deeds respecting record and notice to purchasers.[x] And in some States actual notice is not sufficient without recording the defeasance.

DELIVERY is the transfer of a deed from the grantor to the grantee, or some person acting in his behalf, in such a manner as to deprive the grantor of the right to recall it at his option.

Absolute delivery is that which is complete upon the actual transfer of the instrument from the possession of the grantor.

Conditional delivery is that which passes the deed from the possession of the grantor, but is not to be completed by possession in the grantee, or a third person as his agent, until the happening of a specified event. A deed delivered in this manner is an "*escrow*," and such delivery must be always made to a third person,[y] though where the transfer to the possession of the grantee was merely to enable him to convey it to a third person to hold as an escrow, it was held not an absolute delivery to the grantee.[z]

No particular form of procedure is required to effect a delivery. It may be by acts merely, by words merely, or by both combined; but in all cases an intention that it shall be a delivery must exist.[a] The deed of a corporation is generally delivered by affixing the corporate seal [b] Delivery may be made by an agent as well as by the grantor himself,[c] or to an agent previously appointed,[d] or subsequently recognized;[e] but a subsequent assent on the part of the grantee will not be presumed.[f]

To complete a delivery, acceptance must take place, which may be presumed from the grantee's possession,[g] from the relationship of a person holding the deed to the grantee,[h] and from other circumstances.[i]

There can ordinarily be but one valid delivery,[j] which can take place only after complete execution;[k] but there must be one,[l] and from that one the conveyance takes effect.[m]

ESTIMATION. In sales of land it frequently happens that the property is said to contain a certain number of acres "by estimation," or so many acres, "more or less." When these expressions are used, if the land fall short by a small quantity, the purchaser will receive no relief. In one case of this kind the land fell short two-fifths, and the purchaser received no relief.[n] The meaning of these words has never been precisely determined by judicial decision.[o] See MORE OR LESS, below.

ESCROW is a deed delivered to a stranger, to be by him delivered to the grantee upon the event of certain conditions, upon which last delivery the transmission of title is complete.

The delivery must be to a stranger.[p] The second delivery must be conditioned, and not merely postponed.[q] Care should be taken to express the intent of the first delivery clearly.[r] An escrow has no effect as a deed till the performance of the condition[s] takes effect from the second delivery.[t] See DELIVERY, above.

EXECUTE is to make and deliver.[u] It includes all the essential and formal parts of a conveyance of real property.

EXPENSE. When there is no express agreement to the contrary, the expense of the conveyance falls upon the purchaser,[v] who must prepare and tender the conveyance.[w] The expense of the execution of the conveyance is, on the contrary, always borne by the vendor.[x]

FEE SIMPLE is an estate belonging to a person and his heirs, absolutely. An estate of inheritance.[y] The word "simple" adds no meaning to the word "fee" standing by itself, but it extends all qualification or restriction as to the persons who may inherit it as heirs, thus distinguishing it from a "fee tail," as well as from an estate which, though inheritable, is subject to conditions or collateral determination.[z] A fee simple is the largest possible estate a man can have, being an absolute estate in perpetuity; it is where lands are given to a person and his heirs absolutely, without any end or limitation being put upon the estate.[a]

FEE TAIL is an estate limited to particular classes of heirs. An inheritable estate which can descend to certain classes of heirs only. It is necessary that these heirs should be heirs "of the body" of the ancestor. The descent of property is in general regulated by statute, and unless disposition be expressly made by the owner during his lifetime will, after his death, descend according to such statutory regulations, and not by common law.

w-13 Mass. 443; 22 Pick. 526; 7 Watts, 261, 401; 18 Me. 246; 43 Id. 206. x-3 Wend. 208; 14 Id. 63; 7 S. & R. 70; 12 Mass. 456; 38 Me. 447; 40 Id. 381. y-Shep. Touchst. 59; Cro. Eliz. 520; 8 Mass. 230. z-2 Dev. & B. 530; 4 Watts, 180; 22 Me. 569; 23 Wend. 43; 2 B. & C. 82. a-Com. Dig. *Fait*, (A); 1 Wood Conv. 193; 6 Sim Ch. 191; 11 Vt. 621; 18 Me. 391; 2 Penn. St. 191; 12 Johns. 536; 1 Johns. Ch. 456; 20 Pick. 28; 4 J. J. Marsh, 572. b-Co. Litt. 22, *a*., 36 *a*.; Cro. Eliz. 167; 2 Rolle Abr. *Fait*, (1). c-9 Mass. 307; 3 Met. (Mass.) 412; 4 Day, 66; 5 B. & C. 671; 2 Washb. R. Prop. 579. d-6 Met. (Mass.) 356. e-22 Me. 121; 14 Ohio, 307. f-9 Ill. 177; 1 N. H. 353; 5 Id. 71; 15 Wend. 656; 25 Johns. 187; see also 9 Mass. 307; 4 Day, 66; 2 Ired. Eq. 557. g-1 Harr. & J. 319; 4 Pick. 518; 2 Ala. 136; 11 Id. 412; 1 N. H. 353; 4 Fla. 359; 6 Mo. 326; 1 Zabr. 379. h-7 Ill. 557; 1 Johns. Ch. 240, 456. i-18 Conn. 257; 5 Watts, 243. j-12 Johns. 536; 20 Pick. 28. k-2 Dev. 379. l-2 Harring. 197; 16 Vt. 563; 2 Washb. R. Prop. 581. m-12 Mass. 455; 4 Yeates, 278; 18 Me. 190; see 1 Den. 323. n-2 Freem. 106; see 1 Call. 301; 4 H. & M. 184; 6 Binn. 106; 1 S. & R. 166; 2 Johns. 37; 5 Id. 508; 15 Id. 471; 3 Mass. 380; 5 Id. 355; 1 Root, 528. o-See Sugden Vend. 231–236. p-8 Mass. 320; see 9 Co. 137, *b.*; T. Moore, 642; 5 Blackf. 18; 23 Wend. 43; 2 Dev. & B. 530; 4 Watts, 180; 22 Me. 569. q-3 Met. (Mass.) 412; 8 Id. 436; 2 B. & C. 82; Shep. Touchst. (Preston Ed.) 58. r-2 Johns. 248; 10 Wend. 310, 8 Mass. 230; 22 Me. 569; 14 Conn. 271; 3 Green Ch. 155. s-21 Wend. 267. t-1 Barb. 500; set 3 Met. (Mass.) 412; 6 Wend. 666; 16 Vt. 563; 30 Me. 110, 10 Penn. St. 285; see generally, 14 Ohio St. 309; 13 Johns. 285; 5 Mas. C. C. 60; 6 Humph. 405; 3 Met. (Mass.) 412. u-I. & W. 531; 2 Sandf. Ch. 400. v-2 Ves. Ch. 155, note. w-But see Contra 2 Rand Va. 20. x-Sugden Vend. 296: Contra 2 Rand. 20; 2 McLean C. C. 495; but see 3 Mass. 487; 5 Id. 472; Eunomus Dial 2 § 2. y-Co. Litt. 1, *b*; 2 Bl. Comm. 106. z-1 Washb. R. Prop. 51; Wright Ten. 146; 1 Prest. Est. 420; Litt. § 1. a-Plowd. 557; Atkinson Conv. 183; 2 Sharsw. Bl. Comm. 106.

FEOFFMENT was one of the earliest modes of conveyance used at common law.

GRANT is a generic term, applicable to all transfers of real property.[b] It is a technical term made use of in deeds of conveyance of lands to import a transfer,[c] and is said to be construed into a general warranty.

GRANT AND DEMISE.[d] GRANT, BARGAIN, SELL.[e] GRANT, BARGAIN, SELL, ALIEN, AND CONFIRM.[f] These words are used in a similar manner to the word grant being used in instruments of conveyance of real estate.[g]

GRANTEES are those to whom a conveyance is made.

GRANTORS are those by whom a conveyance is made.

HABENDUM is the clause which usually follows the granting part of the premises of a conveyance or deed, and which defines the extent of the ownership of the thing granted to be held and enjoyed by the grantee.[h] It commences with the words, "To have and to hold," etc.[i] This is not an essential part of a conveyance or deed, but serves to qualify, define, or control it,[j] and may be rejected if clearly repugnant to the rest of the instrument.[k]

HEREDITAMENTS are those things which are capable of being inherited, whether they be corporeal or incorporeal, real, personal, or mixed, and it includes not only lands and everything thereon, but also heirlooms and certain furniture, which by custom may descend to the heir together with the land.[l] This term denotes such things as may be the subject-matter of inheritance, but not the inheritance itself; therefore it cannot, by its own intrinsic force, enlarge an estate, prima facie a life estate, into an absolute fee.[m] Corporeal hereditaments are such permanent, substantial objects as may be inherited; the term "land" will include all such.[n] Incorporeal hereditaments are such intangible, invisible things as are the subject of ownership, and are inheritable.[o] Of these are annuities, easements of air, light, etc., equities of redemption, franchises, reversions, rents, and the like.[p]

HOLD. See HABENDUM, above.

INDENTURE. This is a formal written instrument between two or more persons in different interests, as opposed to "Deed Poll" (which is made by a single person, or by several having similar interests). Its name comes from a practice of indenting or scalloping such an instrument on the top or side in a waving line. The ancient practice was to deliver as many copies of an instrument as there were parties to it; to write the copies on the same parchment, with the word "chirographum," or some other word, written between them, and then to cut them apart through such word, leaving part of each letter on either side of the line, which was at first straight and afterward "indented" or notched.[q]

IN WITNESS WHEREOF. These words, when conveyancing was in the Latin language, were "*in cujus rei testimonium*," they are the initial words of the concluding clause in conveyances: "In witness whereof, the said parties have hereunto set their hands," etc.

IN TESTIMONY WHEREOF. These words are the initial words of the concluding clause in the acknowledgment: "In testimony whereof, I have hereunto set my hand and official seal," etc.

INTENDED TO BE RECORDED is a phrase frequently used in conveyancing, in deeds which recite other deeds which have not been recorded. It has been construed to be a covenant on the part of the grantor to procure the deed to be recorded in a reasonable time.[r]

INTER PARTES (between the parties). This signifies an agreement which in the outset, and before any stipulations are made, to be between such and such persons; as, for example: "This conveyance, made this —— day of ——, between A. B. of the one (*or* first) part and C. D. of the other (*or* second), witnesseth."[s] Such an introduction is a solemn declaration that all the covenants comprised in the conveyance are to be covenants between these parties and none others. And should a stipulation be found in the body of an instrument by which "the said A. B. covenants with E. F. to pay him one hundred dollars," the words "with E. F." are inoperative unless they have been used to denote for whose benefit the stipulation may have been made, being in direct contradiction with what was previously declared, and C. D. alone can sue for the non-payment, it being a maxim that where two opposite intentions are expressed in a contract the first in order shall prevail.[t] But this rule does not apply to simple contracts.[u] When there are more than two sides to a conveyance "inter partes," as between A. B. of the first part, C. D. of the second, and E. F. of the third, there is no objection to one covenanting with another in exclusion of the third.[v]

JUDICIAL MORTGAGES are liens resulting from judgments, whether rendered on contested cases or by default, whether in actions or special proceedings, and whether final or provisional in favor of the person obtaining them.

JUDICIAL SALES are sales by authority of some competent tribunal, by an officer authorized by law for the purpose.

b-2 Washb. R. Prop. 517. c-Id. 620. d-4 Wend. 502: 8 Cow. 36; 9 Ves. Ch. 330. e-4 Dall. 441; 2 Binn. 99; 1 Rawle. 377; 1 S. & R. 50, 438; 4 Kent. Comm. 460. f-2 Caines, 188; 7 Johns. 258; Comm. Dig. Guaranty A. g-See 8 Barb. 463; 1 Monr. 30; 1 Conn. 79; 5 Tenn. 124; 2 Binn. 95; 11 S. & R. 109; 1 Mo. 576; 1 Murph. 343. h-2 Washb. R. Prop. 642. i-The words "to hold" have now no meaning in our deeds, 2 Bl. Comm. 298. j-Co. Litt. 6, *a*, 299; 1 Wood Conv. 224; 4 Kent Comm. 468; 8 Mass. 162, 174. k-1 Wood Conv. 199; Shepp. Touchst. 102; Skinn. 543. l-Co. Litt. 5 *b*; 2 Bl. Comm. 17. m-2 B. & P. 251; 8 T. R. 503; see 4 Washb. R. Prop. n-2 Sharsw. Bl. Comm. 17. o-2 Woodison Lect. 4. p-1 Washb. R. Prop. 11; 1 Hilliard R. Prop. 443; 3 Kent Comm. 402–404, 454. q-1 Reeve Hist. Eng. L. 89; DuCange; 2 Washb. R. Prop. 587, *et seq*. r-2 Rawle, 14. s-Addis. Contr. 9. t-8 Mod. 116; 1 Show. 58; 3 Lev. 138; Carth. 76; Rolle, 196; 7 M. & W. 63. u-2 Dowl. & R. 277; 3 Id. 273; Addis. Contr. 244, 256. v-See 5 Co. 182; 8 Taunt. 245; 4 Q. B. 207; Addis. Contr. 267.

The officer who makes the sale conveys all the rights of the defendant, or other person against whom the process has been issued, in the property sold. Under such a sale there is no warranty, either express or implied, of the thing sold.[w]

When real estate is sold by the sheriff or marshal, the sale is subject to the confirmation of the court.[x]

LEASES. See LEASES, below.

LINES AND CORNERS are boundary lines and their angles with each other.[y]

LOCATIVE CALLS are calls describing certain means by which the land to be located can be identified. Reference to physical objects in entries and deeds by which the land to be located is exactly described.[z] Special are to be distinguished from general calls or descriptions.[a]

MISREADING—MISRECITAL. When a conveyance is read falsely to an illiterate or blind person who is a party to it, such false reading amounts to a fraud, because the contract never had the assent of both parties.[b]

MORE OR LESS are words in a conveyance of lands or contract to convey lands, importing that the quantity is uncertain and not warranted, and that no right of either party under the contract shall be affected by a deficiency or excess in the quantity.[c] So in contracts of sale generally.[d]

In case of an executory contract, specific performance may be enforced without changing the price, if the excess or deficiency is very small,[e] but not if the excess or deficiency is great, even though the price reserved be per acre.[f] But a deed adding the words more or less to the description of the property is not a sufficient fulfilment of a contract to convey the described property, when more or less was not in the original contract, if there is an actual deficiency. But after such a conveyance is made, and a note given for the purchase money, the note cannot be defended against on the ground of deficiency.[g]

In case of an executed contract it will not be disturbed unless there be a great deficiency,[h] or excess,[i] or actual misrepresentation without fraud, and there be a material excess or deficiency.[j]

Eighty-five feet, more or less, means eighty-five feet, unless the deed or situation of the land in some way controls it.[k]

The words more or less will not cover a distinct lot.[l] See ESTIMATION, above.

MORTGAGE. See MORTGAGES, below.

MUNIMENTS. See TITLE, below.

NATURAL AFFECTION (the affection which a husband, a father, a brother, or other near relative naturally feels towards those who are so nearly allied to him) sometimes supplies the place of a valuable consideration in contracts; and natural affection is a good consideration in a deed.

PARTITION is the division of real estate. Compulsory partition is that which takes place without regard to the wishes of one or more of the owners, and is made by virtue of special laws providing that remedy. Voluntary partition is made by the owners, and on mutual consent, and is effected by mutual conveyances or releases, to each person, of the share which he is to hold, executed by the other owners.

PERSONAL PROPERTY. See MORTGAGES, below, and title PROPERTY, ETC.; SALES.

POLL. See DEED POLL; INDENTURE, above.

POWER OF ATTORNEY. See title AGENCY; ATTORNEYS, ante.

PREMISES. "The premises" is that part of a conveyance which precedes the "habendum"; it embraces the statement of the parties, the consideration, recitals inserted for explanation, description of property granted, with the intended exceptions. When lands are granted by metes and bounds, all the area within those bounds, and no more, passes.[m] Growing crops are part of the land while in the owner's hands, and unless excepted, pass by the deed.[n]

PRIMARY CONVEYANCES. See ORIGINAL CONVEYANCES, above.

PROPERTY, ETC. See LEASES; MORTGAGES, below, and title PERSONAL PROPERTY; REAL PROPERTY, ETC.

PUNCTUATION. See title CONTRACTS, ante.

QUADRIPARTITE is having four parts, or divided into four parts, as, This conveyance quadripartite, made this —— day of ——, between A. B. of the one (*or* first) part, C. D. of the second part, E. F. of the third part, and G. H. of the fourth part, witnesseth, etc.

QUIT-CLAIM is a form of deed in the nature of a release containing words of grant as well as release.[o]

The term is in constant and general use. It presupposes a previous or precedent conveyance, or a subsisting estate and possession.[p] It is a conveyance at common law, but differs from a release in that it is regarded as an original conveyance.[q] The operative words are "remise, release, and forever quit-claim."[r] Covenants of warranty against incumbrances by the grantor are usually added. See DEED FORMS, post.

w-9 Wheat. 616. x-See 4 Wash. C. C. 45, 322. y-17 Miss. 459; 21 Ala. 66; 9 Fost. & H. 471; 10 Gratt. 455; 16 Ga. 141. z-2 Bibb. 145; 3 Id. 414. a-3 Bibb. 414; 2 Wheat. 211; 10 Id. 463; 7 Pet. 171; 18 Wend. 157; 16 Johns. 257; 17 Id. 29; 10 Gratt. 445; Jones L. 469; 16 Ga. 141; 5 Ind. 302; 15 Mo. 80; 2 Bibb 118. b-5 Co. 19, 6 East. 309; Dane Abr. Ch. 86, Art. 3, § 7; 2 Johns. 404; 12 Id. 469; 3 Cow. 537. c-17 Ves. Ch. 394; Powell Pow. 397. d-2 B. & Ad. 106. e-17 Ves. Ch. 394; Powell Pow. 397; 24 Miss. 597; 13 Texas, 223. f-In 2 B. & Ad. 106, it was held that an excess of fifty quarters over three hundred quarters of grain was not covered by the words "three hundred more or less," if there was not shown that so large an excess was in contemplation, 1 Esp. 229. g-2 Penn. St. 533; 9 S. & R. 80; 13 Id. 143; 10 Johns. 297; 4 Mass. 414. h-2 Russ. Ch. 597; 1 Pet. C. C. 49. i-8 Paige, 312; 2 Johns. 37; Owen, 133; 1 Ves. & B. Ch. Ir. 375. j-14 N. Y. 143. k-20 Pick. 62. l-24 Mo. 574. m-13 Ohio, 430. n-3 Ohio St. 483. o-2 Wash. R. Prop. 606. p-Thornton Conv. 44. q-6 Pick. 499; 14 Id. 374; 3 Comm. 398; 9 Ohio, 96; 5 Ill. 117. r-Thornton Conv. 44.

REAL PROPERTY. See title PROPERTY, ETC.; REAL PROPERTY.

RECEIPTS. The general principle settled by weight of authority is, that for the purpose of sustaining the conveyance as against the vendor and his privies, the receipt is conclusive: they are estopped to deny that a consideration was paid sufficient to sustain the conveyance.[k] But in a subsequent action for the purchase-money or upon any collateral demand, *e. g.*, in an action to recover a debt which was in fact paid by the conveyance, or in an action for damages for breach of a covenant in the deed, and the like, the grantor may show that the consideration was not in fact paid; that an additional consideration to that mentioned was agreed for, etc.[l]

And when a deed is attacked for fraud, or is impeached by creditors as voluntary, and therefore void, or when the object is to show the conveyance illegal, the receipt may be explained or contradicted.[m] With this exception of receipts inserted in a sealed instrument having some other purpose, to which the receipt is collateral, a receipt under seal works an absolute estoppel on the same principles and to the same general extent as other specialties.[n]

RECITALS are repetitions of some former writing or statement of something which has been done. It is useful to explain matters of fact which are necessary to make the transaction intelligible.[o]

The party which executes a deed is bound by the recitals of essential facts contained therein.[p] The amount of consideration received is not an essential averment under this rule.[q] The recitals in a conveyance bind parties and privies thereto, whether in blood, estate, or law.[r] A deed of defeasance which professes to recite the principal deed must do so truly.[s]

RECORDING. By the laws of the several States, certain conveyances and instruments must be recorded in order to perpetuate the matters which they contain, and that copies thereof from such records shall have the same effect as the records themselves. The fact of an instrument being recorded is held to operate as a constructive notice upon all subsequent purchasers of any estate, whether legal or equitable, in the same property.[t] But all conveyances and deeds which may be in fact recorded, are not to be considered as giving notice. In order to have this effect the instruments must be such as are authorized or required to be recorded. And the registry must have been made in compliance with law—otherwise the recording is to be treated as a mere nullity, and will not effect a subsequent purchaser or incumbrancer, unless he has such actual notice as would amount to a fraud.[u]

REDDENDUM is that clause in a conveyance which reserves something new to the grantor, which must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself;[v] nor of something issuing out of another thing; and it must be made to one of the grantors, and not to a stranger to the conveyance. "Saving and excepting," etc.[w] The thing excepted must be particularly described.[x]

RE-ENTRY. Conveyances in fee reserving a ground rent, and leases for a term of years, usually contain a clause authorizing the proprietor to re-enter in case of the non-payment of rent, or of the breach of some covenant in the lease which forfeits the estate. Without such reservation he would have no right to re-enter for a mere breach of a covenant, although he may do so upon the breach of a condition which, by its terms, is to defeat the estate granted.[y] See LEASES, below.

RELEASE. A release is a conveyance of a person's interest or rights unto a thing to another who has the possession thereof or some estate therein.[z] The relinquishment of some right or benefit to a person who has already some interest in the tenement, and such interest as qualifies him to receive or avail himself of the right or benefit so relinquished.[a]

REMISE, RELEASE, AND QUIT-CLAIM are the ordinary effective words in a release. These words are sufficient to pass the estate in a primary conveyance.[b] Remise is a French word synonymous with release.[c] See SURRENDER, below.

RESERVATION is that part of a deed or instrument which reserves a thing not *in esse* at the time of the grant, but merely created.[d] It is the creation of a right or interest which had no prior existence, as such, in a thing or part of a thing granted, by means of a clause inserted by the grantor in the instrument of conveyance.

k-1 Binn. 502; 26 Mo. 56; 4 Hill (N. Y.) 643. l-16 Wend. 460; 4 Johns. 23; 14 Id. 210; 2 Hill (N. Y.) 554; 10 Vt. 96; 12 Id. 443; 3 N. H. 170; 4 Id. 229, 397; 1 M'Cord, 514; 7 Pick. 533; 1 Rand. 219; 4 Dev. 355; 3 Hawks. 82; 6 Me. 364; 5 B. & Ald. 606; 5 Ala. 224; 5 Lond. Jur.; 2 Harring. (Del.) 354; 13 Miss. 238; 5 Conn. 113; 1 Harr. & G. 139; 2 Humph. 584; 1 Gill. 84; 1 J. J. Marsh, 387; 3 Md. Ch. Dec. 411; 3 Ind. 212; 15 Ill. 230; 1 Stockt. Ch. 492. But there are many contrary cases. See 1 Me. 2; 5 Id. 232; 7 Johns. 341; 3 M'Cord, 552; 1 Johns. Ch. 390; 1 Harr. & J. 252; 1 Hawks. 64; 4 Hen. & M. 113; 2 Ohio, 182; 1 B. & C. 704. m-3 Zab. 465; 3 Md. Ch. Dec. 461; 21 Penn. St. 480; 20 Pick. 247; 12 N. H. 248. n-Ware Dist. Ct. 496; 4 Hawkes, 22; see 2 Taunt. 141. o-2 Bl. Comm. 298. p-Com. Dig. *Estoppel* (A. 2), Met. Yelv. 227, *n.*; 2 Co. 33; 8 Mod. 311. q-17 Mass. 249; 20 Pick. 247; 5 Cush. 431; 6 Me. 364; 7 Id. 175; 13 Id. 233; 15 Id. 118; 10 Vt. 96; 4 N. H. 229, 397; 8 Conn. 304; 14 Johns. 210; 20 Id. 388; 16 Wend. 460; 7 S. & R. 311; 3 Watts, 151; 1 Harr. & G. 139; 1 Bland. Ch. 236; 4 Hen. & M. 113; 1 Rand. 219; 2 Hill, 404; 1 M'Cord, 514; 15 Ala. 498; 10 Yerg. 160; 7 Monr. 291; 1 J. J. Marsh, 389; but see 1 Hawks. 64; 4 Id. 22; 1 Dev. & B. 452; 11 La. 416; 2 Ohio, 350; 3 Mas. C. C. 347. r-1 Greenl. Ev. § 3. And see 3 Ad. & E. 265; 7 Dowl. & R. 141; 4 Pet. 1; 6 Id. 611. s-Cruise Dig. tit. 32, Ch. 7, § 28; see 3 Penn. 324; 3 Chanc. Cas. 101; Co. Litt. 352; Com Dig. *Fait* (E. 1). t-1 Johns. Ch. 394. u-1 Sch. & L. 157; 2 Id. 68; 4 Wheat. 466; 1 Binn. 40; 1 Johns. Ch. 300; 1 Story Eq. Jur. §§ 403, 404; 5 Me. 272. v-See 2 Bl. Comm. 299; Co. Litt. 47; Shep. Touchst. 80; Cruise Dig. tit. 32, c. 24, § 1. w-See 30 Vt. 424; R. I. 419; 41 Ms. 177. x-Woodf. L. & Ten. 10; Co. Litt. 47, *a.*; 12 Me. 337; Wright, 711; 3 Johns. 375; 5 N. Y. 33; 8 Conn. 369; 6 Pick. 499; 6 N. H. 421; 2 Strobh. 208; 2 Tayl. 173. y-3 Wils. 27; 2 Bingh. 13; 1 M. & R. 694; Tayl. Sandl. & Ten. § 290. z-Shepp. Touchst. 320. a-Bunt. R. Prop. 15.* b-7 Conn. 250; 24 N. H. 460; 21 Ala. (N. S.) 125; 7 N. Y. 422. c-See QUIT CLAIM, above. d-2 Hilliard Abr. 359.

A reservation is distinguished from an exception in that it is of a new right or interest; thus a right of way reserved at the time of conveying an estate, which may have been enjoyed by the grantor as owner of the estate, becomes a new right.[v]

A reservation may be of a life-estate,[w] of a right of flowage,[x] right to use water,[y] right of way,[z] and many other rights and interests.[a]

SCRIVENERS, or conveyancers, are those whose business it is to write conveyances and other instruments for others. They act also as agents for the purchase and sale of real estate.

SIGNATURE is the act of putting one's name at the end of an instrument to attest its validity. The name thus written is also called a signature.[b]

It is not necessary that a party should write his name himself to constitute a signature; his mark is sufficient though he was able to write.[c] A signature made by a party, another guiding his hand with his consent, is sufficient.[d]

The signature is usually made at the bottom of the instrument.

SPELLING. See title CONTRACTS, ante.

SURRENDER is the yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, by which act the lesser estate is merged into the greater by mutual agreement.[e] It is the instrument by which the surrender is made.

A surrender is of a nature directly opposite to a release: the latter operates by the greater estate descending upon the less, the former is the falling of a less estate upon the greater by deed. The surrender may be express or implied; the latter is when an estate incompatible with an existing estate is accepted, or the lessee takes a new lease of the same lands.[f]

The technical and proper words of this conveyance are, "Surrender and yield up," but any form of words by which the intention of the parties is sufficiently manifested will operate as a surrender.[g]

TAX DEEDS are absolute conveyances made by a public officer, of the title of the owner to the purchaser, at a tax sale or sale of lands for non-payment of taxes. By the principles of the common law, this conveyance is simply a link in the chain of the grantee's title. It does not *ipso facto* transfer the title of the owner, as in grants from the government or conveyances between man and man. The operative character of it depends upon the regularity of the anterior proceedings. The deed is not the title itself, nor even evidence of it. Its recitals bind no one. It creates no estoppel upon the former owner. No presumption arises upon the mere production of the conveyance that the facts upon which it is based had any existence. When it is shown, however, that the ministerial officers of the law have performed every duty which the law imposed upon them, and every condition essential to its character, then the deed becomes conclusive evidence of the title in the grantee, according to its extent and purport.[h] See GENERAL STATUTES.

TENENDUM was that part of a conveyance which was formerly used to express the tenure by which the estate conveyed was held. Its effect is now expressed by the clause called the "Habendum," which see above.

TESTATUM is that part of a conveyance which commences with the words, "This conveyance" (*or* deed, *or* indenture), etc., witnesseth.

TITLE is the means whereby the owner of lands has the lawful possession thereof.[i]

Muniments of title are those instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, and by which he is enabled to defend the title of his estate.

Title deeds are those deeds which are evidences of the title of the owner of an estate. The person who is entitled to the inheritance has a right to the possession of the title deeds.[j]

TRANSFER is the act by which the owner of a thing delivers it to another person with the intent of passing the rights which he has in it to the latter.

TRIPARTITE is the consisting of three parts; as, "This conveyance tripartite between A. B. of the first part, C. D. of the second part, and E. F. of the third part," etc.

WILL. Last will and testimony, see WILLS, below.

WITNESS ATTESTATION is not essential to the validity of a conveyance unless required by statute.

Careful conveyancers, in general, have all instruments of conveyance, as well as other important instruments, attested by at least one witness.

YARD. A yard is a piece of ground enclosed for the use and convenience of the occupants of a house. See BACKSIDE, above.

For AGREEMENTS TO CONVEY see title CONTRACTS, ante.

For BONDS TO CONVEY see title BONDS, ante.

For CONTRACTS TO CONVEY see title CONTRACTS, ante.

CONVEYANCES—DEED FORMS.

Deeds must be on paper or parchment,[k] completely written before delivery,[l] between competent parties, made without restraint,[m] contain the names of the grantor and grantee,[n] relate the suitable property,[o] and contain the requisite parts:

v-42 Me. 9. w-28 Vt. 10; 33 N. H. 18; 3 Jones, 37, 38; 23 Mo. 373; 3 Md. Ch. Dec. 230. x-41 Me. 298. y-41 Me. 177; 9 N. Y. 423; 16 Barb. 212. z-25 Conn. 331; 6 Cush. 254; 10 Id. 313; 10 B. Mon. 463. a-33 N. H. 507; 9 B. Mon. 163; 5 Penn. St. 317; see 6 Cush. 162; 4 Penn. St. 173; 9 Johns. 73. b-See Merlin Rep. *Signature*, for a history of the origin of signatures, also Cruise Dig. 32, c. 2, § 73, *et seq.* c-8 Ad. & E. 94; 3 Nev. & P. 228; 3 Curt. C. C. 752; 5 Johns. 144. d-4 Wash. C. C. 262, 269. e-Co. Litt. 337, *b*. f-16 Johns. 28; 2 Wils. 26; 1 B. & Ald. 50; 2 Id. 119; 5 Taunt. 518. g-Perkins, § 607; 1 T. R. 441; Com. Dig. Surrender (A.) h-See Blackwell Tax Titles, 430; 2 Washb. R. Prop. 542. i-Termes de la Ley. Co. 3d Inst. 170. j-1 Carr. & M. 653. k-5 Johns. 246. l-1 Hill (So. C.) 267; 6 Mees. & W. 216, Am. Ed. n. m-13 Mass. 371; 2 Bl. Comm. 291. n-2 Brock C. C. 156; 19 Vt. 613; 12 Mass. 447; 14 Mo. 420; 13 Ohio, 120; 14 Pet. 322; 1 McLean C. C. 21; 2 N. H. 525. o-Brown on Frauds, § 6; 2 Washb. R. Prop. 259, *et seq.*

The Introduction—"This conveyance (*or* this deed, *or* this indenture), made this —— day of ——."

1. **The Premises.** This embraces the statement of the parties, the consideration, recitals inserted for explanation, description of property granted, with the intended exceptions. When lands are granted by metes and bounds, all the area within those bounds and no more passes.[f] Growing crops are a part of the land while in the owner's hands, and unless excepted, pass by the deed.[g]

Dower. If a wife unite with her husband in the granting part of a deed conveying her land, she is thereby barred of her right of dower, as against all those who claim under such deed.[h] All that the statute requires of a married woman in order to convey her own estate, or her dower interest, is, that she should join with her husband in the granting part of the deed. If she do this, her dower is thereby barred without express words for that purpose.[i]

2. **The Habendum.** "To have and to hold," etc. This limits and defines the estate which the grantee is to have.

3. **The Reddendum.** This is used to reserve something to the grantor, which must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself.[k] "Saving and excepting," etc.[l] The thing excepted must be particularly described.[m]

4. **The Condition.** This is a qualification or restriction annexed to the conveyance, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated.[n]

5. **Covenants.** See COVENANTS, above. **The Covenant of Warranty.** This is an assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title.[o] Such covenants give the covenantee and grantee the benefit of subsequently acquired titles,[p] to the extent of their terms[q] (but not if an interest actually passes at the time of making the conveyance upon which the covenant may operate);[r] in case of a term for years as well as conveyances of greater estates,[s] as against the grantor and those claiming under him,[t] including purchases for value.[u] And this principle does not operate to prevent the grantee's action for breach of the covenant, if evicted by such title.[v]

The covenant of warranty, until broken, passes with the land to the heir of the grantee; or if the land be assigned or conveyed, it passes to the assignee, and when broken, the heir or assignee injured by the breach can, in his own name, maintain an action against the warrantor, and may maintain an action against every intermediate warrantor, and prosecute the same to judgment. A judgment against one will be no bar to a suit against another. A satisfaction is the only bar.[w] To constitute a breach there must be an eviction by paramount title,[x] which may be constructive.[y]

6. **The Conclusion.** This mentions the execution, date, etc.

7. **The Signature** by the grantor or grantors (and their seals when required by law).

8. **The Attestation** by competent witnesses when required by statute.

9. **The Acknowledgment or proof.**

ALABAMA.

All persons twenty-one years of age, not under legal disability, may convey or incumber real estate or any interest therein. All conveyances must be in writing or printed on parchment or paper and signed at their foot by the contracting party, or his or her agent having written authority.

Acknowledgment. See that title, ante. Acknowledgment dispenses with the necessity of witnesses.

Dower may be relinquished by the wife joining with her husband in the conveyance of land; or in a power of attorney authorizing the attorney to convey the land; or, subsequent to a conveyance, by a separate instrument executed by her alone; and in either case her signature must be attested by two witnesses who are able to write, or acknowledged by her according to the form prescribed for the acknowledgment of their conveyances in the State.[z] Husband must join in wife's conveyance of real property, except he be *non compos mentis*, non-resident, has abandoned her, or is imprisoned under conviction for exceeding two years.[a]

Recording. Conveyances, whether by absolute deed or by mortgage, must be recorded within thirty days from their date in the office of the judge of probate for the country. Other conveyances must be recorded before the rights of purchasers, mortgagees, or judgment creditors accrue.[b]

Seals are not necessary. A scroll is customary.

Witnesses. The execution of such conveyances must be attested by one, and where the party cannot write, by two witnesses who are able to write, and who must write their names as witnesses.

See GENERAL FORMS and KENTUCKY and VIRGINIA FORMS, post.

Conveyance—General Warranty Deed.

This conveyance, made this —— day of ——, by A. B., of —— county, in the State of ——, to C. D., of —— county, in the State of ——, witnesseth:

That in consideration of the sum of —— dollars, the said A. B. does by these presents grant, bargain and sell and convey unto said C. D. (his heirs and assigns), all the following described real estate, situated in —— county and State of Alabama, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together with the appurtenances and every part thereof, forever. And the said A. B. does hereby covenant and agree with said C. D., that he is lawfully seized in fee of said premises, that they are free from all incumbrances, that he has a perfect right to convey the same, and that he will warrant and forever defend the same unto the said C. D., his heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof said grantor has hereunto set his hand, the day and year first above written.

(*Signed*,) A. B.

Executed in presence of }
W. T., N. S. }

For form of ACKNOWLEDGMENT, see that title.

ARKANSAS.

All persons of full age and under no legal disability may convey their real estate or any interest therein.

Acknowledgment. See that title, ante.

Dower. When husband and wife convey lands of the husband, the certificate of acknowledgment must show that the wife acknowledged her relinquishment of dower.[c]

Married women may convey in the same manner as the husband.

Recording is not required within any specified time. Mortgages are not liens until recorded.[d]

Seals are not required.

See KENTUCKY FORMS, post.

f-13 Ohio, 430. g-3 Ohio St. 483. h-15 Ohio, 191. i-Id. 191, 232; Wms. R. Prop. 189; see 6 Ohio St. 510; 2 Binn. 341; 1 Bail. 421; 1 Blackf. 379; 13 Barb. 50. She cannot release her dower by parol, see 5 Monr. 57; 3 Zabr. 62. k-See 2 Bl. Comm. 299; Co. Litt. 47; Shep. Touchst. 80; Cruise Dig. tit. 32, c. 24, § 1. l-See 30 Vt. 424; R. I. 419; 41 Ms. 177. m-Woodf. L. & Ten. 10; Co. Litt. 47, *a*.; 12 Me. 337; Wright, 711; 3 Johns. 375; 5 N. Y. 33; 8 Conn. 369; 6 Pick. 499; 6 N. H. 421; 2 Strobh. 208; 2 Tayl. 173. n-Greenl. Cruise Dig. tit. xiii., c. 1, § 1. o-2 Jones, 203; 3 Duer, 464. p-11 Johns. 91; 13 Id. 316; 14 Id. 193; 9 Cow. 271; 6 Watts, 60; 9 Cranch, 43; 13 N. H. 389; 1 Ohio, 190; 3 Id. 107; 3 Pick. 52; 13 Id. 116; 24 Id. 324; 3 Met. 121; 13 Me. 281; 20 Id. 260. q-12 Vt. 39; 3 Met. 121; 9 Cow. 271; 34 Me. 483. r-3 McLean C. C. 56; 9 Cow. 271; 12 Pick. 47; 5 Gratt. 157. s-Burton R. Prop. § 850; Wms. R. Prop. 229; Washb. R. Prop. 478; 4 Kent. Comm. 261, *n*.; Cro. Car. 109; 1 Ed. Raym. 729; 4 Wend. 502; 1 Johns. Cas. 190. t-2 Washb. R Prop. 479, 480. u-14 Pick. 224; 24 Id. 324; 5 N. H. 533; 13 Id. 389; 5 Me. 231; 12 Johns. 201; 13 Id. 316; 9 Cranch, 53; see 4 Wend. 619; 18 Ga. 192. v-1 Gray, 195; 25 Vt. 635; 12 Me. 499. w-5 Ohio, 154; 14 Id. 118. x-Rawl. Cov. 221; 6 Barb. 165; 5 Harr. 162; 11 Rich. 80; 13 La. An. 390, 499; 5 Cal. 262; 4 Ind. 174; 6 Ohio St. 525; 26 Mo. 92; 17 Ill. 185; 36 Me. 455; 14 Ark. 309. y-12 Me. 499; 17 Ill. 185; 5 Hill, 599; 4 Mass. 349; 8 Ill. 162; 5 Ired. 393. z-Code 1886, § 1894. a-Id. § 2348. b-Id. 1810–11. c-Gould's Dig. Ch. 81, §§ 1–37. d-Gould's Dig. Ch. 117, § 1.

CALIFORNIA.

Conveyances or deeds are here called "grants," and may be in substance as follows :[a]

I, A. B., grant to C. D all that real property, situated in —— county, State of California, bounded (*or* described) **as follows : (*here follows the description, either by metes and bounds or by a descriptive name, as* "The Norris Ranch"):**

Witness my hand, this —— day of ——.

A. B.

Acknowledgment. See that title.

Recording imports notice at once and must be in the office of the recorder of the county where the land is situated.

Seals. Distinctions between sealed and unsealed instruments are abolished.[a]

Witnesses are not required.

See GENERAL FORMS.

CANADA.

Province of Ontario.

The common law form of conveyance, as modified by usage and as stated below, and when duly executed according to the laws or custom of the locality of the property conveyed, are valid.

Acknowledgment. See that title, ante.

Duplicates. Conveyances must be in duplicate for the purpose of registration.

Heirs. The word "heirs" is necessary to convey a fee simple.

Married women may convey real property by a deed in which the husband joins, may appoint an attorney to convey, etc., and a separate examination is unnecessary. A married infant may bar her dower.

Registering. After a grant from the crown every conveyance and instrument affecting real estate is deemed fraudulent and void against creditors, subsequent purchasers, and mortgagees for valuable consideration without actual notice, unless registered in the registry office of the county where the lands lie.

Seal. Conveyances and instruments affecting real property must be under seal; a wafer or other adhesive substance should be used. A scroll or scrawl is improper.

Witnesses must each make affidavit as to the execution of the instrument by the party whose execution he attests, where parties sign before different subscribing witnesses, or the conveyance, etc., cannot be registered.

Province of Quebec.

Conveyances and other instruments affecting real property or any interest therein, made in conformity with the laws in force where the property is situated, are valid here.

Acknowledgment. See that title ante.

Recording is necessary in order to affect creditors, subsequent mortgagees or purchasers in good faith, for value, and without notice.

COLORADO.

See conveyances referred to below.

Acknowledgment. See that title, ante.

Corporations. Private corporations may be authorized by law to convey. It should be executed in the name of the corporation, by its president or other chief officer, naming him, and be by him signed, attested by its common seal, and acknowledged, "for and as the act and deed of the (*name the corporation*)."

Dower is abolished.

Married women convey same as married men; either may convey their own real estate without joining the other. Both must sign a homestead conveyance.

Recording is necessary in order to affect creditors, subsequent purchasers or mortgagees in good faith, for value, and without notice.

See KANSAS FORMS, post.

CONNECTICUT.

See Conveyances referred to below.

Acknowledgment must be personally made. See title ACKNOWLEDGMENT, ante.

Married women. Women married since April 20, 1877, may convey without husband joining in deed.

Recording must be at length, within a reasonable time, by the town clerk of the town where such lands are situated.

[a]-C. C. § 1092. [a]-C. C. § 1620.

Witnesses. Conveyances must be attested by two witnesses.

See GENERAL FORMS, post.

DAKOTA, N. and S.

Conveyances may be made from husband to wife, or *vice versa*. See conveyances referred to below.

Acknowledgments. See that title ante.

Courtesy is abolished.

Dower is abolished.

Married Woman need not join in a conveyance of land belonging to her husband except homestead, nor need the husband join in a conveyance of the lands of his wife.

Recording is necessary in order to affect creditors, subsequent purchasers or mortgagees in good faith, for value, and without notice.

Witnesses and seals are not necessary to conveyances of realty, except wills.

DELAWARE.

Acknowledgments. See that title, ante.

Corporations convey by their President or other legally presiding officer duly authorized by the directors, trustees or other managers.

Dower. The certificate of acknowledgment must show that the wife relinquishes her dower.

Married women must be examined privately, and such examination certified to.

Recording must be within three months from the sealing and delivering of the conveyance, otherwise it is void as against a subsequent fair creditor, mortgagee, or purchaser, for a valuable consideration, without notice.

Seal. A scroll is sufficient.

Witness. One witness is sufficient.

DISTRICT OF COLUMBIA.

Conveyances of any estate or interest in lands, tenements, or hereditaments within this district must be executed and acknowledged before any officer authorized by the law there to take acknowledgments.

Acknowledgments. See that title.

Dower. To bar dower a married woman's acknowledgment made prior to April 10, 1869, must show that it was made "apart" or "privily" from her husband, and as her voluntary act.

Married women may convey their real estate in the same manner as though single.[b]

Recording is necessary in order to affect creditors, subsequent purchasers, or mortgagees in good faith, for value, and without notice.

Seals not required except by notaries, but customary.

Witnesses are not required, but the signing, sealing, and delivery is usually attested by at least one witness.

See GENERAL FORMS, post.

FLORIDA.

Conveyances of any estate or interest of freehold or for a term of more than two years must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Dower. See title ACKNOWLEDGMENT, ante.

Married women. Citizens of this State at marriage and seized or possessed of real or personal property preserve their title separate, independent, and beyond their husbands' control.

Recording must be in the county in which the lands are situated and within six months after the execution thereof, or they are void as against creditors, subsequent purchaser, or mortgagee, for value, without notice.

Seals. A scrawl with the word "seal" written in it affixed to it is a sufficient seal.[c]

Witnesses. At least two are necessary.

See GENERAL FORMS, post.

GEORGIA.

Conveyances of any estate or interest in real property are made as referred to below.

Acknowledgment. See that title, ante.

Dower need not be renounced except where the husband is alienating lands to which he derived title through the wife, prior to the statute of 1866. The wife joining in the deed with her husband bars her dower.

Recording may be made at any time, but will lose its priority over a subsequent deed, but previously recorded, and from the same vendor.

Seals. A seal or scroll is necessary.

Witnesses. All deeds, mortgages, etc., to real estate, should be attested by two witnesses, the commissioner, consul, etc., or judge being one of them.

See GENERAL FORMS, post.

[b]-Acts 1869, April 10, 16 Stat. L. 45. [c]-2 Fla. 421.

IDAHO.

Courtesy and dower are abolished. Married woman need not join husband in conveying his property, unless the same be occupied as a homestead. Recording necessary, but time not limited.

Witnesses not required. See GENERAL FORMS.

ILLINOIS.

Acknowledgment—See Page 22. Married women convey individual property by joining in the conveyance with the husband, and thereby release dower. Recording is necessary; time not limited. Seals are required; a scroll is sufficient. Witnesses are not required.

"**Sec. 9.** Deeds for the conveyance of land may be substantially in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the County of ——, in the State of Illinois.* A. B. [L. S.]

Dated this — day of ——, A. D. ——."

"Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs or assigns, with covenants on the part of the grantor (1) that at the time of making and delivering of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all incumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed." R. S. 1877, Ch. 30.

"**Sec. 10.** Quit claim deeds may be, in substance, in the following form:

The grantor (here insert grantor's name or names and place of residence), for the consideration of (here insert consideration), convey and quit claim to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the County of ——, in the State of Illinois.* A. B. [L. S.]

Dated his — day of ——, —. D. ——."

"Every deed in substance in the form prescribed in this Section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quit claim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor, in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention." R. S. 1877, Ch. 30.

*"**Sec. 11.** . . . When the grantor or grantors in any such deed or mortgage for the conveyance of any real estate desires to release or waive his, her or their homestead rights thereon, they or either of them may release or waive the same by inserting in the form of deed or mortgage (as the case may be) provided in Sections nine, ten and eleven, after the words "State of Illinois, in substance the following words": **"hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State."** R. S. 1877, Ch. 30.

INDIANA.

Any conveyance of lands worded in substance as follows: "A. B. conveys and warrants to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*), the said conveyance being dated and duly signed, sealed and acknowledged by the grantor," shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims.[g]

Acknowledgment. See that title.

Corporations convey as natural persons; they must use their private seal.

Dower is abolished.

Heirs, etc. It shall not be necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance. And if it be the intention of the grantor to convey a less estate, it shall be so expressed in the deed.[h]

Married women. Separate deed of the husband conveys no interest in the lands of the wife. The joint deed of husband and wife is necessary to pass the lands of the wife. Wife bound by her covenants as if sole. The wife cannot convey her separate real estate unless the husband joins in the conveyance.

Recording must be in the recorder's office of the county where the land is situated within forty-five days after the execution of the conveyance, or such conveyance will not be valid against any others than the grantor, his heirs, and those having notice thereof.

Seals are not required.[i] See CORPORATIONS, above.

Witnesses are not required.

Conveyance—General Warranty Deed.
Short Form.

This conveyance, made this —— day of ——, A. D. ——, witnesseth:

That A. B. and W. B. his wife, of —— county, in the State of ——, conveys and warrants to C. D., of —— county, in the State of ——, for the sum of ——, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it by metes and bounds*).

Witness the grantors' hands, the day and year first above written.

A. B. [*Seal.*]
W. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—General Warranty Deed.
Long Form.

This conveyance, made this —— day of ——, A. D. ——, by A. B. and W. B. his wife, of —— county, in the State of ——, of the first part, to C. D., of —— county, of the State of ——, of the second part, witnesseth:

That said parties of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it by measure and boundaries*).

To have and to hold the same, with the appurtenances and every part thereof, forever.

And said (*here insert the name of the party or parties warranting, it being desirable in some cases that the warranty shall be made by only one of the parties conveying*), do (*or* does) hereby covenant, promise, and agree, to and with said party of the second part, that he is (*or* they are) lawfully seized in his (*or* their) own right, of an absolute and indefeasible estate of and in all and singular the above granted and described premises, with the appurtenances; that he has good right to convey the same; that he guarantees the quiet possession thereof; that the same are free, clear, and discharged of and from all incumbrances of whatever nature or kind soever, and that he (*or* they) will warrant and forever defend the title to the same unto the said party of the second part, his heirs and assigns, against all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

A. B. [*Seal.*]
W. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—General Warranty Deed.
By Attorney—Short Form.

This conveyance, made this —— day of ——, A. D. ——, witnesseth:

That A. B., of —— county, in the State of ——, by A. A., his attorney in fact, convey said warrants to C. D., of —— county, in the State of ——, for the sum of —— dollars, all the following described real estate, situated in the county of ——,

d-4th Sess. 67. e-Id. f-1 Gross, 90. g-R. S. 1881, § 2927. h-Id. § 2929. i-Id. § 2919.

and State of ——, to wit: (*describing it by metes and bounds*).

Witness the grantor's hand, the day and year first above written.

(*Signed*) A. B., *by A. A.*

For form of ACKNOWLEDGMENT, see that title.

Conveyance—General Warranty Deed.

By Attorney—Long Form.

This conveyance, made this —— day of ——, A. D. ——, by A. B., of —— county, in the State of ——, of the first part, by A. A., his attorney in fact, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describe it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever. And said (*here insert the name of the party warranting*), only for himself, his heirs, executors, or administrators, does hereby covenant, promise, and agree, to and with said party of the second part, that at the delivery of these presents he was lawfully seized, in his own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that he has good right to convey the same; that he guarantees the quiet possession thereof; that the same are free, clear, discharged, and unincumbered, of and from all (former and other grants, titles, charges, estates, judgments, taxes, assessments, and) incumbrances of whatever nature or kind soever; and that he will warrant and forever defend the title to the same unto said party of the second part, his heirs and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said party has hereunto set his hand and seal, the day and year first above written.

A. B. [*Seal.*]

By A. A., his attorney in fact.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Special Warranty Deed.

Short Form.

This conveyance, made this —— day of ——, A. D. ——, witnesseth:

That A. B. and his wife W. B., of —— county, in the State of ——, convey to C. D., of —— county, in the State of ——, for the sum of —— dollars, all their estate, right, title, and interest as derived from their grantors therein (*or otherwise, as the case may be*), in and to the following described real estate, situated in the county of ——, and State of ——, to wit: (*describe it by metes and bounds, or copy description from last grantor's deed*).

Witness the grantors' hands and seals, the day and year first above written.

A. B. [*Seal.*]
W. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Special Warranty Deed.

Long Form.

This conveyance, made this —— day of ——, A. D. ——, by A. B. (and W. B. his wife), of —— county, in the State of ——, of the first part, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said parties of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto said party of the second part, his heirs and assigns, forever; and said party of the first part, for themselves, their heirs, executors, or administrators, do hereby covenant, promise, and agree, to and with said party of the second part, his heirs and assigns, that they will warrant and forever defend the within granted and described premises, with the appurtenances, against the claims of all persons claiming or to claim by, through, or under themselves (and themselves) only.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

A. B. [*Seal.*]
W. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Quit-Claim Deed.

Short Form.

Any conveyance of lands worded in substance as follows: "A. B. quit-claims to C. D. (*here describe the premises*), for the sum of (*here insert the consideration*)," the said conveyance being duly signed, sealed, and acknowledged by the grantor, shall be deemed a good and sufficient conveyance in quit-claim to the grantee, his heirs and assigns.[a]

This conveyance, made this —— day of ——, A. D. ——, by A. B. and W. B. his wife, of —— county, in the State of ——, quit-claims to C. D., of —— county, in the State of ——, for the sum of —— dollars, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it by metes and bounds*).

Witness the grantors' hands and seals, the day and year first above written.

A. B. [*Seal.*]
W. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Quit-Claim Deed.

Long Form, with Warranty.

This conveyance, made this —— day of ——, A. D. ——, by A. B., of —— county, in the State of ——, of the first part, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents remise, release, and forever quit-claim unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of —— and State of ——, to wit:

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever. And said A. B., for himself, his heirs, executors, or administrators, does hereby covenant, promise, and agree, to and with said party of the second part, his heirs and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof the within granted and described premises, or any part thereof, now are incumbered in any manner whatsoever.

In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

IOWA.

Conveyances affecting real estate or any interest therein must be in writing, etc. See forms referred to below.

Acknowledgment. See that title.

Married women. The wife joining with her husband in the conveyance of real property is sufficient to pass her interest in the same, whether her separate property or not.

Recording in the office of the recorder of deeds of the county where the land is situated, after acknowledgment or proof, is absolutely necessary to their validity as against subsequent purchasers, or mortgagees in good faith, for value, and without notice.

[a] R. S. 1881, § 2928.

Seals are not required.
Witnesses are unnecessary.
See INDIANA FORMS, ante; GENERAL FORMS, post.

KANSAS.

Forms printed and sold by Geo. W. Crane, Topeka, Kansas.

Conveyances of real estate or any interest therein must be in writing, and are in forms as given below.

Corporations execute conveyances under their corporate seal.

Married women should join their husbands in the conveyance of real estate; but this is not necessary if at the time of executing the conveyance she has never been a resident of the State. Separate examination is not required nor customary.

Recording in the office of the register of deeds of the county in which the lands are situate is necessary to impart notice to creditors, subsequent purchasers, and mortgagees in good faith, for value, and without notice.

Seals are abolished.

Witnesses are unnecessary.

Conveyance—General Warranty Deed.

This conveyance, made this —— day of ——, A. D. ——, between A. B. and W. B. his wife, of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said parties of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, forever.

And said (*here insert the name of the party or parties warranting*), for himself (*or* themselves), his (*or* their) heirs, executors, or administrators, does hereby covenant, promise, and agree, to and with said party of the second part, that at the delivery of these presents that he was lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free (clear, discharged, and unincumbered, of and) from all (former and other grants, titles, charges, estates, judgments, taxes, assessments, and) incumbrances of what nature or kind soever; and that he will warrant and forever defend the same unto said party of the second part, his heirs and assigns, against said parties of the first part, their heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have hereunto set their hands, the day and year first above written.

A. B.
W. B.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Special Warranty Deed.

This conveyance, made this —— day of ——, A. D. ——, by A. B. (and W. B. his wife), of —— county, in the State of ——, of the first part, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said parties of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all his right, title and interest only in the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever; and said parties of the first part, for themselves, their heirs, executors, or administrators, do hereby covenant, promise, and agree, to and with said party of the second part, his heirs and assigns, that they will warrant and forever defend said interest, the within granted and described premises, with the appurtenances, against the claims of all persons claiming or to claim by, through, or under themselves (and themselves) only.

In witness whereof, the said parties of the first part have hereunto set their hands, the day and year first above written.

A. B.
W. B.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—General Warranty Deed.

By Attorney.

This conveyance, made this —— day of ——, A. D. ——, by A. B., of the —— county, in the State of ——, of the first part, by A. A., his attorney in fact, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describe it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever. And said (*party warranting*), for himself, his heirs, executors, or administrators, does hereby covenant, promise, and agree, to and with said party of the second part, that at the delivery of these presents that he was lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free (clear, discharged, and unincumbered, of and) from all (former and other grants, titles, charges, estates, judgments, taxes, assessments, and) incumbrances, of whatever nature or kind soever; and that he will warrant and forever defend the same unto said party of the second part, his heirs and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said party has hereunto set his hand, the day and year first above written.

A. B.,
By A. A., his attorney in fact.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Quit-Claim Deed with Warranty.

This conveyance, made this —— day of ——, A. D. ——, by A. B., of —— county, in the State of ——, of the first part, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents remise, release, and forever quit-claim unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit:

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever. And said A. B., for himself, his heirs, executors, or administrators, does hereby covenant, promise, and agree, to and with said party of the second part, his heirs and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof the within granted and described premises, or any part thereof, now are incumbered in any manner whatsoever.

In witness whereof, the said party of the first part has hereunto set his hand, the day and year first above written.

A. B.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Trust Deed with Warranty.

This conveyance, made this —— day of ——, A. D. ——, between A. B., of —— county, in the State of ——, of the first part, and E. F., of —— county, in the State of ——, of the second part, and C. D., of —— county, in the State of ——, of the third part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto said party of the second part, his successors and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describe it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, forever, in fee, in trust, nevertheless, and to and for the uses, interests, and purposes hereinafter limited, described, and declared—that is to say, in trust, to (*state the purposes, etc.*)

And said party of the first part does hereby covenant, promise, and agree that the within described premises are free, clear, and discharged of and from all incumbrances, of whatever nature or kind soever; and that he will warrant and forever defend the same unto said parties of the second and third parts, their successors and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

And the said party of the second part covenant faithfully to perform and fulfil the trusts herein created.

In witness whereof, the said parties have hereunto set their hands, the day and year first above written.

A. B.
E. F.
C. D.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Executor's or Administrator's Deed.

This conveyance, made this —— day of ——, A. D. ——, between E. A. (executor of the last will and testament, *or* administrator of the estate and effects), of A. B., of —— county, and State of ——, deceased, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, by virtue of an order of sale issued out of the probate court of —— county, in the State of Kansas, and dated the —— day of ——, A. D. ——, the real property hereinafter described has been sold, in conformity with said order, and sale thereof confirmed, as required by law, and in conformity with the provisions of the act of the legislature of the State of Kansas, entitled "An act respecting executors and administrators, and the settlement of the estates of deceased persons," approved February 28, 1868, and in consideration of the sum of —— dollars (the same being more than three-fourths of the appraised value of said real property), the receipt of which is hereby acknowledged, does, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, all the right, title, and interest of said deceased, discharged from liability for his debts, in and to all the following described real estate, situated in the county of ——, and State of Kansas, to wit: (*describing it*).

To have and to hold the above granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part does hereby covenant with the said party of the second part, his heirs and assigns, that he has, in all things, observed the requirements of law, and of all orders in and concerning said sale.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

E. A., [*Seal.*]
(*Executor*) *or Administrator.*

For form of ACKNOWLEDGMENT, see that title.

The above deed approved by me this —— day of ——, A. D. ——.

P. J.,
[*Seal.*] *Probate Judge*

Conveyance—Guardian's Deed.

This conveyance, made this —— day of ——, A. D. ——, between G. N., guardian of I. I., minor heir of A. B., of —— county, and State of Kansas, deceased, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, by virtue of an order of sale issued out of the probate court of —— county, in the State of Kansas, and dated the —— day of ——, A. D. ——, the real property hereinafter described, has been sold, in conformity with said order, and sale thereof confirmed, as required by law, and in conformity with the provisions of the acts of the legislature of the State of Kansas, entitled "An act concerning guardians and wards," approved February 29, 1868, and "An act respecting executors and administrators, and the settlement of the estates of deceased persons," approved February 28, 1868, and in consideration of the sum of —— dollars (the same being more than three-fourths of the appraised value of said real property), the receipt of which is hereby acknowledged, does, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, all the right, title, and interest of said minor in and to all the following described real estate, situated in the county of ——, and State of Kansas, to wit: (*describing it by metes and bounds*).

To have and to hold the above granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever.

And the said party of the first part does hereby covenant with the said party of the second part, his heirs and assigns, that he has, in all things, observed the requirements of law, and of all orders, in and concerning said sale.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

G. N., [*Seal.*]
Guardian.

For form of ACKNOWLEDGMENT, see that title.

The above deed approved by me this —— day of ——, A. D. ——.

P. J.,
[*Seal.*] *Probate Judge*

Conveyance—Sheriff's Deed.

After Sale on Execution.

This conveyance, made this —— day of ——, A. D. ——, between S. F., sheriff of —— county, and State of Kansas, of the first part, and E. F., of —— county, and State of ——, of the second part, witnesseth:

That, whereas, on the —— day of ——, A. D. ——, in an action then pending in the district court of —— county, in the —— judicial district of the State of Kansas, judgment was rendered in favor of A. B., and against C. D., for the sum of —— dollars, and the further sum of —— dollars, as costs of suit. And whereas, S. F., sheriff of —— county, and State of Kansas, by virtue of an execution issued out of the district court of —— county, in the —— judicial district of the State of Kansas, upon said judgment, and to said sheriff directed and delivered, commanding him that of the goods and chattels of said judgment debtor he cause to be made the aforesaid judgment and costs, and for want of goods and chattels, he cause the same to be made of the lands and tenements of said debtor—upon which execution was indorsed the amount of debt, damages and costs, for which said judgment was entered—did levy said execution upon the real estate hereinafter described, and make sale thereof, in conformity with the provisions of an act of the legislature of the State of Kansas, entitled "An act to establish a code of civil procedure," approved February 25, 1868:

Therefore, the said party of the first part, sheriff aforesaid, by virtue of said execution, and in consideration of the sum of —— dollars (the same being more than two-thirds the appraised value of said

real estate), the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, all the estate, right, title, and interest of said C. D., judgment debtor aforesaid, whereof he was seized or possessed at and after the time when said real estate became liable to the satisfaction of said judgment, in and to all the following described real estate, situated in —— county, in the State of Kansas, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, forever; and the said party of the first part does hereby covenant with the said party of the second part, his heirs and assigns, that in pursuance of the writ of execution aforesaid, he did levy the same, have appraisement made, make return of the same, give public notice by advertisement, and make sale, and in all things observed the requirements of law, and of all orders in and concerning said sale.

In witness whereof, the said party of the first part, sheriff aforesaid, has hereunto set his hand, the day and year first above written.

S. F., [*Seal.*]
Sheriff.

Conveyance—Sheriff's Deed.

On Order of Sale.

This conveyance, made this —— day of ——, A. D. ——, between S. F., sheriff of —— county, and State of Kansas, of the first part, and E. F., of —— county, and State of ——, of the second part, witnesseth:

That the said party of the first part, sheriff aforesaid, by virtue of an order of sale issued out of the district court of —— county, in the —— judicial district of the State of Kansas, on a judgment to enforce a —— lien—rendered by the district court of —— county, in the State of Kansas, on the —— day of ——, A. D. ——, in an action then and there pending, in favor of A. B., judgment creditor, and against C. D., judgment debtor, and for the sale of the lands and tenements hereinafter described and granted, and to said sheriff directed and delivered: commanding him that of said lands and tenements of said judgment debtor he cause to be made the aforesaid judgment, costs, and charges hereinafter mentioned—upon which order of sale was indorsed the amount of debt, damages, costs, and charges for which said judgment was entered—by him levied upon said lands and tenements, and sale thereof made, in conformity with the provisions of an act of the legislature of the State of Kansas, entitled "An act to establish a code of civil procedure," approved February 25, 1868, and an act of the legislature of the State of Kansas, entitled "An act to amend the code of civil procedure," being chapter 80 of the General Statutes of 1868, and to amend "Section 27 of chapter 22 of the General Statutes of 1868," approved March 8, 1870, and in consideration of the sum of —— dollars, the amount and amounts for which said judgment was rendered, due as well to said plaintiff as other parties to said action having liens upon the said lands and tenements, by mortgage or otherwise, with interest thereon, and costs of suit, taxes, insurance, attorney's fees, and interest thereon, and all other expenses accrued and to accrue in said action (the same being more than two-thirds the appraised value of said real estate), the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, all the estate, right, title, and interest of said C. D., judgment debtor aforesaid, whereof he was seized or possessed at and after the time when said real estate became liable to the satisfaction of said judgment, in and to all the following described real estate, situated in —— county, in the State of Kansas, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together, etc. (*the balance of this deed is the same as the preceding one, including the form of acknowledgment*).

Conveyance—Tax Deed.

Lands or Lots.

Know all men by these presents:

That, whereas, the following described real property, viz. (*describing the entire parcel subject to taxation*), situated in the county of ——, and State of Kansas, was subject to taxation for the year A. D. ——, and whereas, the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas, the treasurer of said county did, on the —— day of ——, A. D. ——, by virtue of authority in him vested by law, at (*an adjourned sale of*), the sale begun and publicly held, on the first Tuesday of ——, A. D. ——, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of taxes, interest, and cost then due and remaining unpaid upon said property; and whereas, at the place aforesaid, C. D., of the county of ——, and State of ——, having offered to pay the sum of —— dollars and —— cents, being the whole amount of taxes, interests, and costs then due and remaining unpaid on said property, for (*describing that portion of the entire parcel sold*), which was the least quantity bid for; and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price.

(*When there has been assignments, add:* And whereas, the said C. D. did, on the —— day of ——, A. D. ——, duly assign the certificate of the sale of the property as aforesaid, and all his right, title, and interest to said property, to E. F., of the county of ——, and State of ——.)

(And whereas, the said E. F. did, on the —— day of ——, A. D. ——, duly assign the certificate of the sale of the property as aforesaid, and all his right, title, and interest to said property, to G. H., of the county of ——, and State of ——.)

And whereas, the subsequent taxes of the year ——, amounting to the sum of —— dollars, have been paid by the purchaser, as provided by law; and whereas, ——years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided by law:

Now, therefore, I, C. C., county clerk of the county aforesaid, for and in consideration of the sum of —— dollars and —— cents, taxes, costs, and interest due on said land for the year A. D. ——, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said A. B. (*or* G. H., *as the case may be*), his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him, the said A. B. (*or* G. H.), his heirs and assigns, forever, subject, however, to all rights of redemption provided by law.

In witness whereof, I, C. C., county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county, on this —— day of ——, A. D. ——.

C. C.,
[*Seal.*] *County Clerk.*

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Tax Deed.

Property Bid Off by the County.

Know all men by these presents:

That, whereas, the following described real property, viz. (*describing the entire parcel subject to taxation*), situated in the county of ——, and State of Kansas, was subject to taxation for the year A. D. ——, and whereas, the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas, the treasurer of said county did, on the —— day of ——, A. D. ——, by virtue of authority in him vested by law, at (*an adjourned sale of*), the sale begun and publicly held, on the first Tuesday of ——, A. D. ——, expose to public sale, at the county seat of said county, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for

the payment of taxes, interest, and cost then due and remaining unpaid upon said property; and whereas, at the place aforesaid, said property could not be sold for the sum of —— dollars and —— cents, being the whole amount of tax and charges thereon, the same was bid off by the county treasurer for said county; and whereas, on the —— day of ——, A. D. ——, C. D., of the county of ——, and State of ——, having paid into the county treasury of the county first aforesaid the sum of —— dollars and —— cents, being equal to the cost of redemption of said property at that time;

And whereas, the said C. D. did, on the —— day of ——, A. D. ——, duly assign the certificate of the sale of the property as aforesaid, and all his right, title, and interest to said property to E. F., of the county of ——, and State of ——;

And whereas, the subsequent taxes of the year ——, amounting to the sum of —— dollars, have been paid by the purchaser, as provided by law;

And whereas, —— years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided by law:

Now, therefore, I, C. C., county clerk, etc. (*the balance of this deed is the same as the preceding one, including the form of acknowledgment*).

KENTUCKY.

Forms printed and sold by Wilstach, Baldwin & Co., Cincinnati, Ohio.

Conveyances of real estate or any interest therein are given below.

Acknowledgment. See that title.

Corporations. See title ACKNOWLEDGMENT, ante.

Married women. Separate examination is not necessary.

Recording conveyances of any title or interest in land, or deed of trust, or mortgage, and all other instruments affecting such title or interest, are not valid against a purchaser for a valuable consideration without notice, or any creditor, until it is acknowledged or proved and lodged in the county clerk's office for record.[a] No deed is held to be legally lodged for record until the tax be paid thereon;[b] by non-residents within four months: other deeds by residents must be recorded within sixty days.

Seals are abolished.

Witnesses are not required.

For LONG FORM CONVEYANCES, see INDIANA FORMS, ante, and GENERAL FORMS, post.

Conveyance—Warranty Deed.

Short Form.[c]

This conveyance, made this —— day of ——, witnesseth:

That A. B., of —— county, in the State (*or* Commonwealth) of ——, conveys and warrants to C. D., of —— county, in the State (*or* Commonwealth) of ——, for the sum of $——, all the following described real estate, situated in the county of ——, and State (*or* Commonwealth) of ——, to wit: (*here follows the description*).

In witness whereof, the said grantor has hereunto set his hand, the day and year first above written. A. B.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—General Warranty Deed.

By Attorney—Short Form.

This conveyance, made this —— day of ——, witnesseth:

That A. B., of —— county, in the State (*or* Commonwealth) of ——, by A. A., his attorney in fact, conveys and warrants to C. D., of —— county, in the State (*or* Commonwealth) of ——, for the sum of —— dollars, all the following described real estate, situated in the county of ——, and State (*or* Commonwealth) of ——, to wit: (*here follows the description*).

In witness whereof, said grantor has hereunto set his hand, the day and year first above written.

(*Signed*) A. B.,
By A. A., his attorney in fact.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Special Warranty Deed.

Short Form.

This conveyance, made this —— day of ——, witnesseth:

That A. B., of —— county, in the State (*or* Commonwealth) of ——, conveys to C. D., of —— county, in the State (*or* Commonwealth) of ——, for the sum of —— dollars, all his right, title, and interest (as derived from ——) in and to all the following described real estate, situated in the county of ——, and State (*or* Commonwealth) of ——, to wit: (*here follows the description*).

In witness whereof, said grantor has hereunto set his hand, the day and year first above written. A. B.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Quit-Claim Deed.

This conveyance, made this —— day of ——, witnesseth:

That A. B., of —— county, in the State (*or* Commonwealth) of ——, quit-claims unto C. D., of —— county, and State (*or* Commonwealth) of ——, for the sum of —— dollars, all the following described real estate, situated in the county of ——, and State (*or* Commonwealth) of ——, to wit: (*here follows the description*).

In witness whereof, said grantor has hereunto set his hand, the day and year first above written. A. B.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Trust Deed.

Short Form.

This conveyance, made this —— day of ——, witnesseth:

That A. B., of —— county, in the State (*or* Commonwealth) of ——, conveys (and warrants) to C. D., of —— county, in the State (*or* Commonwealth) of ——, and E. F., of —— county, in the State (*or* Commonwealth) of ——, for the sum of —— dollars, all the following described real estate, situated in the county of ——, and State (*or* Commonwealth) of ——, to wit: (*here follows the description*).

In trust, nevertheless, for the following purposes, to wit: (*here set forth the objects and purposes to be effected*).

In witness whereof, said parties have hereunto set their hands, the day and year first above written.

(*Signed*) A. B.
C. D.
E. F.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Administrator's, Executor's, Trustee's, etc., Deed.

This conveyance, made this —— day of ——, witnesseth:

That —— as (administrator of the estate and effects of D. D., deceased, *or* executor of the last will and testament of D. D., deceased, *or* guardian of the persons and estates of ——, ——, ——, minor heirs of D. D., deceased, *or* trustee of ——), etc., of —— county, in the State (*or* Commonwealth) of ——, by order of the circuit court of —— county, in the —— judicial district of the Commonwealth of Kentucky, entered in volume —— of ——, on page ——, conveys to C. D., of —— county, in the State (*or* Commonwealth) of ——, for the sum of —— dollars, all the following described real estate, situated in —— county, and State (*or* Commonwealth) of ——, to wit: (*here follows the description*).

In witness whereof, said ——, as (administrator, etc.), aforesaid, has hereunto set his hand, the day and year first above written.

(*Signature and representative title.*)

For form of ACKNOWLEDGMENT, see that title.

LOUISIANA.

Conveyances of real estate or any interest may be made before a notary public, who reduces the contract to writing, and together with the parties, and in the presence of two competent witnesses (three if the grantor be blind), signs it, and adds his certificate, made in the usual form and acknowledged.

Acknowledgment. See that title.

Corporations execute conveyances in the same manner as private individuals.

Married women. See that title.

Recording is necessary in the parish where the property is situated. Conveyances take effect against third parties from the date of such record only.

a-G. S. 1873, Ch. 24. b-G. S. 1873, p. 250, § 22. c G. S. 1873, p 255, Ch. 24, § 1.

Seals or scrolls are not authorized.
See ACKNOWLEDGMENT, ante; GENERAL FORMS, post.

MAINE.

See conveyances referred to below.
Acknowledgment. See that title.
Married women need not be examined separately.
Recording is necessary in order to render them valid against subsequent conveyances and attachments.[j]
Seals must be wafers or wax.
Witnesses. One is necessary; two customary
See MASSACHUSETTS FORMS, post.

MARYLAND.

Conveyances of an estate of inheritance, or freehold, or any declaration of use, or estate for above seven years, must be by deed in writing, etc. No words of inheritance are necessary to convey an estate in fee simple. The word "grant" in a deed is sufficient to convey the whole interest and estate of the grantor.
Acknowledgment. See that title, ante.
Consideration must be stated when a consideration is necessary.
Married women need not be examined separately.
Parties conveying and to whom conveyed must be set forth in the instrument.
Recording. Where land lies in more than one county, or in the city of Baltimore and a county adjoining, the deed must be recorded in each of them. Conveyances, etc., must be recorded within six months from date, in the county or city where the land affected lies.[k]
Seals are necessary; a scroll is sufficient.
Witnesses. At least one is necessary.
See GENERAL FORMS, post.

MASSACHUSETTS.

Conveyances of real estate or any interest therein must be made in writing, etc.
Acknowledgment by the grantors, or one of them, is necessary. See title ACKNOWLEDGMENT, ante.
Married women need not be examined separately.
Recording is necessary to render the conveyance valid against subsequent *bona fide* purchasers or attaching creditors.
Seals are necessary,[l] and should be wafer or wax.
Witnesses are not necessary; one is customary.

Conveyance—Warranty Deed.

Know all men by these presents:
That I, A. B., of ——, in —— county, State of ——, in consideration of —— dollars, to me paid by C. D., of ——, in —— county, State of ——, the receipt of which I hereby acknowledge, do by these presents give, grant, bargain, sell, and convey unto said C. D., his heirs and assigns, all that certain parcel of land situate in ——, in —— county, and State of ——, bounded and described as follows: (*here follows the description*), together with all the privileges and appurtenances to the said land in anywise appertaining and belonging.
To have and to hold the above granted premises unto said C. D., his heirs and assigns, to his and their use and behoof, forever.
And I, the said A. B., for myself, my heirs, executors, and administrators, do covenant with said C. D., his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to said C. D. as aforesaid; that I will, my heirs, executors, and administrators shall, warrant and defend the same to said C. D., his heirs and assigns, forever, against the lawful demands of all persons.
In witness whereof, I, the said A. B., have hereunto set my hand and seal, this —— day of ——.
A. B. [L. S.]
For form of ACKNOWLEDGMENT, see that title.

Wife's Release of Dower.

In witness whereof, I, the said A. B., and W., my wife, in token of her release of all right of dower (and homestead exemption), in said premises, have hereunto set our hands and seals, this —— day of ——.
A. B. [L. S.]
W. B. [L. S.]

Signed, sealed, and delivered in the presence of us. W. T., N. S.

Conveyance—Warranty Deed.

Husband and Wife—Wife's Land.

Know all men by these presents:
That we, A. B., of ——, etc., and W. B., his wife, in her own right, in consideration of ——, to us paid, the receipt of which is hereby acknowledged, do by these presents give, grant, bargain, and sell unto C. D., his heirs and assigns, all that parcel of land situate in ——, in —— county, State of —— (*describing it*), and all the right, title, and interest which they, or either of them, have in or to the same or any part or parcel thereof.
To have and to hold the above described real estate, with the appurtenances, to the said C. D., his heirs and assigns, to his and their use and behoof, forever.
And the said A. B., for himself, his heirs, executors, and administrators, does hereby covenant with said C. D., his heirs and assigns, that immediately before the sealing and delivery hereof, he, the said A. B., and W. B., his wife, in her right, are lawfully seized in fee of the above conveyed real estate; that the same is free from all incumbrances, and that the said A. B., his heirs, executors, and administrators shall and will warrant and defend the same to the said C. D., his heirs and assigns, against the lawful claims and demands of all persons.
In witness, etc. (*as above*).

MICHIGAN.

Conveyances of any estate or interest in real property must be in writing, etc. See conveyances referred to below.
Acknowledgment. See that title, ante.
Recording must be according to the provisions of the statute, or the conveyance will be void as against any subsequent purchasers in good faith for value.[m]
Seals. A scroll is a sufficient seal
Witnesses. Two are necessary.
See GENERAL FORMS, post.

MINNESOTA.

Conveyances affecting real estate or any interest therein must be in writing, etc. See conveyances referred to below.
Acknowledgment. See that title, ante.
Dower is released by wife joining in the conveyance with the husband.
Married woman may convey her separate estate by the husband joining. She is liable on the covenants in the deed the same as though she were a *feme sole*. Separate acknowledgment is not required.
Recording in the office of the register of deeds of the county in which the land is situate is necessary. Unless so recorded it is void against subsequent purchasers in good faith, for valuable consideration, whose conveyance is first recorded, or against attachments levied, or judgments lawfully obtained before recording.[o]
Seals are necessary.
Witnesses. Two are necessary.
See GENERAL FORMS, post.

MISSISSIPPI.

Conveyances, etc., of any estate or interest in lands must be in writing, etc. A deed of quit-claim or release conveys all the estate of the grantor.[p] See forms referred to below.
Acknowledgment. See that title, ante.
Dower has been abolished.
Married women have all the rights of *femmes sole*, their common law disabilities being totally abolished.
Recording in the offices of the chancery clerks of the respective counties in which the land is situate is necessary to affect subsequent purchasers, mortgagees, etc.
Seals and scrolls are unnecessary except to corporations.
See GENERAL FORMS, post.

MISSOURI.

Conveyances, etc., of any estate or interest in real estate must be in writing, etc. The words "grant, bargain, and sell" imply covenants.
Acknowledgment. See that title, ante.
Corporations executing conveyances must attach their corporate seal. Private persons need no seal.

j-R. S. Ch 73, § 8 k-P. G. L. Art. 24, §§ 13, 14. l-13 Met 79 m-Comp L. 1346. n-Comp. Laws, 1760.
o-G. S. Ch. 40, § 21; 18 Minn. 405. p-33 Miss. 292; 34 Id. 18. q-8 S. & M. 480; 9 Id. 34.

Dower. See title ACKNOWLEDGMENT, ante.
Married women need not be examined separate from their husbands.
Recording in the county where the real estate is situated is necessary in order to render the conveyance effective against purchasers, etc., without notice.
Seals. A scrawl is sufficient.
Witnesses are not necessary.

Conveyance—Warranty Deed.

Know all men by these presents:
That I, A. B., of —— county, in the State of ——, have this —— day of ——, for and in consideration of the sum of —— dollars to me in hand paid * have granted, bargained, and sold, and by these presents do grant, bargain, sell and convey unto C. D., of —— county, in the State of ——, the following described tract or parcel of land, situate in the county of ——, in the State of ——, that is to say (*here follows the description*).
To have and to hold the premises hereby conveyed, with all the rights, privileges, and appurtenances thereto belonging or in anywise appertaining, unto the said C. D., his heirs and assigns, forever.
And I, the said A. B., hereby covenant to and with said C. D., his heirs and assigns, for myself, my heirs, executors, and administrators, to warrant and defend the title to the premises hereby conveyed against the claim of every person whomsoever * *
In witness whereof, I have hereunto subscribed my name and affixed my seal, this —— day of ——.
A. B. [*Seal.*]
For form of ACKNOWLEDGMENT, see that title.

Conveyance—Quit-Claim Deed.

Follow from the * : do remise, release, and forever quit-claim unto C. D., his heirs and assigns, the following described tract or parcel of land, situate in the county of ——, in the State of ——, that is to say (*here follows the description*).
In witness whereof, etc. (*as above*).

Conveyance—Special Warranty.

All that is necessary to convert the foregoing form into a special warranty deed is to add at the * * "Claiming by, through, or under the said A. B."

MONTANA.

Conveyances, etc., of any interest or estate in lands must be in writing, etc. See conveyances referred to below.
Acknowledgment. See that title, ante.
Corporations. See title ACKNOWLEDGMENT, ante.
Recording is necessary to the validity of a conveyance, etc., as against subsequent purchasers and mortgagees in good faith, for value and without notice.
See GENERAL FORMS, post.

NEBRASKA.

Conveyances, etc., of any estate or interest in real property must be in writing, etc. See forms referred to below.
Acknowledgment. See that title, ante.
Curtesy is barred by husband joining in wife's deed.
Dower is barred by wife joining in husband's deed.
Married women need not be separately examined.
Recording. Delivery for record to the county clerk for record or to the register of deeds in the county in which the lands lie is necessary to render a conveyance effectual against all creditors and subsequent purchasers in good faith, without notice.
Subscribing by the grantor is necessary.
Witnesses. At least one is necessary.
See KANSAS and OHIO FORMS, ante and post.

NEVADA.

Conveyances, etc., of any estate or interest in real estate must be in writing, etc. See forms referred to below.
Acknowledgments. See that title, ante.
Married women should be examined apart from their husbands.
Recording is necessary to render a conveyance valid as against subsequent purchasers in good faith, and for a valuable consideration when his conveyance is first recorded.
Seal. A scroll is sufficient.
See GENERAL FORMS and OHIO FORMS, post

NEW HAMPSHIRE.

Conveyances, etc., of any estate or interest in real property must be in writing, etc. See forms referred to below.
Acknowledgment. See that title, ante.
Married women. See title ACKNOWLEDGMENT ante.
Recording of any conveyance must be in the office of the register of deeds in the county wherein the real estate is situated in order to be valid against subsequent purchasers, mortgagees, etc.
Seals are necessary. A scroll is not sufficient.
Witnesses. Two are required.
See GENERAL FORMS and MASSACHUSETTS FORMS, post.

NEW JERSEY.

Conveyances are by the common law forms.
Acknowledgment. See that title, ante.
Dower is relinquished by wife's joining in the deed.
Heirs. This word is necessary to convey a fee simple.
Married women must be separately examined.
Recording must be within fifteen days after signing, sealing, and delivering, or they are void against subsequent *bona fide* purchasers or mortgagees without notice.
Seals are necessary. A scroll is not sufficient.
Witnesses. There should be at least one witness.

Ordinary Warranty Deed—Short Form.

This conveyance, made this —— day of ——, by A. B., of —— county, and State of ——, of the first part, to C. D., of —— county, and State of ——, of the second part, witnesseth:
That said party of the first part, for the consideration of —— dollars, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all that tract and parcel of land, situate in ——, in —— county, and State of ——, to wit: (*here follows the description*), together with the rights, members, privileges and appurtenances, and the reversions and remainders, rents, issues, and profits thereof.
To have and to hold the same unto said party of the second part, his heirs and assigns, to his and their only use, benefit, and behoof, forever.
And the said party of the first part does, for himself, his heirs, executors, and administrators, covenant with said party of the second part, his heirs and assigns, that * * at the sealing and delivery hereof he is the owner in fee simple of the said premises hereby granted or intended so to be; that the same are free and clear of all charges and incumbrances whatsoever, and that he and they the said premises unto said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the same, shall and will warrant and forever defend.
In witness whereof, said party of the first part has hereunto set his hand and seal, the day and year first above written. A. B. [L. S.]
Signed, sealed and delivered in presence of W. T.

Conveyance—Special Warranty.

Convert the above form into a special warranty deed by substituting for the matter following the * * "he has not done, or suffered to be done, anything whereby said premises hereby granted or intended so to be are or may be in any manner incumbered or charged; and that he and they the said premises unto said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the same, by, through, or under said parties of the first part (*or* either of them) shall and will warrant and forever defend.
In witness whereof, etc. (*as above*).

MECHANICS' LIEN LAW OF NEW JERSEY

OF THE LIEN.

Every building hereafter erected or built within this state shall be liable for the payment of any debt contracted and owing to any person for labor performed or materials furnished for the erection and construction thereof, which debt shall be a lien on such building, and on the land whereon it stands, including the lot or curtilage whereon the same is erected.

Whenever any building shall be erected in whole or in part by contract in writing, such building and the land whereon it stands shall be liable to the contractor alone for work done or materials furnished in pursuance of such contract; *provided*, said contract, or a duplicate thereof, together with the specifications accompanying the same, or a copy or copies thereof, be filed in the office of the clerk of the county in which such building is situate before such work done or materials furnished.

Whenever any master workman or contractor shall, upon demand, refuse to pay any person who may have furnished materials used in the erection of any such house or other building, or any journeyman or laborer employed by him in the erecting or constructing any building, the money or wages due to him, it shall be the duty of such journeyman, or laborer or materialman to give notice in writing to the owner or owners of such building of such refusal, and of the amount due to him or them and so demanded, and the owner or owners of such building shall thereupon be authorized to retain the amount so due and claimed by any such journeyman, laborer or materialman out of the amount owing by him or them on the contract, or that may thereafter become due from him or them on such contract for labor or materials used in the erection of such building, giving the master workman or contractor written notice of such notice and demand; and if the same be not paid or settled by said master workman or contractor, such owner or owners, on being satisfied of the correctness of said demand, shall pay the same, and the receipt of such journeyman, laborer or materialman for the same shall entitle such owner or owners to an allowance therefor in the settlement of accounts between him and such master workman or contractor, or his representatives or assigns, as so much paid on account.

When a notice or notices shall be served upon such owner or owners by any journeyman, laborer or materialman, under the provisions of this act, and notice thereof shall have been given by such owner or owners to the master workman or contractor, as required by said section, and said master workman or contractor shall, within five days after receiving the notice aforesaid, notify in writing the journeyman, laborer or person who has furnished materials that he disputes his or their claim, and requests him or them to establish the same by judgment, the owner shall not pay the claim until it is so established; *provided*, the master workman or contractor shall notify him in writing that he has given the aforesaid notice to said journeyman, laborer or materialman.

If the owner or owners of any building or other property which, by this act, is made the subject of liens for or toward the construction, altering, repair or improvement of which labor or services have been performed or materials furnished by contract, duly filed, shall, for the purpose of avoiding the provisions of this act, or in advance of the terms of such contract, pay any money or other valuable thing on such contract, and the amount still due to the contractor, after such payment has been made, shall be insufficient to satisfy the notices served in conformity with the provisions of this act, such owner or owners shall be liable in the same manner as if no such payments had been made.

In all cases journeymen or laborers shall have priority and preference over any employers of labor, contractors or materialmen for the payment of wages, without reference to the date when said journeymen or laborers shall have filed the lien or served the notices provided for in this act; laborers or materialmen giving notices in accordance with the provisions of the third section shall have priority and preference in the disposition of the moneys due and to grow due upon the contract over any persons claiming said moneys or any part thereof by reason of order or orders thereon or assignments thereof.

If any building be erected by a tenant or other person than the owner of the land, then only the building and the estate of such tenant or other person so erecting such building, shall be subject to the lien created by this act and the other provisions thereof, unless such building be erected by the consent of the owner of such lands in writing, which writing may be acknowledged or proved and recorded, as deeds are, and when so acknowledged or proved and recorded, the record thereof and copies of the same, duly certified, shall be evidence in like manner.

Any addition erected to a former building, and any fixed machinery for gearing, or other fixtures for manufacturing purposes, shall be considered a building for the purposes of this act.

The lien given by this act is hereby extended to all mills and manufactories, of whatever description, within this state.

The lien given by this act shall be and is hereby extended to all buildings of whatever description erected or to be erected in this state and the lots or curtilages whereon the same are erected, for all debts contracted by the owners thereof, or by any other person with the consent of the owner or owners in writing, for work done or materials furnished in and for the repairing or alteration of any such building; *provided*, however, that said lien shall not be valid against a bona fide purchaser or mortgagee before said lien is filed in the office of the clerk of the county in which said lot or curtilage is situate; and *provided further*, that work done or materials furnished under contract in and for such repairs or alterations shall be liable to the said contractor alone in the manner provided by this act.

The lien given by this act is hereby ex-

tended to all docks, wharves, and piers erected upon any navigable river in this state.

Every building or part or parts of any building which shall hereafter be removed, *shall, as provided, be subject to lien as given by this act.*

Any married woman, upon whose lands any building or buildings shall hereafter be erected or repaired, or whereon any fixtures shall be put, shall be taken as consenting to the same, and such building or buildings and curtilages whereon the same are erected shall be subject to the lien created by this act, *unless said married woman shall duly file with the clerk of the county court her protest against such construction or repairs.*

Nothing in this act shall make the lands of any person liable for any building or repairs not authorized by the owner, or built or done without the knowledge of the owner.

Whereas it is the practice of owners of lots or tracts of land to dispose of the same to a builder or builders, taking therefor a mortgage or mortgages in excess of the purchase money price of said lot or tract of land, the mortgagee agreeing to pay such excess to the aforesaid builders from time to time, as the building or buildings progress, such mortgages being known as advance money mortgages; therefore, in all such transactions the building or buildings so erected shall be liable for the payment of any debt contracted and owing to any person or persons for labor performed or materials furnished for the erection and construction thereof, which debt shall be a lien on such building or buildings and on the land whereon they stand, including the lot or curtilage whereon the same are erected, and the lien for labor performed or materials furnished for the erection and construction of any such building or buildings shall be a prior lien to the lien of any mortgage created on such building or buildings and lot or tract of ground to secure either in whole or in part any advances in money to be used in and about the construction of such building or buildings, but to the extent only of the moneys remaining to be advanced by the mortgagee under such agreement; *provided*, such mortgage shall be recorded or registered before the filing of any claim in pursuance of this act.

Every mortgage given or to be given upon lands in this state shall have priority over any claim that may be filed in pursuance of this act to the extent of the money actually advanced and paid by the mortgagee and applied to the erection of any new building upon the mortgaged lands or any alterations, repairs or additions to any building on said lands; *provided*, such mortgage be registered or recorded before the filing of any such claim.

Of the Claim.

Every person intending to claim a lien under the provisions of this act shall, within four months after the labor is performed or the materials furnished for which such lien is claimed, file his or her claim in the office of the clerk of the county where the building and land subject to such lien is situate, which claim shall contain:

A description of the building and of the lot or curtilage upon which the lien is claimed, and of its situation, sufficient to identify the same;

The name of the owner or owners of the land or of the estate therein on which the lien is claimed;

The name of the person who contracted the debt, or for whom, or at whose request the labor was performed or the materials furnished for which such lien is claimed, who shall be deemed the builder;

A bill of particulars exhibiting the amount and kind of labor performed and of materials furnished, and the price at which and times when the same was performed and furnished, and giving credit for all the payments made thereupon and deductions that ought to be made therefrom, and exhibiting the balance justly due to such claimant, which statement, when the work or materials or both are furnished by contract, need not state the particulars of such labor or materials further than by stating, generally, that certain work therein stated was done by contract at a price mentioned; and such bill of particulars and statements shall be verified by the oath of the claimant or his agent in said matter, setting forth that the same is for labor done or materials furnished in the erection of, addition to, repair of, or alteration in or of the building in such claim described, at the times therein specified, and that the amount as claimed therein is justly due; and when such claim shall not be filed in the manner or within the time aforesaid, or if the bill of particulars shall contain any willful or fraudulent misstatement of the matters above directed to be inserted therein, the building or lands shall be free from all lien for the matters in such claim.

No debt shall be a lien by virtue of this act, unless a lien claim is filed as hereinbefore provided, within four months from the date of the last work done or materials furnished for which such debt is due; nor shall any lien be enforced by virtue of this act, *except as in the manner provided*

Discharge of Land from Lien.

Such land and building may be discharged from any lien created by this act:

By payment and receipt therefor, given by such claimant, which, when the same is executed in the presence of, and is attested by any officer entitled to take the acknowledgment of the execution of a deed, or when acknowledged or proved before such officer, shall be filed by such clerk, and the words

"discharged by receipt" shall be entered by him in said lien docket, opposite the entry of said lien;

By paying to said county clerk the amount of said claim with interest and costs; which amount said clerk shall pay over to said claimant;

By the expiration of the time limited for issuing a summons on such lien claim, without any summons being issued, or without notice thereof endorsed on said claim;

By filing an affidavit that a notice from the owner to the claimant, requiring such claimant to commence suit to enforce such lien in thirty days from the service of such notice; and the lapse of thirty days after such service without such suit being commenced, or without any entry of the time of issuing such summons being made on such claim;

When it shall be made to appear by affidavit or otherwise, to the satisfaction of the justice of the supreme court holding the circuit court in the county wherein said lien is filed, that said lien has been duly paid and satisfied, and that the claimant under said lien, and his attorney, have died or removed from this state since the filing of said lien, and said lien still remains on record as unsatisfied, the judge of said court shall have power to forthwith order the clerk of said court to enter a discharge of said lien in said lien docket, opposite the entry of said lien.

A landowner desiring to contest a claim, and free his property from the lien, may pay to the county clerk the amount of such claim, with six months' interest, and $25 in addition thereto, with notice to said clerk not to pay over the same until such claim be established by suit; which sum shall be paid to such claimant upon his obtaining judgment against such property in the manner prescribed, and said claim shall be a lien on said money, and said building and lands shall be discharged therefrom, and no execution shall issue against the same by virtue of such judgment; but if such suit is not commenced within the time at which the said lands would be discharged by the provisions of this act without suit, or in case judgment be given therein without being against said lands, said sum shall be repaid to him by said clerk, and if judgment be given against such lands for an amount less than that so deposited, then the surplus shall be returned by said clerk to said landowner.

NEW MEXICO.

Conveyances, etc., of any estate or interest in lands must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Married women need not be examined separate and apart from their husbands.

Recording is necessary to render the conveyance valid against *bona fide* purchasers, mortgagees, etc.

Seals. A scroll is sufficient.

See GENERAL FORMS, post.

NEW YORK.

Conveyances take effect from the time of delivery, which must be attested.

THE law of New York has been materially changed so far as concerns the transfer and mortgage of property. The old common law forms are virtually abolished, and new and simplified ones substituted by the act of 1890, which is as follows. It will be seen to contain the necessary and proper forms:

AN ACT to provide for short forms of deeds and mortgages.

Approved by the Governor June 2, 1890. (Now the real property law of 1896.)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. In grants of freehold interests in real estate the following or similar covenants shall be construed as follows:

(1) A covenant that the grantor "is seized of the said premises (described) in fee simple, and has good right to convey the same," shall be construed as meaning that such grantor at the time of the execution and delivery of the conveyance is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

(2) A covenant that the grantee "shall quietly enjoy the said premises," shall be construed as meaning that such grantee, his heirs, successors and assigns shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

(3) A covenant "that the said premises are free from incumbrances" shall be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

(4) A covenant that the grantor will "execute, or procure any further necessary assurance of the title to said premises" shall be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges in the law of the grantee, his heirs, successors and assigns, make, do and execute or cause to be made, done and executed, all

and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors and assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law shall be reasonably advised or required.

(5) A covenant that the grantor "will forever warrant the title" to the said premises shall be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors and assigns, against the grantor and his heirs or successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

(6) A covenant that the grantor "has not done or suffered anything whereby the said premises have been incumbered in any way whatever," shall be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

§ 2. In any grant or mortgage of freehold interests in real estate, the words "together with the appurtenances and all the estate and rights of the grantor in and to said premises," shall be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower, and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

§ 3. In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," shall be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

§ 4. In mortgages of real estate and in bonds secured by such mortgages the following or similar covenants shall be construed as follows:

(1) The words, "And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of interest for —— days, or after default in the payment of any tax or assessment for —— days after notice and demand," shall be construed as meaning, and it is hereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof on any day whereon the same is made payable as above expressed, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of —— days, or such tax or assessment remain unpaid and in arrear for —— days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

(2) A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law," shall be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns the principal sum of money secured by said mortgage and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it

shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple (or otherwise, as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors, or assigns, which sale so to be made, shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises or any part thereof by, from or under him, them or any of them.

(3) A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," shall be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time, until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved of by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors, or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefore, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable.

(4) A covenant that the mortgagor "will execute any further necessary assurance of the title to said premises, and will forever warrant said title," shall be construed as meaning that the mortgagor shall and will make, execute, acknowledge, and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

§ 5. All covenants contained in any grant or mortgage of real estate shall bind the heirs, executors, successors, administrators and assigns of the grantor or mortgagor, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee, in the same manner and to the same extent, and with like effect, as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

§ 6. The schedules hereto annexed contain forms of instruments such as are authorized by this act, and shall be taken as a part thereof, but nothing herein contained shall invalidate or prevent the use of other forms.

§ 7. The register or county clerk of the county of New York and the county of Kings shall be entitled to charge for the recording of any instrument containing the above-mentioned covenants, or any of them at large, instead of the short forms thereof, in this act contained, the sum of five dollars in addition to the fee chargeable by law for such recording.

§ 8. All existing acts and parts of acts inconsistent with this act are repealed.

§ 9. This act shall take effect the first day of September, eighteen hundred and ninety.

SCHEDULE A.

Deed with Full Covenants.

THIS INDENTURE, made the —— day of ——, in the year eighteen hundred and —— between —— of (insert occupation and residence) of the first part, and —— of (insert occupation and residence) of the second part,

WITNESSETH, that the said party of the first part, in consideration of —— dollars, lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his

heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part doth covenant with said party of the second part as follows:

First.—That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same.

Second.—That the party of the second part shall quietly enjoy the said premises.

Third.—That the said premises are free from incumbrances.

Fourth.—That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth.—That the party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In the presence of:

SCHEDULE B.

Executor's Deed.

THIS INDENTURE, made the —— day of —— eighteen hundred and —— between —— as executor of the last will and testament of —— late of —— deceased, of the first part, and —— of —— of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of —— dollars, lawful money of the United States paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever

And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in way whatever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year first above written.

In the presence of:

SCHEDULE C.

Mortgage.

THIS INDENTURE, made the —— day of —— in the year eighteen hundred and —— between —— of —— party of the first part, and —— of ——, party of the second part

WHEREAS, the said —— is justly indebted to the said party of the second part in the sum of —— dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of —— dollars, on the —— day of —— eighteen hundred and ——, and the interest thereon, to be computed from —— at the rate of —— per centum per annum, and to be paid.

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

PROVIDED ALWAYS, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part covenants with the party of the second part as follows:

First.—That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described, according to law.

Second.—That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

Third.—And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for —— days after default in the payment of any tax or assessment for —— days, after notice and demand.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In the presence of:

Administration of Decedent's Estate.

Letters of administration and letters testamentary are issued by the surrogate. Administrators are required to give bond; executors are not required to give bond unless objection is made and the surrogate satisfied that his circumstances are such that they do not afford adequate security to the creditors or persons interested for the due administration of the estate, and where he is not a resident of the State. The testator may, by provision in his will, relieve a non-resident executor from giving bonds. Before letters of administration or testamentary are issued all heirs and legatees are cited by the surrogate to appear and object, if they desire. Citations are served personally or by publication.

Descent and Distribution of the Property of Decedents.

1. **Real estate.** Widow has common-law dower. Husband has courtesy in property of which wife dies seized. (See *Married Women.*) Real estate of intestate descends: 1. To lineal descendants: 2. To father; 3. To mother; 4. To collaterals. Descendants take shares of parents, except when all are of equal consanguinity, when all share alike.

2. **Personal estate.** After debts are paid, personal property is distributed: 1. One-third to the widow and the residue to children or their heirs or legal representatives; 2. If there are no children, one-half is given to the

widow and the other to the next of kin; 3. If there is no descendant, parent, brother, sister, nephew or niece, the widow takes all; 4. If there is no widow, the children and their representatives take all; 5. If there is no widow or children, all goes to the next of kin; posthumous children take as survivors; married women's personal estates are distributed as men's, the husband taking to the same extent as a widow.

LIEN LAW OF NEW YORK.

Mechanics' lien on real property.—A contractor, sub-contractor, laborer or materialman, who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof, or of his agent, contractor or sub-contractor, shall have a lien for the principal and interest of the value, or the agreed price, of such labor or materials upon the real property improved or to be improved and upon such improvement, from the time of filing a notice of such lien, as prescribed in this article.

Extent of lien.—Such lien shall extend to the owner's right, title or interest in the real property and improvements, existing at the time of filing the notice of lien. If an owner assigns his interest in such real property by a general assignment for the benefit of creditors, within thirty days prior to such filing, the lien shall extend to the interest thus assigned. If labor is performed for, or materials furnished to, a contractor or sub-contractor for an improvement, the lien shall not be for a sum greater than the sum earned and unpaid on the contract at the time of filing the notice of lien, and any sum subsequently earned thereon. In no case shall the owner be liable to pay by reason of all liens created pursuant to this article a sum greater than the value or agreed price of the labor and materials remaining unpaid, at the time of filing notices of such liens, except as hereinafter provided.

Liens under contracts for public improvements.—A person performing labor for or furnishing materials to a contractor, his sub-contractor or legal representative, for the construction of a public improvement pursuant to a contract by such contractor with the state or a municipal corporation, shall have a lien for the principal and interest of the value or agreed price of such labor or materials upon the moneys of such corporation applicable to the construction of such improvement, to the extent of the amount due or to become due on such contract, upon filing a notice of lien as prescribed in this article.

Liens for labor on railroads.—Any person who shall hereafter perform any labor for a railroad corporation shall have a lien for the value of such labor upon the railroad track, rolling stock and appurtenances of such railroad corporation and upon the land upon which such railroad track and appurtenances are situated, by filing a notice of such lien in the office of the clerk of any county wherein any part of such railroad is situated, to the extent of the right, title and interest of such corporation in such property, existing at the time of such filing. The lien must be properly filed.

Liability of owner for advance payments, collusive mortgages and incumbrances.—Any payment by the owner to a contractor upon a contract for the improvement of real property, made prior to the time when, by the terms of the contract, such payment becomes due, for the purpose of avoiding the provisions of this article, shall be of no effect as against the lien of a sub-contractor, laborer or materialman under such contract, created before such payment actually becomes due.

Terms of contract may be demanded.—A statement of the terms of a contract pursuant to which an improvement of real property is being made, and of the amount due or to become due thereon, shall be furnished upon demand, by the owner, or his duly authorized agent, to a sub-contractor, laborer or materialman performing labor for or furnishing materials to a contractor, his agent or sub-contractor, under such contract.

Contents of notice of lien.—The notice of lien shall state:

1. The name and residence of the lienor.
2. The name of the owner of the real property against whose interest therein a lien is claimed, and the interest of the owner as far as known to the lienor.
3. The name of the person by whom the lienor was employed, or to whom he furnished or is to furnish materials; or, if the lienor is a contractor or sub-contractor, the person with whom the contract was made.
4. The labor performed or to be performed, or materials furnished or to be furnished and the agreed price or value thereof.
5. The amount unpaid to the lienor for such labor or materials.
6. The time when the first and last items of work were performed and materials were furnished.
7. The property subject to the lien, with a description thereof sufficient for identification; and if in a city or village, its location by street and number, if known. A failure to state the name of the true owner or contractor, or a misdescription of the true owner, shall not affect the validity of the lien. The notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Filing of notice.—The notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or within ninety days after the completion of the contract, or the final performance of the work,

or the final furnishing of the materials, dating from the last item of work performed or materials furnished. The notice of lien must be filed in the clerk's office of the county where the property is situated. If such property is situated in two or more counties, the notice of lien shall be filed in the office of the clerk of each of such counties.

Service of copy of notice.—At any time after filing the notice of lien, the lienor may serve a copy of such notice upon the owner, by delivering the same to him personally, or if the owner cannot be found, to his agent or attorney, or by leaving it at his last known place of residence in the city or town in which the real property or some part thereof is situated, with a person of suitable age and discretion, or by registered letter addressed to his last known place of residence, or, if such owner has no such residence in such city or town, or cannot be found, and he has no agent or attorney, by affixing a copy thereof conspicuously on such property, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon.

Notice of lien on account of public improvements.—At any time before the construction of a public improvement is completed and accepted by the municipal corporation, and within thirty days after such completion and acceptance, a person performing work for or furnishing materials to a contractor, his sub-contractor, assignee or legal representative, may file a notice of lien with the head of the department or bureau having charge of such construction and with the financial officer of the municipal corporation, or other officer or person charged with the custody and disbursements of the corporate funds applicable to the contract under which the claim is made. To be valid the notice shall contain certain required information.

Priority of liens.—A lien for materials furnished or labor performed in the improvement of real property shall have priority over a conveyance, judgment or other claim against such property not recorded, docketed or filed at the time of filing the notice of such lien; over advances made upon any mortgage or other incumbrance thereon after such filing; and over the claim of a creditor who has not furnished materials or performed labor upon such property, if such property has been assigned by the owner by a general assignment for the benefit of creditors, within thirty days before the filing of such notice. Such liens shall also have priority over other advances under certain conditions. Persons standing in equal degrees as co-laborers or materialmen shall have priority according to the date of filing their respective liens; but in all cases laborers for daily or weekly wages shall have preference over all other claimants under this article, without reference to the time when such laborers shall have filed their notices of liens.

Assignment of lien.—A lien properly filed may be assigned by a written instrument signed and acknowledged by the lienor, at any time before the discharge thereof. To be valid the filing of the lien must conform to certain requirements.

Assignments of contracts and orders to be filed.—No assignment of a contract for the performance of labor or the furnishing of materials for the improvement of real property or of the money or any part thereof due or to become due therefor, nor an order drawn by a contractor or sub-contractor upon the owner of such real property for the payment of such money, shall be valid until the contract, or a statement containing the substance thereof and such assignment or a copy of each or a copy of such order, be filed in the office of the county clerk of the county wherein the real property improved or to be improved is situated, and such contract, assignment or order shall have effect and be enforceable from the time of such filing.

Duration of lien.—No lien specified in this article shall be a lien for a longer period than one year after the notice of lien has been filed, unless within that time an action is commenced to foreclose the lien, and a notice of the pendency of such action, whether in a court of record or in a court not of record, is filed with the county clerk of the county in which the notice of lien is filed, containing the names of the parties to the action, the object of the action, a brief description of the real property affected thereby, and the time of filing the notice of lien; or unless an order be granted within one year from the filing of such notice by a court of record, continuing such lien, and such lien shall be redocketed as of the date of granting such order and a statement made that such lien is continued by virtue of such order. For the lien to continue valid certain subsequent requirements must be complied with.

Duration of lien under contract for a public improvement.—If the lien is for labor done or materials furnished for a public improvement, it shall not continue for a longer period than three months from the time of filing the notice of such lien, unless an action is commenced to foreclose such lien within that time, and a notice of the pendency of such action is filed with the financial officer of the municipal corporation, with whom the notice of lien was filed.

Discharge of lien generally.—A lien other than a lien for labor performed or materials furnished for a public improvement specified in this article may be discharged as follows:

1. By the certificate of the lienor, duly acknowledged or proved and filed in the office where the notice of lien is filed, stating that the lien is satisfied and may be discharged.

2. By failure to begin an action to foreclose such lien or to secure an order continuing it,

within one year from the time of filing the notice of lien.

3. By order of the court vacating or cancelling such lien of record, for neglect of the lienor to prosecute the same, granted pursuant to the code of civil procedure.

4. Either before or after the beginning of an action by the owner executing an undertaking with two or more sufficient sureties, who shall be freeholders, to the clerk of the county where the premises are situated. The undertaking shall be in accordauce with certain requirements.

Discharge of lien by payment of money into court.—A lien specified in this article, other than a lien for performing labor or furnishing materials for a public improvement, may be discharged, at any time before an action is commenced to foreclose such lien, by depositing with the county clerk, in whose office the notice of lien is filed, a sum of money equal to the amount claimed in such notice, with interest to the time of such deposit. After such action is commenced the lien may be discharged by a payment into court of such sum of money, as, in the judgment of the court or a judge or justice thereof, after at least five days' notice to all the parties to the action, will be sufficient to pay any judgment which may be recovered in such action. Upon any such payment, the county clerk shall forthwith enter upon the lien docket and against the lien for the discharge of which such moneys were paid, the words "discharged by payment." This deposit money shall be refunded after the lien has been discharged pursuant to law.

Discharge of lien for public improvement.—A lien against the amount due or to become due a contractor from a municipal corporation for the construction of a public improvement may be discharged as follows:

1. By filing a certificate of the lienor or his successor in interest, duly acknowledged and proved, stating that the lien is discharged.

2. By lapse of time, when three months have elapsed since filing the notice of lien, and no action has been commenced to enforce the lien.

3. By satisfaction of a judgment rendered in an action to enforce the lien.

4. By the contractor depositing with the financial officer of the municipal corporation, or the officer or person with whom the notice of lien is filed, such a sum of money as is directed by a justice of the supreme court, which shall not be less than the amount claimed by the lienor, with interest thereon for the term of one year from the time of making such deposit, and such additional amount as the justice deems sufficient to cover all costs and expenses. The amount so deposited shall remain with such financial officer or other officer or person until the lien is discharged as prescribed in subdivisions one, two or three of this section.

Building loan contract.—A contract for the sale of land with a building loan and any modification thereof must be in writing, and within ten days after its execution be filed in the office of the clerk of the county in which any part of the land is situated. If not so filed, the interest of each party to such contract in the real property affected thereby is subject to the lien and claim of a person who shall thereafter file a notice of lien under this chapter. A modification of such contract shall not affect or impair the right or interest of a person, who, previous to the filing of such modification, had furnished or contracted to furnish materials, or had performed or contracted to perform labor for the improvement of the real property, but such right or interest shall be determined by the original contract.

Construction of article.—This article is to be construed liberally to secure the beneficial interests and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same.

Enforcement of mechanics' liens.—The mechanics' liens specified in this article may be enforced against the property specified in the notice of lien and which is subject thereto and against any person liable for the debt upon which the lien is founded. The code of civil procedure regulates and provides for such enforcement.

Liens on monuments, gravestones and cemetery structures.—A person furnishing or placing in a cemetery or burial ground a monument, gravestone, inclosure or other structure, has a lien thereon for the agreed price thereof or the part remaining unpaid, with interest from the time the amount was due, upon filing with the superintendent or person in charge of such cemetery or burial ground a notice of lien as provided by law.

Lien for labor performed in quarrying, dressing and cutting stone.—A person employed in a quarry, yard or dock at excavating, quarrying, dressing or cutting sandstone, granite, bluestone, or marble, may have a lien upon such sandstone, granite, bluestone or marble, for the amount due for the labor expended thereon, upon filing a notice of lien in the office where a chattel mortgage upon such sandstone, granite, bluestone or marble is required to be filed, as provided in this chapter. Such notice must be filed within thirty days after the completion of such labor, and must state amount due, and name and residence of lienor, and of person for whom labor was performed.

Duration and effect of lien.—Such lien shall terminate unless an action is brought to enforce the same within three months after the date of filing such notice, as provided in the code of civil procedure for the enforcement of a lien upon a chattel. If the labor on such sandstone, granite, bluestone or marble is per-

formed for a contractor under a contract with the owner of such quarry, yard or dock, the owner shall not be liable to pay by reason of all the liens filed against such quarry, yard or dock a greater sum than the amount unpaid upon such contract at the time of filing such notices, or in case there is no contract, then the aggregate amount unpaid of the value of labor and services performed, pursuant to the preceding section. The lien created by this article shall not attach to any material which shall have become a part of any building or structure, or ceased to be the property of the person for whom such labor was performed.

Discharge of lien.—Such lien may be discharged by a payment of the amount due thereon, by a failure to bring an action to enforce the same within the time prescribed in the preceding section, by the written consent of the lienor, duly acknowledged and filed with the proper officer, to the effect that such lien may be discharged, and by the owner of such sandstone, granite, bluestone or marble filing with such officer an undertaking in an amount equal to twice the sum specified in the notice of lien, executed by one or more sureties, who shall justify in such amount and approved by the officer with whom the notice of lien is filed, conditioned for the payment of the sum due such lienor by reason of such lien, and the costs and expenses of enforcing same.

Artisans' lien on personal property.—A person who makes, alters, repairs or in any way enhances the value of an article of personal property, at the request or with the consent of the owner, has a lien on such article, while lawfully in possession thereof, for his reasonable charges for the work done and materials furnished, and may retain possession thereof until such charges are paid.

Liens of hotel, inn, boarding and lodging house keepers.—A keeper of a hotel, inn, boarding house or lodging house, except an emigrant lodging house, has a lien upon, while in possession, and may detain the baggage and other property brought upon their premises by a guest, boarder or lodger, for the proper charges due from him, on account of his accommodation, board and lodging, and such extras as are furnished at his request. If the keeper of such hotel, inn, boarding or lodging house knew that the property so brought upon his premises was not, when brought, legally in possession of such guest, boarder or lodger, a lien thereon does not exist.

Factors' lien on merchandise.—A person, in whose name any merchandise shall be shipped, is deemed the true owner thereof so far as to entitle the consignee of such merchandise to a lien thereon.

1. For any money advanced or negotiable security given by such consignee, to or for the use of the person in whose name such shipment is made:

2. For any money or negotiable security received by the person in whose name such shipment is made, to or for the use of such consignee.

Such lien does not exist where the consignee has notice, by the bill of lading or otherwise, when or before money is advanced or security is given by him, or when or before such money or security is received by the person in whose name the shipment is made, that such person is not the actual and bona fide owner thereof.

Warehouse liens.—A warehouse company, warehouseman or other person lawfully engaged in the business of storing goods, wares and merchandise for hire has a lien on goods deposited and stored with him for his storage charges, and for moneys advanced by him for cartage, labor, weighing and coopering in relation to such goods, or other goods belonging to the same owner; and he may detain such goods until his lien is paid.

Lien of bailee of animals.—A person keeping a livery stable, or boarding stable, for animals, or pasturing or boarding one or more animals, has a lien dependent upon possession upon each animal kept, pastured or boarded by him under an agreement with the owner thereof, whether such owner be a mortgagor remaining in possession or otherwise, for the sum due him for the care, keeping, boarding or pasture of the animal under the agreement, and may detain the animal accordingly until such sum is paid.

Sale of personal property to satisfy a lien.—A lien against personal property, other than a mortgage on chattels, if in the legal possession of the lienor, may be satisfied by the public sale of such property according to the provisions of law.

NORTH CAROLINA.

Conveyances, etc., of any estate or interest in real property, must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Dower. Separate examination of wife is necessary to her dower.

Married woman must be examined separately from her husband in all deeds executed with him. She must acknowledge her signature before she is privily examined. She cannot convey her separate property without her husband joins in the conveyance or gives his written consent thereto.

Recording is necessary in order to render the conveyance valid against *bona fide* subsequent purchasers, mortgagees, etc.

Seals. A scroll is sufficient.

See SOUTH CAROLINA, and GENERAL FORMS, post.

OHIO.

Conveyances of estate or any interest in real estate must be in writing, etc. See forms below.

Acknowledgment. See that title, ante.

Dower is barred by wife joining in the deed with her husband.

Married Women need not be examined separate and apart from their husbands. Husbands need not join in conveyance of wife's property, and *vice versa*, unless relinquishment of dower is sought.

Recording must be in the office of the recorder of deeds of the county in which the lands conveyed are situated. The filing takes effect in the order of presentment to the recorder for record. Such instruments,

and all other instruments in writing, conveying or incumbering lands, tenements or hereditaments, until so filed for record, are deemed fraudulent as to a subsequent *bona fide* purchaser, having, at the time of purchase, no knowledge of the existence of former instrument.

Seals. All private seals are abolished. The act does not, however, affect corporate seals.

Witnesses. The grantor's signature and acknowledgment must be in presence of two witnesses who must sign their names.

Warranty Deed—With Dower.

KNOW ALL MEN BY THESE PRESENTS: That ——, in consideration of —— to —— paid by ——,the receipt whereof is hereby acknowledged, do— hereby BARGAIN, SELL and CONVEY to the said ——, —— heirs and assigns forever, the following real estate, viz.: ——, together with the privileges and appurtenances to the same belonging. TO HAVE AND TO HOLD the same to the said ——, —— heirs and assigns forever —— hereby covenanting that the title so conveyed is clear, free and unincumbered, and that —— will warrant and defend the same against all claims whatsoever.

And ——, wi— of the said ——, in consideration of one dollar to —— paid, do remise, release and forever quit-claim unto the said grantee, all —— right by way of dower or otherwise, in and to the above granted premises.

IN WITNESS WHEREOF, The said ——, hereunto set —— hand— this —— day of ——, in the year Eighteen Hundred and Ninety ——.

Signed and delivered in the presence of
(*2 witnesses.*)

For form of ACKNOWLEDGMENT, see that title.

The warranty deed *without dower* is the same as the above, omitting the clause releasing dower.

Special Warranty Deed—With Release of Dower.

KNOW ALL MEN BY THESE PRESENTS: That —— in consideration of —— to —— paid by ——, the receipt whereof is hereby acknowledged, do— hereby GRANT, BARGAIN, SELL and CONVEY to the said ——, —— heirs and assigns forever, the following real estate, viz.: —— and all the ESTATE, TITLE AND INTEREST of the said ——, either in law or in equity, of, in and to the said premises; TOGETHER with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; TO HAVE AND TO HOLD the same to the only proper use of the said ——, —— heirs and assigns forever.

And the said —— for —— and —— heirs, do HEREBY COVENANT with ——, —— heirs and assigns, that the said premises are free and clear from all incumbrances by, from, through or under the said grantor—, and that —— will forever WARRANT and DEFEND the same, with the appurtenances, unto the said ——, —— heirs and assigns, against the lawful claims of all persons, claiming by, from, through or under the grantor— herein.

IN WITNESS WHEREOF, The said —— hereby release —— right and expectancy of DOWER in the said premises, ha— hereunto set —— hand— this —— day of ——, in the year of our Lord One Thousand Eight Hundred and Ninety ——.

Signed and acknowledged
in presence of
(*2 witnesses.*)

For form of ACKNOWLEDGMENT, see that title

Warranty Deed by Attorney.

KNOW ALL MEN BY THESE PRESENTS: That ——, by ——, —— attorney in fact, in consideration of —— to —— paid by ——, the receipt whereof is hereby acknowledged, does hereby BARGAIN, SELL and CONVEY to the said ——, —— heirs and assigns, the following real estate, viz.: ——, together with the privileges and appurtenances to the same belonging.

TO HAVE AND TO HOLD the same to the said ——, —— heirs and assigns forever, —— hereby covenanting that the title so conveyed is clear, free and unincumbered, and that —— will WARRANT and DEFEND the same against all other claims whatsoever.

IN WITNESS WHEREOF, the said ——, by ——, —— attorney in fact, hereunto set —— hand— this —— day of ——, in the year of our Lord One Thousand Eight Hundred and Ninety ——.

Signed and acknowledged in presence of
(*2 witnesses.*)

By ——
—— attorney in fact.

Quit-Claim Deed.

KNOW ALL MEN BY THESE PRESENTS: That ——, of ——, the grantor—, in consideration of ——, to —— paid by ——, of ——, the grantee, the receipt whereof is hereby acknowledged, do— hereby REMISE, RELEASE, and forever QUIT-CLAIM unto said grantee—, and to —— heirs and assigns forever, all the following described real property, situate in the county of ——, and State of Ohio, to wit: ——, together with all the privileges and appurtenances thereunto belonging.

TO HAVE AND TO HOLD the same unto the said grantee—, and to —— heirs and assigns forever.

IN WITNESS WHEREOF, the said —— ha— hereunto set —— hand—, this —— day of ——, in the year Eighteen Hundred and Ninety ——.

Signed and acknowledged
in presence of
(*2 witnesses.*)

OKLAHOMA.

All males of 21, females of 18, and legally married persons, and all corporations to the extent authorized by law, may take title, hold, mortgage and convey real estate.

Witnesses to execution not necessary.

For **acknowledgment**, see that title, *ante*.

Instruments must be in writing, and if a homestead, husband and wife must join in the execution.

Husband or wife may convey other than homestead without the other joining.

All conveyances must be recorded as against third parties.

Every estate in land conveyed by deed shall be deemed a fee simple, unlesss limited.

Dower and courtesy are abolished.

The following may be accepted as a statutory form of deed:

KNOW ALL MEN BY THESE PRESENTS: That ——, party of first part, in consideration of the sum of $——, in hand paid, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL and CONVEY unto —— the following described real property and premises, situate in —— county, Territory (State) of Oklahoma, to wit: —— ——, together with all the improvements thereon, and the appurtenances thereto belonging, and warrant the title to the same.

TO HAVE AND TO HOLD said premises unto the said ——, party of second part, —— heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature. Signed and delivered this —— day of ——, 19—.

OREGON.

Conveyances, etc., of real estate, or any interest therein, must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Married women need not be separately examined.

Recording must be within five days after the execution of the conveyance to be valid against subsequent purchasers, etc., in good faith for value and without notice, whose conveyance shall be first duly recorded

Seals. A scroll is sufficient.

PENNSYLVANIA.

Conveyances, etc., are by the forms of the common law.

Acknowledgment. See that title, ante.

Dower is relinquished and barred by the wife joining in the conveyance.

Married women must be examined separately.

Recording in the office of the recorder of deeds in the county where the lands lie, and within ninety days after execution, is necessary, except when executed out of the State, when recording must be done within six months.

Seals. A scroll is sufficient.

Witnesses are not necessary, though one or more is usual.

Conveyance—Warranty Deed.

This conveyance (*or* indenture), made the —— day of ——, in the year of our Lord ——, between A. B., etc., of the one part, and C. D., etc., of the other part, witnesseth:

That the said party of the first part, in consideration of the sum of ——dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, and confirm to the said party of the second part, his heirs and assigns (*here describe the property, and add as follows*), together with all and singular the minerals, woods, underwoods, timber (*and whatever, else*), waters, water-courses, ways, houses, fences, improvements, rights, liberties, members, hereditaments, and appurtenances thereunto belonging or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, benefit, property, claim, and demand whatsoever, in law or equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof.

To have and to hold the said —— to the said party of the second part, his heirs and assigns, to the only proper use and behoof of the said party of the second part, his heirs and assigns, forever.

And the said A. B., for himself, his heirs, executors, and administrators, does covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he, the said A. B., and his heirs, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said A. B., and his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, —— shall and will warrant and forever defend.

In witness whereof, etc.

Conveyance—Warranty Deed.

This conveyance (*or* indenture), made the —— day of ——, in the year of our Lord ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That the said A. B., for and in consideration of the sum of —— dollars, lawful money of the United States of America, unto him well and truly paid by the said C. D., at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, and confirm unto the said C. D., his heirs and assigns (*describe property, and add as follows*), together with all and singular buildings, improvements, etc., ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsover thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said A. B., in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

To have and to hold the said real estate, buildings, improvements, hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said C. D., his heirs and assigns, to and for the only proper use and behoof of the said C. D., his heirs and assigns, forever.

And the said A. B., his heirs, executors, and administrators, does by these presents covenant, grant, and agree to and with the said C. D., his heirs and assigns, that he, the said A. B., and his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said C. D., his heirs and assigns, against him, the said A. B., and his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof (*here insert clause for special warranty, when desired*), shall and will warrant and forever defend.

In witness whereof,

Conveyance—General (and Special) Warranty Deed.

This conveyance (*or* indenture), made the —— day of ——, in the year of our Lord ——, between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, his heirs and assigns, all (*description of the property*), together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, both in law and equity, of the said party of the first part, of, in, and to the said premises, with the appurtenances.

To have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever.

And the said A. B., for himself, his heirs, executors, and administrators does by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he, the said A. B., his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said A. B., his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof ("by, from, or under them, or any of them." *These words convert this general warranty deed into a special warranty deed*), shall and will warrant and forever defend.

In witness whereof, etc.

Conveyance—Sheriff's Deed.

On Fieri Facias.

S. F., esquire, high sheriff of —— county, in the commonwealth of Pennsylvania, to all to whom these presents shall come, greeting:

Whereas, by virtue of a writ of fieri facias, bearing test the —— day of ——, A. D. ——, I was commanded that of the goods and chattels, lands and tenements of A. B., late of —— county, —— in my bailiwick, I should cause to be levied and made as well a certain debt of —— dollars, law-

ful money of the United States, with interest from the — — day of ——, A. D. ——, which C. D., late in our —— court, before our judges at ——, recovered against him, as also —— dollars like money, which to the said plaintiff in our said court were in like manner adjudged for his damages which he sustained by occasion of the detention of that debt whereof the said defendant was convict as appears of record. And that I should have that money before our judges at ——, at our —— court there to be held for said —— county, on the —— Monday of —— next, to render to the said plaintiff for his debt and damages.

And whereas, the defendant having no personal property out of which to make the above moneys, in pursuance whereof and by virtue of said writ, I levied on (*here describe the property*).

And whereas, the defendant having, by writing filed, waived his right of inquisition, and agreed that the above described property should be sold on the said fieri facias; and thereupon, in pursuance of the said writ, I, the said sheriff, having given due and legal notice of the time and place of sale by advertisements in the public newspapers, and by handbills set up on the premises, and in the most public places in my bailiwick, did, on ——, the —— day of ——, A. D. ——, expose the said premises above described, with the appurtenances, to sale by public vendue or outcry, and sold the same to E. F., of ——, for —— dollars, he being the highest and best bidder, and that the highest and best price bidden for the same.

Now know ye, that I, the said S. F., esquire, high sheriff aforesaid, for and in consideration of the aforesaid sum of —— dollars, to me in hand paid by the said E. F., at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents, according to the directions of the said writ, and by force and virtue thereof, and the constitution and laws of this commonwealth in such case made and provided, do grant, bargain, and sell unto the said E. F., his heirs and assigns, all that land, messuage, improvements, etc., and being as hereinbefore particularly described; together with all and singular the improvements, their rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof:

To have and to hold all and singular the hereditaments and premises hereby granted, with the appurtenances, unto the said E. F., his heirs and assigns, to and for their only proper use and behoof forever, according to the form, force, and effect of the laws and usages of this commonwealth in such case made and provided.

In witness whereof, I, the said sheriff, have hereunto set my hand, and affixed my seal, the —— day of ——, in the year of our Lord ——.

S. F., *Sheriff of —— county.* [SEAL.]

Sealed and delivered in the presence of us, }

Conveyance—Sheriff's Deed.

On Levari Facias.

S. F., esquire, high sheriff of —— county, in the commonwealth of Pennsylvania, to all to whom these presents shall come, greeting:

Whereas, by a certain writ of —— levari facias, issued out of the —— court, tested at ——, the —— day of ——, in the year of our Lord ——, I, the said sheriff, was commanded —— that without any other writ, of the lands and tenements of A. B., etc. (*here follows the recitals and description, and adding the following*):

Together with the hereditaments and appurtenances in my bailiwick, I should cause to be levied as well a certain debt of —— dollars, lawful money of Pennsylvania, with the lawful interest thereof, from the —— day of ——, as also —— dollars like money for costs, which said debt, with interest and costs aforesaid, —— lately in the —— court, before the judges at ——, to wit, on the —— day of ——, by the consideration of the same court recovered to be levied of the same premises, with the appurtenances, by the default of the said A. B., in not paying the said sum of ——, with the lawful interest thereof, at the day and time when the same ought to have been paid, according to the form and effect of an act of Assembly of the State of Pennsylvania, in such case made and provided, and that I should have those moneys before the judges at ——, at the —— court, there to be held the —— of —— next, to render to the said C. D. for the debt, interest, and damages aforesaid, whereof the aforesaid A. B. is convict as appears of record, etc., and that I should have then there that writ.

And thereupon, in pursuance of the said writ, I, the said sheriff, having given due and legal notice of the time and place of sale by advertisements in the public newspapers, and by handbills set up on the premises, and in the most public places in my bailiwick, did, on ——, the —— day of ——, expose the said premises above described, with the appurtenances, to sale by public vendue or outcry, and sell the same to E. F., for the sum of —— dollars, he being the highest and best bidder, and that the highest and best price bidden for the same.

Now know ye, that I, the said S. F., esquire, high sheriff aforesaid, for and in consideration of the aforesaid sum of ——, to me in hand paid by the said E. F., at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents, according to the directions of the said writ, and by force and virtue thereof, and the constitution and laws of this commonwealth in such case made and provided, do grant, bargain, and sell unto the said C. D., his heirs and assigns, all that the said messuage, etc., and being as hereinbefore particularly described; together with all and singular the buildings, improvements, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or inanywise appertaining, and the reversions, remainders, rents, issues, and profits thereof:

To have and to hold all and singular the hereditaments and premises hereby granted, with the appurtenances, unto the said E. F., and assigns, to and for ——, their only proper use and behoof forever, etc., according to the form, force, and effect of the laws and usages of this commonwealth in such case made and provided.

In witness whereof, I, the said sheriff, have hereunto set my hand, and affixed my seal, the —— day of ——, in the year of our Lord ——.

S. F., *sheriff of —— county.* [SEAL.]

Sealed and delivered in the presence of us, }

Conveyance—Sheriff's Deed.

On Venditioni Exponas.

S. F., esquire, high sheriff of —— county, in the Commonwealth of Pennsylvania, to all to whom these presents shall come, greeting:

Whereas (*here insert recitals and description of property, adding as follows*): which remained in my hands unsold for want of buyers, and therefore I could not have the money in the said writ mentioned at the day and place in the said writ specified as therein I was commanded, and that the residue of the execution of said writ appeared in a certain schedule or inquisition thereunto annexed, by which schedule and inquisition it was found that the rents, issues and profits of the above described property in my said return upon the said writ thereunto annexed mentioned were not of a clear yearly value beyond all reprizes, sufficient within the space of seven years to satisfy the debt and damages in the said writ mentioned.

And whereas, by a certain writ of —— venditioni exponas, to me, the said sheriff, directed, tested at ——, the —— day of ——, I was commanded that the premises above described, with the appurtenances, I should expose to sale, and that I should have that money before the —— day of ——, at ——, at ——, there to be held the —— of —— next, to render to the said debt and damages aforesaid. In pursuance whereof, I, the said sheriff, having given due and legal notice of the time and place of sale by advertisements in the public newspapers, and by handbills set up

on the premises, and in the most public places in my bailiwick, did, on ——, the —— day of ——, expose the said premises above described, with the appurtenances, to sale by public vendue or outcry, and sold the same to E. F., of ——, for the sum of —— dollars, he being the highest and best bidder, and that the highest and best price bidden for the same.

Now know ye, that I, the said S. F., esquire, high sheriff aforesaid, for and in consideration of the aforesaid sum of —— dollars, to me in hand paid by the said E. F., at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents, according to the directions of the said writ, and by force and virtue thereof, and the constitution and laws of this commonwealth in such case made and provided, do grant, bargain, and sell unto the said E. F., his heirs and assigns, all that the said messuage, etc., and being as hereinbefore particularly described; together with all and singular the buildings, improvements, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof:

To have and to hold all and singular the hereditaments and premises hereby granted, with the appurtenances, unto the said E. F., and assigns, to and for ——, their only proper use and behoof forever, —— according to the form, force, and effect of the laws and usages of this commonwealth in such case made and provided.

In witness whereof, I, the said sheriff, have hereunto set my hand, and affixed my seal, the —— day of ——, in the year of our Lord ——.

S. F., [SEAL.]
Sheriff of —— county.

Sealed and delivered
in the presence of us,

RHODE ISLAND.

Conveyances of any estate of inheritance or freehold for a term exceeding one year must be by deed, in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Corporations have no prescribed form. The president or treasurer affixes the corporate seal, signs his name, and adds his official title, and so acknowledges its execution.

Dower is relinquished and barred by the wife joining in the conveyance.

Married women must be examined separately. They must be joined in conveyance of their lands by their husbands, and *vice versa*.

Recording must be in the office of the clerk of the town or city where the lands are situated. If the estate is in the city of Providence the conveyance must be recorded in the office of the recorder of deeds in said city.

Seals must be of some adhesive substance, as wax, wafers, adhesive paper, etc.

Witnesses are not necessary, one is customary.

See GENERAL FORMS, post.

SOUTH CAROLINA.

Conveyances of real estate or any interest therein must be in writing, etc.

Acknowledgment. See that title, ante.

Dower. If grantor is married, the wife's dower must be renounced on the deed or paper attached, in the form below.

Married women may hold property separate from their husbands, and convey or alien the same as if unmarried.

Recording. Deeds must be recorded in the office of the registrar of mesne conveyances within forty days after execution; if recorded thereafter they take precedence only of subsequent conveyances not recorded.

Seals. A scroll is sufficient.

Signature of the grantor must be in the presence of two witnesses, who must subscribe their names in attestation thereof.

See GENERAL FORMS, post.

Conveyance—Warranty Deed.

Statutory Form.[a]

State of South Carolina:
Know all men by these presents:

That I, A. B., of ——, in the State aforesaid, in consideration of ——, to me paid by C. D., in the State aforesaid, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto said C. D. all that (*here describe the land*), together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appurtenant.

To have and to hold all and singular the premises before mentioned unto the said C. D., his heirs and assigns, forever.

And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal, this —— day of ——, in the year of our Lord ——, in the —— year of the independence of the United States of America. A. B. [SEAL.]

Signed, sealed, and delivered
in presence of W. T., N. S.

Proof as above. *See* acknowledgment.

TENNESSEE.

Conveyances of real estate or any interest therein must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Dower is relinquished and barred by the wife's joining in the conveyance.

Married women must be separately examined. They must be joined by their husbands in the conveyance of their real estate, and join the husband in the conveyance of his or of their joint realty.

Recording must be in the office of the register of deeds of the county wherein the land is situate in order to affect subsequent *bona fide* purchasers, etc., without notice.

Seals. A scroll with the word seal written after the signature is sufficient.[a]

See GENERAL FORMS, post.

TEXAS.

Conveyances of any estate or interest in real property need no technical words to convey a fee simple; and where the instrument purports to pass a greater interest than the grantor possesses it alienates only such interest as he possesses.[b]

Acknowledgment. See that title, ante.

Married women must be examined separately.

Recording is necessary to affect subsequent *bona fide* purchasers and creditors without notice or reasonable information.

Seals are not necessary, except to instruments executed by corporations.

Witnesses to grantor's signature not necessary, when instrument is acknowledged before authorized officer, but when not, then two witnesses are necessary, who must sign at request of grantor.

See GENERAL FORMS, post.
Use SOUTH CAROLINA FORM.[c]

UTAH.

Conveyance includes every instrument in writing by which real estate or any interest therein is created, aliened, mortgaged or assigned, except wills, and leases not exceeding a term of one year.

Acknowledgment. See that title, ante.

Dower is a third in fee simple.

Married women contract as if sole, but must join husband in the conveyance of the homestead.

Recording in the office of the recorder of deeds of the county where the lands are situated is necessary.

Seals. No seals are necessary.

Witnesses. One witness is sufficient.

See CALIFORNIA FORM, ante, and GENERAL FORMS, post.

VERMONT.

Conveyances of lands or any interest therein must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Married women need not be examined separately.

Recording in the office of the town or city clerk of the town or city where the land is located is necessary to convey title as against subsequent *bona fide* purchasers or attaching creditors without notice.

a-5 P. L. 256, § 1; 9 Rich, 374; 11 Id. 80. a-1 Swan. 333. b-Pasch. Dig. Art. 5087. c-Hartl. Dig. 129, Art. 170.

Seals must be of **wax, wafers,** or other **adhesive substance.**

Signature of the grantor must be in the presence of two witnesses, who must attest such signature.

See GENERAL FORMS, post.

VIRGINIA.

Conveyances of real estate or any interest therein must be in writing, etc.

Acknowledgment. See that title, ante.

Dower is relinquished and barred by the wife joining her husband in the conveyance.

Married women. Common law prevails with slight modification. Separate examination is not necessary.

Recording within sixty days of a deed of bargain and sale is necessary, and all conveyances from the time they are duly admitted to record are valid against subsequent *bona fide* purchasers and creditors without notice.

Seals. A scroll is sufficient.

Conveyance—Statutory Deed.[d]

The following form will pass all the estate, right, title, and interest of the grantor, both in law and in equity.[e] Unless exception is made a conveyance of land includes and passes all buildings, privileges, and appurtenances of every kind.[f]

This conveyance, made this —— day of ——, by A. B., of ——, etc., to C. D., of ——, etc., witnesseth:

That in consideration of (*state what*), the said A. B. doth with the said C. D. bargain, sell, and grant all, etc. (*here describe the property, and add whatever covenants, conditions, restrictions, limitations, etc., agreed upon*).

Witness the following signature and seal.[g]

A. B. [L. S.]

Conveyance—Warranty Deed.

With Full Covenants.[h]

This conveyance, made this —— day of ——, by A. B., of ——, etc., to C. D., of ——, etc., witnesseth:

That in consideration of (*state what*), the said A. B. doth with the said C. D. bargain, sell, and grant, all, etc. (*here describe the property, and add whatever covenants, conditions, restrictions, limitations, etc., agreed upon*).

And the said A. B. covenants, That he has the right to convey said land to the grantee; that the same is free from all incumbrances; that the grantee shall have quiet possession of said land; that he will execute such further assurances of said lands as shall be requisite; and that he will warrant generally (*or* specially) the property hereby conveyed.

Witness the following signature and seal, etc. (*as above*).

Conveyance—Life Estate Clause.

To have, to hold, and enjoy the same, and all and singular the appurtenances and every part thereof, during the natural life of said C. D.[i]

Conveyance—Quit-Claim Deed.

This conveyance, made this —— day of ——, by A. B., of ——, to C. D., of ——, witnesseth:

That in consideration of —— dollars, the said A. B. doth release to the said C. D. all his claims upon the following described lands, to wit: (*describing them*).

Witness the following signature and seal, etc. (*as above*).

Conveyance—Trust Deed.[j]

This conveyance, made this —— day of ——, by A. B., of one part, to C. D., of the other part, witnesseth:

That the said A. B. doth grant unto said C. D. the following property: (*here follows the description*). In trust, to secure (*here describe the debts to be secured, or the securities to be indemnified, and whatever covenants, provisions, etc., agreed upon*).

Witness the following signature and seal, etc. (*as above*).

WASHINGTON.

Conveyances of realty, or interest therein, must be by deed in writing, signed by party bound thereby and acknowledged by party making it. See forms referred to below.

d-Code 1849, p. 503, Ch. 117, § 1. e-Code 503, § 2.

Acknowledgment. See that title, ante.

Dower and courtesy are abolished.

Private seals of grantors abolished.

Term "heirs" not necessary to create fee simple.

Recording is necessary to render the conveyance valid against subsequent *bona fide* purchasers, etc., without notice.

Witnesses. Two are necessary

WEST VIRGINIA.

Conveyances of real estate or any interest therein must be in writing, etc. See forms referred to below.

Acknowledgment. See that title, ante.

Dower is relinquished and barred by the wife joining her husband in the conveyance.

Married women need not be examined separately and apart from their husbands.

Recording in the office of the clerk of the county court is necessary to render the conveyance valid against subsequent *bona fide* purchasers or creditors without notice.

Seals. A scroll is sufficient.

Witnesses are not necessary.

See VIRGINIA FORMS, above, and GENERAL FORMS, post.

WISCONSIN.

Conveyances, etc., of any estate or interest in real property must be in writing, etc. See forms referred to below.

Acknowledgments. See that title, ante.

Dower is released and barred by the wife joining in the conveyance with her husband.

Married women, whether by their sole deed or by joining with their husbands to convey their estate or dower, execute the conveyance the same as though they were unmarried. No separate examination is necessary.

Recording in the office of the register of deeds in the county where the land is situated is necessary to render the conveyance valid against subsequent *bona fide* purchasers, etc.

Seals. A scroll is sufficient.

Signature of the grantor is necessary, in the presence of two witnesses, who must subscribe their names in attestation thereof.

See OHIO FORMS, above, and GENERAL FORMS, post.

WYOMING.

Conveyances of lands or any interest therein must be in writing, etc. See forms referred to below.

See **Acknowledgment** ante.

Dower and Courtesy abolished.

One witness enough. Private seals abolished, except corporation seals. Wife must join husband to deed or mortgage homestead. Wife must sign and acknowledge, freely and voluntarily, and separate and apart from husband, and must be fully apprised by official of contents and her rights and effect of signing.

Recording necessary, to protect against subsequent purchasers.

CONVEYANCES—VARIOUS DETAILS.

Introductions in Deeds and Other Conveyances.

The introduction to a conveyance, deed, mortgage, etc., is called the "Testatum" clause. See text above.

A. B. (*or* A. B. and W. B. his wife) conveys, etc.

I (*or* we, A. B., of ——, and W. B. his wife), for a consideration, etc., convey, etc.

This conveyance (*or* deed, *or* indenture, bipartite, tripartite, quadripartite, etc., *or* mortgage, etc.), witnesseth.

That, etc.

This conveyance (*or* deed, etc.), made this —— day of ——, witnesseth:

That, etc.

This conveyance (*or* deed, etc.), made this —— day of ——, by A. B., of ——, to C. D., of ——, witnesseth:

That, etc.

This conveyance (*or* deed, etc.), made this —— day of ——, in ——, by A. B., of —— county, in the State (*or* Commonwealth) of ——, farmer, to C. D.,

f-Code 503, § 7. g-1 Munf. 487; 2 Leigh. 488. h-Code 503, §§ 10-15. i-13 Gratt. 653. j-Code 503, § 5.

of —— county, in the State (*or* Commonwealth) of ——, merchant, witnesseth:

That, etc.

Know all men by these presents:

That this conveyance, etc. (*as above*).

Know all men by these presents:

That A. B., of ——, has, for a consideration of ——, etc., the receipt of which, etc., has granted, bargained, and sold, and does by these presents grant, bargain, sell, and convey unto C. D., of ——, etc.

This conveyance (*or* deed, etc.), made and entered into this —— day of ——, by and between A. B., of —— county, and the State of ——, party of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That, etc.

In trust, etc.

To all to whom these presents may come greeting (*or* To all whom it may concern):

Know ye:

That this conveyance (*or* deed, etc.), between the ——, a corporation existing under the laws of the State (*or* Commonwealth) of ——, of the first part, and C. D., E. F., and G. H., a company doing business under the firm-name and style of the D., F., H. —— manufacturing company, of the second part, witnesseth:

That, etc.

Premises in Deeds and Other Conveyances.

1. Statement of Parties.

"A. A., assignee of the estate and effects of B. I., of ——, bankrupt (*or* insolvent)," etc.

"The ——, a company (*or*, corporation) created and existing (*or*, organized and doing business) under and by virtue of the laws of the State of —— (*or*, an act of the legislature of the State of ——, entitled 'An act,' etc., *reciting the title*)."

"A. R., administrator of the estate and effects of D. D., deceased, of ——," etc.

"A. R., administrator of all and singular the goods and chattels, rights, credits, and effects of D. D., late of ——, deceased."

"E. X., executor of the last will and testament of D. D., of ——, deceased," etc.

"G. N., guardian of the person and estate of I. D., minor heir of D. D., of ——, deceased," etc.

"A. B., C. D., and E. F., of ——, in ——, partners, doing business (as ——) under the firm-name and style of A. B. & Co."

"R. R., receiver in the matter of A. B. *vs.* C. D., in the —— court of ——."

"T. R., trustee of (*state what*)."

2. Recitals for Explanation.

This may include consideration, a statement of the condition of the estate, or any particulars concerning the derivation of title or material fact respecting it, or of any other matter requiring explanation upon the face of the deed.

Title by Administrator.

And whereas, A. R., administrator of the estate and effects of D. D., of ——, who died intestate, by virtue and in pursuance of an order of the —— court for the sale of the real estate of the said intestate, by (conveyance, deed, *or*, indenture), under the hand (and seal) of said administrator, bearing date the —— day of ——, for the consideration therein mentioned did (grant and confirm, *or*, sell and convey) unto E. F., his heirs and assigns, all the above mentioned and described tract of —— acres (and allowance aforesaid), with the appurtenances:

To have and to hold the same forever, as, in, and by the last recited (conveyance, deed, *or*, indenture, recorded in the office of ——, in —— county, in ——, Record F., page ——), relation (*or*, reference) being thereto had, appears.

Recital—Title by Attorney.

And whereas, said C. D., by his attorney, A. A., (by letter [*or*, power] of attorney, under his hand and seal bearing date the —— day of ——) did by (conveyance, deed, *or*, indenture) bearing date the —— day of ——, for the consideration therein mentioned, grant and confirm (*or* sell and convey) unto E. F., his heirs and assigns, all that tract and parcel of —— acres of land with the appurtenances:

To have and to hold the same forever, as in and by said last mentioned (conveyance, deed, *or* indenture, [recorded in the office for the recording of deeds, at ——, in book A, page ——], relation (*or*, reference) being thereto had, appears.

Recital—Title by Executors.

And whereas said E. X. and T. R., executors of the last will and testament of said D. D., deceased, by virtue of the authority and power to them given by said will, and pursuant to the directions thereof, did, by conveyance under their hands and seals, bearing date the —— day of ——, and for the consideration therein mentioned, grant and confirm unto E. F., his heirs and assigns, all the said tract of —— acres, with the appurtenances:

To have and to hold the same unto him, his heirs and assigns forever, as in and by said recited conveyance (recorded in the office for the recording of deeds, at ——, in ——, in book ——, page ——), relation (*or*, reference) being thereto had, appears.

Recital—Title by Deed.

It being (the same, *or*, a part of the same) premises which M. M., and W., his wife, by conveyance (deed, *or*, indenture), bearing date the —— day of ——, and for the consideration therein mentioned, did convey and confirm unto said A. B., his heirs and assigns forever, as in and by the said (in part) recited conveyance (recorded in the office for the recording of deeds, in ——, in —— county, in book ——, page ——), relation (*or*, reference) being thereto had, more fully and at large appears.

Recital—Title by Deed, Descent, and Patent.

It being the same tract which the State (*or*, commonwealth) of ——, by patent, bearing date the —— day of —— (recorded in the land office of said State [*or*, commonwealth], in patent book ——, page ——), for the consideration therein mentioned, did convey and confirm unto A. in fee, who being thereof lawfully seized, died intestate, leaving issue B. and W., who intermarried with C., to whom the same by the laws of said State (*or* commonwealth) did descend and come. And said B. and C., and W., his wife, by their joint conveyance, bearing date the —— day of ——, and for the consideration therein mentioned, did grant and confirm unto said A. B. in fee, as in and by the said conveyance (deed, *or*, indenture, [recorded in the office for recording deeds, in ——, in —— county, in book ——, page ——), relation (*or*, reference) being thereto had, appears.

For Title by Descent, see preceding form and Title by Administrator, above.

For Title by Devisee, see Title by Executor, above.

Recital—Title by Partition.

And whereas, by deed (*or* instrument) of partition between the said A. B., of the one part, and the said C. D., of the other part, bearing date the —— day of ——, partition of the said premises, etc., with the appurtenances, was made between said parties, wherein and whereby the tract or parcel thereof, bounded and limited as follows, to wit: beginning, etc.; containing —— acres and allowance aforesaid, was released and confirmed to the said C. D., his heirs and assigns, forever.

To have and to hold to him, the said C. D., his heirs and assigns (in severalty), forever, as in and by said deed (*or*, instrument) of partition (recorded in the office for the recording of deeds, in ——, in —— county, in deed book ——, page ——), relation (*or*, reference) being thereto had, appears.

Title by Patent, see Title by Deed, Descent, and Patent, above.

Title by Sheriff, see New York, Pennsylvania, and General Forms.

3. Descriptions of Property Granted, with the Intended Exceptions.

Easement for Drainage Reserved.

—— The following described property, situated in ——, etc. (*describing it, and then adding*):

Subject, nevertheless, to the perpetual right of the owner upon the premises upon the north side immediately adjoining the premises hereby conveyed (constructing a drain, *state where, or*) using and fully enjoying a drain or sewer passing through said premises hereby conveyed (*state where*).

Easement for Party Walls Reserved.

After describing the property add:

Subject, nevertheless, to the use of the walls upon the north and south sides of said premises by E. F. and G. H., owners of the lots next adjoining said north and south sides of the premises hereby conveyed, their heirs and assigns, as party walls.

Metes and Bounds.

All the following described real estate, situated in the city (*or* town, *or* village of ——, in the) county of ——, and State (*or* Commonwealth) of ——, to wit: Lot number seventy-two (72) and eighty-eight (88) on Main street (in the city, etc., county and State aforesaid).

Another.

As above, etc. Town lot numbered four (4), as known and designated by the number four (4) on the recorded plat of ——'s addition to the town of ——, in the county and State aforesaid.

Another.

All that certain tract or parcel of land known as lot number seventy-nine (79), in township number eight (8), in range seven (7), in the county of ——, and State of —— aforesaid, containing —— acres.

Another.

"All," etc. (*as above*). The west half (½) of the east half (½) of the northwest quarter (¼) of section twenty-one (21), in township fourteen (14), range fifteen (15), east of the —— principal meridian, containing forty (40) acres, more or less.

Another.

All the following described real property, situated in —— county, ——, to wit: The undivided one-half (½) of lot number seven (7), in block number sixty-one (61), in the city (*or* town, *or* village) of ——, of —— (county and State aforesaid).

Another.

All that certain tract, piece or parcel of land, situate, lying and being in the town of ——, county of ——, and State of ——, known and described as follows, to wit:

Beginning at a corner stone at the northeast corner of a certain out lot at the junction of —— and —— streets of said town (said corner-stone being —— from said —— street and —— from said —— street), running thence south twenty-three degrees (23°), west sixteen (16) rods, thence north seventy-nine degrees (79°), west ten (10) rods, thence north twenty-five degrees and ten minutes (25° 10′), east sixteen (16) rods ten (10) inches, thence east by south to the point of beginning, containing —— acres.

Another.

All that certain lot, piece or parcel of land (with the buildings erected thereon), lying and being in the —— ward, city of ——, county of ——, and State of ——, bounded and described as follows, to wit: Beginning at a point on the west side of Twentieth (20th) street, seventy (70) feet and five (5) inches north of the north side of Fourth (4th) avenue, running thence west through a party wall and parallel with Fourth (4th) avenue one hundred and ten (110) feet, thence north fifty-one (51) feet and six (6) inches, thence east and through another party wall and parallel with said Fourth (4th) avenue one hundred and ten (110) feet, and thence south along the west side of said Twentieth (20th) street fifty-one (51) feet and six (6) inches to the point or place of beginning.

Natural Boundaries, Highways, etc.

Beginning at the west side (*or* bank) of the —— river (*or* creek) at the junction of the —— run (creek, *or* ravine, etc.), and running thence north along the west bank of said river —— rods unto a ledge of —— rock, thence west to the highway leading from —— to ——, thence south —— rods to said —— run (creek, *or* ravine, etc.), thence along the course of said run, etc., unto the place of beginning, containing —— acres, more or less.

4. Dower.

See title Acknowledgment, ante, and Dower, above.

Habendum in Deeds and Other Conveyances.

The habendum limits and defines what estate the grantee is to have in the premises conveyed.

Habendum—In Fee Simple.

To have and to hold the same forever.

Another.

To have and to hold the same, together with the appurtenances and every part thereof, forever.

Another.

To have and to hold the same, with the appurtenances, unto the said C. D., his heirs and assigns, in fee simple, forever.

Another.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said party of the second part, his heirs and assigns, forever.

Another.

To have and to hold the said messuage or tenement and tract of —— acres of land, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances and every part thereof, unto the said C. D., his heirs and assigns, to the only proper use and behoof of the said C. D., his heirs and assigns, forever.

Habendum—Life Estate.

To have and to hold the same during the natural life (*or* lives) of ——.

Habendum—With Conditions.

See Mortgages and Trust Deeds, post.

To have and to hold, etc. (*as in the habendum forms above*).

In trust to (*state what*); *or*,

In trust, nevertheless, to, etc.; *or*,

Reserving and retaining, etc.; *or*,

Saving and excepting, etc.; *or*,

Subject to (*state what*): *or*,

Subject, nevertheless, to, etc.; *or*,

Yielding and paying, etc.

Reddendum in Deeds and Other Conveyances.

The reddendum (or reservation) is that clause in a conveyance or deed by which the grantor reserves something new to himself out of that which he granted before. It usually follows the habendum, and is usually in these words, "Yielding and paying." In every good reddendum or reservation these things must concur: 1. It must be in apt words. 2. It must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself, nor of something issuing out of another thing. 3. It must be made of a thing on which the grantor may resort to distrain. 4. It must be made to one of the grantors, and not to a stranger to the conveyance or deed.[a]

Reddendum or Reservation of Annuity.

Yielding and paying unto W., the wife of said A. B. (and to her heirs and assigns), the yearly rent or annuity of —— dollars, in —— instalments, on the —— days of —— of each year, for a term of —— years from the (sealing and) delivery of these presents.

Reddendum or Reservation of Mines, etc.

Excepting and reserving unto the said A. B., his heirs and assigns, all mines, beds, seams, or veins of coal, ironstone, and other minerals whatsoever already found or which may hereafter be found upon or under the lands hereby conveyed

a-See 2 Bl. Comm. 299; Co. Litt 47; Shepp Touchst. 80; Cruise Dig. tit. 32, Ch. 24, § 1; Dane Abr.

or intended so to be, with full liberty of ingress, egress, and regress at all times for said A. B., his heirs or assigns, and his and their agents, servants, and workmen in and upon said lands, and either with or without horses and other cattle, carts and wagons, and other carriages, for the purpose of searching for, working said mines, and taking and carrying away the said minerals; and with full liberty for said A. B., his heirs and assigns, to drive, make, sink, and use pits, shafts, drifts, outlets, air courses and water courses, and to erect and set up fire and other engines, machinery and works, and to lay down railroads and other roads in, upon, under, over and above said lands or any of them, for the purpose of more conveniently working said mines and carrying away said minerals; and also to appropriate and use any part of the surface of said lands for depositing, placing, and piling thereon the minerals, rubbish, waste, or other substances issuing from said mines or minerals, and generally to do all other acts and things necessary, proper, and usual for working said mines and procuring said minerals (according to the most approved practice of mining in the district wherein they are situated).

Provided always.

That said A. B., his heirs and assigns, do and shall pay to said C. D., his heirs or assigns, the annual sum of —— dollars for every acre, and so in proportion for any less quantity than an acre of land, the surface whereof shall be appropriated or used for any of the purposes aforesaid, so long as such appropriation or use shall continue, and until the surface shall be restored as nearly as may be practicable to its original state or condition before such appropriation or use commenced.

And provided further.

That the working of said mines shall be conducted in such a manner as not to endanger any buildings now being on said lands, or which may hereafter be erected on the site of, or within —— feet from the site of any present buildings, and generally to do as little damage or injury to the surface of the said lands as shall be consistent with and necessary to the proper working of said mines, and procurement and carrying away of said minerals.

And provided further:

That said A. B., his heirs or assigns, shall pay said C. D., his heirs or assigns, adequate compensation for all damage or injury which he or they, or his or their tenants may sustain by the reason of the working of said mines, or the exercise of any of the liberties and privileges hereby excepted and reserved; the amount of such compensation and all other matters in difference which may arise between said parties in connection with said excepted mines, minerals, liberties, and privileges to be ascertained by arbitration, etc.

See AGENCY, ARBITRATION FORMS, ante.

REDDENDUM OR RESERVATION—FOR STREETS, ETC.

Saving and reserving from and out of the hereby granted premises such streets as are now, or hereafter may be laid out through the premises hereby granted. And whenever any such streets may be laid out over and across the said premises that the same shall be made at the expense of said party of the second part, his heirs or assigns, and be and remain forever public streets as other public streets are or ought to be.

See DESCRIPTIONS SUBJECT TO CONDITIONS, above.

Conditions in Deeds and Other Conveyances.

The condition in a conveyance or deed is a qualification or restriction annexed to the conveyance, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated.[a] "Subject, nevertheless, to," or "Subject to," or "On condition," etc. Thus the property conveyed may be subject to the payment of an annuity, an easement, an incumbrance, a mortgage, or other condition, qualification, restriction, etc.

See DESCRIPTION, ETC., WITH EXCEPTIONS, and HABENDUM and REDDENDUM, above; MORTGAGES, TRUST DEEDS, post.

a-Greenl. Cruise Dig. tit. xiii, c. 1, § 1.

Covenants in Deeds and Other Conveyances.

For the law concerning covenants, see COVENANTS, etc., above.

COVENANT—OF ONE PERSON TO ANOTHER.

General Form.

And the said A. B., for himself, his heirs, executors, and administrators, does covenant with the said C. D., his heirs, executors, and administrators (*or*, his heirs and assigns, *or*, his heirs, executors, administrators, and assigns).

COVENANT—AGAINST ACTS OF GRANTOR.

And said party of the first part, for himself, and his heirs, executors, and administrators, does covenant, promise, and agree to and with said party of the second part, his heirs, executors, administrators, and assigns, that he has not made, done, committed, or suffered any act, matter, or thing whatsoever, whereby, or by means whereof the above-granted premises, or any part thereof, now are, or at any time hereafter, shall or may be impeached, charged, or incumbered in any manner or form whatsoever.

Another—Short Form.

And said grantor hereby covenants and agrees that he has not done or suffered anything whatsoever whereby the title of the said premises to said grantee can be rendered invalid or annulled.

COVENANT—AGAINST INCUMBRANCES, ETC.

And said (*here insert the name of the party or parties warranting*), for himself (*or*, themselves), his (*or*, their) heirs, executors, or administrators, does hereby covenant, promise, and agree to and with said party of the second part, that at the delivery of these presents that he was lawfully seized in his own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever; and that he will warrant and forever defend the same unto said party of the second part, his heirs and assigns, against said parties of the first part, their heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

COVENANT—EXECUTORS OR ADMINISTRATORS.

And the said party of the first part (executor, *or*, administrator aforesaid) does hereby covenant with the said party of the second part, his heirs and assigns, that he has, in all things, observed the requirements of law, and of all orders in and concerning said sale.

The Same—Covenant of Seisin.

And said parties of the first part (executors, *or* administrators aforesaid) do jointly and severally for themselves, their heirs, executors, and administrators, covenant, promise, and agree to and with said party of the second part, that D. D. died lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted premises, with the appurtenances (subject to, *state what, if anything*).

COVENANT—FURTHER ASSURANCE.

And the said A. B. (party hereto), for himself, his heirs, executors, and administrators, does covenant, promise, and agree with said C. D., his heirs and assigns, that he, the said A. B., his heirs, executors, and administrators, at the request and charges of said C. D., his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, execute, deliver, and acknowledge, or cause to be, etc., all and every such further and other acts, conveyances, and assurances in law, for the better assuring unto said C. D., his heirs and assigns, the premises in the manner above conveyed, or mentioned or intended to be conveyed, as by said C. D., his, etc., or his or their counsel, learned in the law, shall be reasonably advised and required.

Another—Short Form.

That I, the said A. B., and all persons hereafter

claiming under me, will at any time hereafter, at the request and expense of said C. D., his heirs and assigns, make all such further assurances for the more effectual conveying of the said premises, with the appurtenances, as may be reasonably required by him or them.

COVENANT—HUSBAND FOR SELF AND WIFE.

And the said A. B., for himself, etc., and for and on behalf of the said W., his wife, and her heirs, does covenant, etc.

COVENANT—JOINT.

And said A. B., C. D., and E. F., for themselves, their executors, and administrators, do covenant, etc.

COVENANT—JOINT AND SEVERAL.

And said A. B., C. D., and E. F., for themselves, their heirs, executors, and administrators, do jointly and severally covenant, etc.

COVENANT—MUTUAL—TO CONVEY, ETC.

And the said C. D., for himself and his heirs, executors and administrators, does covenant, promise and agree, to and with A. B., his heirs and assigns, that he will pay said A. B., his heirs and assigns, the sum of —— dollars, on the —— day of —— next, and in consideration thereof the said A. B., for himself, his heirs, executors and administrators, does covenant, promise and agree to and with the said C. D., his heirs and assigns, that he will make and execute to the said C. D., his heirs and assigns, a good and sufficient deed of (inheritance, in fee simple, *or otherwise, as the case may be*), upon the payment of the said sum as aforesaid.

COVENANT—POWER TO CONVEY.

That said party of the first part (*or* that said A. B.), at the time of the execution (*or* sealing) and delivery of these presents has good right, full power, and lawful authority to grant, bargain, sell and convey the same in the manner aforesaid.

COVENANT—QUIET ENJOYMENT.

That said A. B., for himself and his heirs, executors and administrators, does covenant, promise and agree, to and with said C. D. (*or* said party of the second part), his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof, with the appurtenances, without any restraint, suit, action or disturbance from said A. B. (*or* said party of the first part), his heirs, etc., or any other person or persons lawfully claiming or to claim the same.

COVENANT—SEIZIN.

That said party of the first part (*or* that said A. B.), at the time of the execution (*or* sealing) and delivery of these presents is lawfully seized in his own right (*or otherwise, as the case may be*), of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted premises, with the appurtenances (*if conveyed subject to incumbrances, etc., say* subject as aforesaid).

COVENANT—SEVERAL.

And the said A. B., C. D., E. F., and G. H., for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators (and not jointly, or the one for the other, or others), do covenant with said ——, his heirs and assigns, that, etc.

COVENANT—WARRANTY.

See COVENANT AGAINST INCUMBRANCES, above.

Conclusions in Deeds and Other Conveyances.

Signed (and sealed[f]); *or*,

Signed, sealed, and acknowledged; *or*,

Witness our hands (and seals[f]); *or*,

Given under our hands (and seals[f]): *or*,

In witness whereof, we hereunto set our hands, etc.; *or*,

In witness whereof, the parties to these presents have hereunto set their hands, etc.; *or*,

In witness whereof, we have hereunto set our hands (and affixed our seals) (at ——), this —— day of ——; *or*,

In witness whereof, we have hereunto set our hands (*or* subscribed our names), the day and year first (*or* last) above written; *or*,

In witness whereof, A. B., the party of the first part, and C. D., the party of the second part, in their own proper persons, have hereunto respectively and severally set their hands and seals, this —— day of —— (*or* the day and year first, *or* last) above written.

Signature (and Seals[f]) in Deeds and Other Conveyances.

Where a person acts in a representative capacity, he must sign in that capacity; thus, if A. R. is administrator, he must sign A. R., *Administrator*.

(*Signed*) A. B.

CORPORATION SIGNATURE.

See CONVEYANCES—CORPORATIONS, post.

PARTNERSHIP SIGNATURES in conveyances affecting real estate or any interest therein should never be by the firm-name. Each member of the partnership must sign his own name himself, or else give special authority to another to sign it. See title PARTNERSHIP, post.

REPRESENTATIVE AND INDIVIDUAL SIGNATURES may be as follows, adding the seal or scrawl (scroll) when it is required by law.[f]

A. B., *by A. A., his Attorney in Fact* [*Seal.*[f]]

A. ✕ B. (his mark.) "

A. R., *Administrator.* "

A. X., *Administratrix.* "

E. X., *Executor.* "

E. X., *Executrix.* "

G. N., *Guardian.* "

S. F., *Sheriff.* "

T. T., *Trustee.* "

Attestation or Witness Clauses in Deeds and Other Conveyances.

Test; *or*,

Attest; *or*,

In witness; *or*,

Witnesses; *or*,

In presence of; *or*,

Executed (and delivered) in presence of; *or*,

Signed and interchanged in presence of; *or*,

Signed, sealed[f], and delivered in presence of; *or*,

Signed, sealed[f], and acknowledged in presence of:

ATTESTATION—ERASURES OR INTERLINEATIONS.

(Signed, sealed[f]—*or* executed) and delivered by the above *or* within named A. B., the words "(*here copy them*)" having been previously interlined (*or* erased) in the sixth and seventh lines of the first page, in the presence of

(*Signed*) W. T.
N. S.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[*Signature and Seal.*]

f-In many States private seals are abolished. This does not, however, include the seals of corporations.

Or thus: (Signed, sealed—*or* executed) and delivered by the above-named A. B. (four words being erased on the third page) in the presence of, etc.

Or thus: (Signed, sealed—*or* executed) and delivered by the above-named A. B. (the name E. J. being previously written over an erasure on the second page) in the presence, etc.

Signed, sealed, and delivered in the presence of (the word "five," on the first page was erased, the words, "be the same more or less," written over an erasure; on the second page, the words "or assigns," interlined in three places, and the word "forthwith" cancelled on the third page, before execution).

[*Signature of witness.*]

ATTESTATION—BLIND PERSON.

Of the Execution of a Deed.

Memorandum. The above written instrument was signed, sealed, and delivered by the above-named A. B., and he being blind, the same was first carefully and deliberately read over to him, in the presence of us.

ATTESTATION—DEAF AND DUMB PERSON.

Of the Execution of a Deed by.

Memorandum. The above written instrument was signed, sealed, and delivered by the above-named A. B., who being deaf and dumb, but capable of reading, the same was first read over by him, and he seemed perfectly to understand the same, in the presence of us, etc.

ATTESTATION—ILLITERATE PERSON.

Of the Execution of a Deed by.

Memorandum. The above written instrument was signed, sealed, and delivered by the within-named A. B., the same being previously read over to him in the presence of, etc.

ATTESTATION—POWER OF ATTORNEY.

Of a Deed Executed under.

(Signed, sealed, *or*, executed) and delivered by the within-named A. A., as the attorney of the within-named A. B., in the presence of, etc.

ATTESTATION—SELF AND FOR ANOTHER.

Of a Deed, Executed by one of the Parties in his own right, and as the Attorney of Another.

(Signed, sealed, *or* executed) and delivered by the above-named A. B. with his own name and as his own act and deed, and afterwards, as the attorney, and with the name, and as the act and deed of the above-named C. D., by virtue of the authority given to him, the said A. B., for that purpose, by the indenture of assignment from the said C. D. to him, the said A. B., and which is above recited, in the presence of, etc.

SHORT DEED FORMS.

CONVEYANCE—CHANCELLOR KENT'S DEED.

This form is given by Chancellor Kent as sufficient to convey an absolute fee in any part of the United States.[a]

I, A. B., in consideration of —— dollars, to me paid by C. D., do bargain and sell to C. D. (and his heirs) the lot of land (bounded, *or*, described), etc.

Witness my hand and seal, etc.

For form of ACKNOWLEDGMENT, see that title.

CONVEYANCE—CALIFORNIA DEED.

I, A. B., grant to C. D. all that real property situated in —— county, of the State of California, bounded (*or*, described) as follows:

Witness my hand this —— day of ——. A. B.

For form of ACKNOWLEDGMENT, see that title.

CONVEYANCE—INDIANA DEED.

A. B. conveys and warrants to C. D. (*description of the premises*), for the sum of ——.

Witness my hand and seal this —— day of ——.

A. B. [SEAL.]

For form of ACKNOWLEDGMENT, see that title.

CONVEYANCE—VIRGINIA AND TEXAS DEED.

A. B. doth bargain, sell, and grant unto C. D. all (*here follows the description of the real estate conveyed*).

Witness the following signature and seal.

A. B. [SEAL.]

For form of ACKNOWLEDGMENT, see that title.

LONG DEED FORMS.

See NEW YORK, PENNSYLVANIA, and the various other State forms, ante.

GENERAL DEED FORMS.

Conveyance—Administrator's Deed.

For other GENERAL FORMS, see the various States, ante.

Know all men by these presents: *or*,

This conveyance (*or*, deed, *or*, indenture), made this —— day of ——, witnesseth:

That I, A. R., of ——, as administrator of the goods and estate which were of D. D., late of ——, deceased, intestate, being duly empowered in this behalf by the —— court, for the —— circuit (*or*, district), at ——, in —— county, in pursuance of a sale at public auction, and in consideration of the sum of ——, to me paid by E. F., of —— (who was the highest bidder at said sale for the estate hereinafter described), the receipt whereof (*or*, of which) I do hereby acknowledge, do hereby grant, bargain, sell, and convey unto said E. F., his heirs and assigns forever, a parcel of land situate in —— county, and State of ——, bounded and described as follows, to wit: (*here follows the description*).

To have and to hold said parcel of land, with the privileges and appurtenances thereof, to the said E. F., his heirs and assigns forever.

And I, the said A. R., do covenant with said E. F., his heirs and assigns (That said D. D. died seized of the above granted premises[b]): that I am duly empowered to convey the same to the said E. F., as aforesaid: that I have in all things observed the rules and directions of the law in said sale: and that I will, and my heirs, executors, and administrators shall, warrant and defend the same unto the said E. F., his heirs and assigns, against all persons claiming the same, by, from, or under the said D. D., or me, the said A. R., but against no other persons.

In witness whereof, I have hereunto set my hand (and seal) this —— day of —— (*or*, the day and year first above written). A. R., [SEAL.]

Administrator.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Administrator De Bonis non Deed.

With the Will Annexed—Setting forth Orders at Length.

To all to whom these presents shall come, A. R., of ——, administrator with the will annexed of the goods and chattels, rights and credits, which have not been administered, and of which D. D., late of ——, deceased, sends greeting: *or*,

This conveyance (deed, *or*, indenture), made this —— day of ——, by A. R., administrator of the estate and effects of D. D., deceased, witnesseth: *or*,

Know all men by these presents:

Whereas, the —— court, holden at ——, in ——, at its —— term, on the —— day of ——, upon application duly made by A. P., granted an order for the sale of certain real property of said D. D. in the words and figures, as follows: (*here copy the order at length*);

And whereas, pursuant to law, and the terms of said order, upon giving bond, being duly sworn, and upon due notice, valuation, and appraisement, a sale was by me made at public auction to E. F. of the hereinafter granted premises, the same being (a part of) the premises described in said order, for the sum of —— dollars, he being the highest bidder therefor, returns of which was thereupon fully made to said court;

And whereas, upon examination of said returns by said court it appearing that such sale was duly and legally made, and fairly conducted, and that the sum bid was not disproportional (*or*, exceeded two-thirds [*or*, three-fourths] the appraised value thereof, *or*, that a greater than the above sum cannot be obtained), said court did, on the —— day of ——, make an order confirming said sale, and directing a conveyance (*or*, deed, etc.) to be executed, which order is in the words and figures following (*here copy the order at length*):

[a] 4 Kent Comm. 461. It is sustained by 19 N. H. 487; 1 Mass. 219; 34 Miss. 18; 13 Gratt. 653; 2 Dana, 21. [b] A covenant of this sort ought not to be entered into by the administrator. It is sufficient that he convey the property sold, and covenant only for his own acts.

Now, therefore (know ye that) I, A. R., by virtue of the power and authority in me vested as aforesaid, and in consideration of the sum of —— dollars to me paid by said E. F., the receipt (of which, *or*) whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto said E. F., his heirs and assigns, forever, all (*here follows the description of the premises conveyed*).

To have and to hold the above-granted premises to the said E. F., his heirs and assigns, forever:

And I, the said A. R., for myself, my heirs, executors, and administrators, do hereby covenant, promise and agree with said E. F., his heirs and assigns, that in pursuance of the order aforesaid I took the oath, gave bond, and public notice, and made the sale and due return thereof as above set forth, and in all things have observed the requirements of the law and said order in said sale.

In witness whereof, I, the said A. R., as administrator aforesaid, have hereunto set my hand (and seal) this —— day of —— (or the day and year first above written). A. R., [*Seal*]
Administrator.

(*Attestation when necessary.*)

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Administrator's Deed.

When Intestate has Contracted to Convey

To all to whom these presents shall come, etc. (*as in the above form*). *Or*,

This conveyance, etc. (*as in the above form*).

Whereas, the said D. D., in his lifetime, and (on or about the —— day of ——), by a contract bearing date the —— day of ——, agreed, to and with E. F., of ——, to sell and convey to him, his heirs and assigns, forever, the premises hereinafter described, in consideration of the payment by said E. F. of the sum of —— dollars; but said D. D. died intestate, without performing said contract;

And whereas, at the —— term of the —— court, holden at ——, in ——, upon the application of ——, said court did, on the —— day of ——, order said administrator to carry into effect the terms and conditions of said contract:

Now, therefore (know ye that), by virtue of the authority and order aforesaid, and in pursuance of the terms and conditions of said contract, on the part of said D. D. to be performed, and in consideration of the payment to me of said sum of —— dollars by said E. F., and the performance and fulfilment of all things in the above-named contract on his part to be performed, I, the said A. R., do hereby grant, bargain, sell and convey unto said E. F., his heirs and assigns, forever, the said (*here follows a description of the premises*), with the appurtenances.

To have and to hold the same unto the said E. F., his heirs, to his and their use forever.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Administrator's Deed.

With a Recital.

To all, etc. (*as in above form*). *Or*,

This conveyance, etc. (*as in the above form*).

Whereas, the —— court, at its —— term, holden at ——, in ——, on the —— day of ——, did empower and order me to sell, and to make, execute and deliver good and sufficient deeds, conveying so much of the real estate of the said intestate as should amount to the sum of —— dollars, for the payment of the just debts of said intestate, with the actual and necessary incidental costs and charges;

And whereas, having given the bond and taken the oath required by law, and given public notice of the time and place of the sale of the real estate hereinafter described (by an advertisement thereof published for —— consecutive weeks, beginning on the —— day of ——, in the —— newspaper, published and of general circulation in —— county), I have sold said real estate to E. F., of ——, for the sum of —— dollars, which was the highest sum bid therefor at the public sale thereof on the —— day of ——, at ——, in ——:

Now, therefore, etc. (*as in the second preceding form*).

Conveyance—Assignment of Deed.

See titles ASSIGNMENT and CONTRACTS, ante.

Conveyance—Attorney in Fact.

See forms in various States, ante.

This conveyance (*or* deed, etc.), made this —— day of ——, by A. B., of ——, of the first part, by A. A., his attorney in fact,* to C. D., of ——, of the second part, witnesseth:

That, etc. (*as in the ordinary forms*).

In witness whereof, said party of the first part has hereunto, by A. A., his attorney in fact, set his hand (and seal), the day and year first above written. A. B., *by A. A.*,
his Attorney in Fact.

Or the following may be substituted:

In witness whereof, said A. A., in pursuance of the letter of attorney hereunto attached (*or* a copy of which is hereunto attached), bearing date the —— day of ——, has hereunto set the hand (and seal) of his said principal (this —— day of ——), on the day and year first above written.

A. B., *by A. A*,
his Attorney in Fact.

For form of ACKNOWLEDGMENT, see that title.

The following may be inserted at the * if desirable:

* Specially constituted by power of attorney, bearing date the —— day of ——, and recorded in the office for the recording of deeds in —— county, State of ——, in deed book ——, page ——, as by reference thereunto had appears.

Conveyance—Bond for Deed.

See title BONDS, ante.

Conveyance—Commissioners' Deed.

On Sale in Partition.

This deed (*or* indenture), made this —— day of ——, A. D. ——, between C. O., of ——, in the county of ——, and State of ——, M. S., of the same place, and R. S., of ——, in said county, of the first part, to S. P., of —— aforesaid, of the second part.

Whereas, in proceedings duly taken and had in the —— court of ——, by and between P. A., R. T., and N. N., for the partition and division of certain premises mentioned in the petition in said proceedings, according to the respective rights of the parties interested therein, or for a sale of such premises, if partition thereof could not be made without prejudice to the owners, pursuant to the statute relating to the partition of lands owned by several persons, it was by the said court ordered, adjudged and decreed, by an order made on the —— day of ——, at ——, that a sale of the said premises should be made in order to a division of the proceeds, according to the several rights and interests of the said parties; and thereupon to make such partition, the parties of the first part to these presents being qualified, were, by the said court, appointed commissioners;

And whereas, such proceedings were afterwards had in the said court upon the said petition, that the said commissioners so appointed, as aforesaid, were, by a rule of said court, ordered and directed to sell the said premises, with the appurtenances, at public auction, to the highest bidder; giving notice, according to law, of the time and place of such sale; and that they should make report thereof to the said court;

And whereas, the said commissioners, pursuant to the said order and direction, after giving public notice of the time and place of such sale, did, on the —— day of ——, A. D. ——, at ——, in ——, in said county of ——, expose to sale at public auction, all and singular the said premises, with the appurtenances; at which sale (a part of) the said premises hereinafter described were sold to the said party of the second part for the sum of —— dollars, that being the highest sum bid for the same;

And whereas, the proceedings of the said commissioners in the premises were duly reported to the said court, and the sale approved and confirmed, on the —— day of ——, as by the records of the said court more fully appears; and the said commissioners were thereupon, by an order of said court then made, directed to execute to the said party of the second part a con-

veyance of said premises, pursuant to the sale so made as aforesaid.

Now this conveyance (deed, *or*, indenture) witnesseth:

That the said parties of the first part, pursuant to the direction and authority to them given, and for and in consideration of the sum of money so bid as aforesaid, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have bargained, sold, aliened, conveyed and confirmed, and by these presents do bargain, sell, alien, convey, and confirm unto the said party of the second part, all the estate, right, title, interest, claim, and demand of the said parties of the first part, and also all the right, title, interest, claim, and demand of all and singular the several and respective parties to the proceedings in partition aforesaid, of, in and to all (*here follows description of the premises*), together with all and singular the tenements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part thereof:

To have and to hold the said above-bargained premises, with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns; as fully and absolutely as the said parties of the first part can and ought to grant and convey the same, pursuant to the statute and their authority as aforesaid.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

C. O.
M. S.
R. S. } *Commissioners.* { [*Seal.*]
[*Seal.*]
[*Seal.*]

(Signed, sealed, *or*, executed) and delivered in presence of }

[*Signature of witness.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Committee's Deed.

By Committee of Idiot, Lunatic, or Habitual Drunkard.

This conveyance (deed, *or*, indenture), made this —— day of ——, by C. E., of ——, in the county of ——, and State of ——, committee of the person and estate of I. D., an idiot (*or*, a lunatic, *or*, an habitual drunkard), of the first part, and E. F., of ——, aforesaid, of the second part.

Whereas, upon an application duly made, the —— court of ——, at ——, on the —— day of ——, by an order bearing date on that day, directed the real estate of said I. D., hereinafter described (*or*, so much of the real estate of said I. D. as might be necessary to raise the sum of —— dollars), to be sold by the said C. E. at public or private sale, subject to the approbation of the court, as by the terms of said order will more fully appear; and whereas, pursuant to law, and to the terms of said order (after giving the additional security required by said order), and upon due notice, a sale was made by said C. E., by public auction, to the said party of the second part, of the hereinafter granted premises, being (a part of) the real estate aforesaid of said I. D., for the sum of —— dollars, said party of the second part being the highest bidder therefor (*or state sale by private agreement*): and thereupon the said C. E., on oath, made his report of such agreement to this court, pursuant to the last recited order, upon which an order was made by said court, at the ——, in said county, bearing date the —— day of ——, confirming said report, approving and confirming said sale, and directing the same to be carried into effect, and ordering the said committee to execute, acknowledge, and deliver a deed of said premises to said party of the second part, on his complying with the terms on which, by said agreement, the same was to be delivered;

And whereas, the said party of the second part has complied with the said terms:

Now this conveyance (deed *or* indenture) witnesseth:

That the said party of the first part, committee as aforesaid, in consideration of the sum of —— dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain and sell unto the said party of the second part, and to his heirs and assigns forever, all (*here follows description of premises*), together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, and of the said M. N., of, in and to the above-granted premises, and every part and parcel thereof.

To have and to hold all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever

(*Covenant as to regularity of proceedings, if desired. See ante.*)

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

(*Signature, title, and seal.*)

Signed, sealed, acknowledged, and delivered in presence of }

(*Signature of witness.*)

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Correct Mistakes.

See CONVEYANCE, MISTAKES, ETC., post.

Conveyance—Confirmation Deed.

Confirming a Prior Voidable Deed.

This conveyance (deed, *or* indenture), made this —— day of ——, by A. B., of ——, county ——, and State of ——, of the first part, to C. D., of ——, in the said county, of the second part.

Whereas, by a deed bearing date on the —— day of ——, and therein mentioned to be made by the party hereto of the first part (with one E. F.), of the one part, and (*or* unto) the said C. D., of the other part, and in consideration of ——, the premises hereinafter described were granted and conveyed, or intended so to be, to the said C. D., his heirs and assigns, forever;

And whereas (*here recite defect which rendered the deed voidable—e. g., infancy, thus*): the said A. B., at the time of the date and making the said in part recited deed, was not of the age of twenty-one years, but has since attained to such age, and has this day, and before the execution of these presents, duly sealed and delivered the said in part recited deed:

Now this conveyance (deed, *or* indenture) witnesseth:

That (as well in the performance of a covenant for further assurance in the said deed contained, as also) for and in consideration of the sum of —— dollars, to him, the said A. B., in hand paid by the said C. D., the receipt whereof the said A. B. does hereby acknowledge, he, the said A. B., has, and now by these presents, does ratify, approve and confirm said deed[h] and remise, release and quitclaim unto the said C. D., in his actual possession now being, by virtue of the before-mentioned deed, and to his heirs and assigns, all (*here follows the description of premises*).

To have and to hold all and singular the above-described premises, together with the appurtenances and every part thereof, unto said party of the second part, his heirs and assigns, forever.

And the said A. B. (*not naming the wife*), for himself, his heirs, executors, and administrators does hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged or incumbered, in any manner or way whatsoever.

[h]-These are the appropriate words for such a deed 2 Hilliard R. Prop. 315.

In witness whereof, the said party (*or* parties) of the first part has (*or* have) hereunto set his hand and seal (*or* their hands and seals), the day and year first above written.

(*Signatures and seals.*)

For form of ACKNOWLEDGMENT, see that title.

BY INDORSEMENT ON THE PRIOR DEED.

Know all men by these presents:

That I, A. B., etc., the within-named grantor, do by these presents grant, ratify and confirm unto C. D., of ——, all the estate which I may have in the premises within described, with the appurtenances.

To have and to hold unto him, the said C. D., and his heirs and assigns, forever.

Witness my hand (and seal), this —— day of ——. A. B. [*Seal.*]

Executed in presence of

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Corporation Deed.

This conveyance (deed, *or* indenture), made this —— day of ——, by the (*here give the legal title of the corporation*), of ——, parties of the first part, and C. D., of —— county, in the State of ——, parties of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of —— dollars (*thence proceeding as in other deeds to the covenants, each of which will begin thus*):

And the said parties of the first part (*or name the corporation*), for themselves and their successors, do covenant (*etc., continuing as in other cases*).

In witness whereof, the said parties of the first part in pursuance of a resolution adopted —— day of —— month A. D.——, by the board of directors, have hereunto caused their corporate seal to be affixed, and these presents to be subscribed by their president and cashier (*or* secretary, *or other officer or officers, as the corporation may order*)

(*Signatures of officers.*)

[*Corporate seal.*]

For form of ACKNOWLEDGMENT see that title.

Another—By a Municipal Corporation.

(*Same as in the preceding form to the attestation, which will be:*

—— The common seal of the said city of —— to be affixed, the day and year first above written.

(*Signature of*) *Mayor.*

[*Corporate seal.*]

By the Common Council.

(*Signature of*) *Clerk.*

Another—Where all the Directors Sign.

(*Same as in the preceding form to the attestation, which will be*):

In witness whereof, the president, directors, and company of (*naming the corporation*) have hereunto set their corporate seal by the hands of their president and directors, and the president and directors have hereunto subscribed their names, this —— day of —— (*or* the day and year first above written). (*Signature of*) *President.*

[*Corporate seal.*] (*Signatures of*) } *Directors.*

Conveyance—To Corporation Deed.

This conveyance (*or* deed, *or* indenture), made this —— day of ——, by A. B., of —— county, in the State of ——, of the first part, and the (*here insert the legal title of the corporation*), of ——, parties of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of —— dollars, to him in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, and the said parties of the second part and their successors, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said parties of the second part, and to their successors and assigns forever, all (*here follows the description, etc., as in other deeds*).

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their successors and assigns, forever. And the said A. B., for himself and his heirs, executors and administrators, does covenant, promise and agree to and with the said parties of the second part, that (*etc., continuing as in other cases, but naming* "successors" *instead of* "heirs, executors," *etc., of the parties of the second part*).

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Covenants in Deeds.

See ante, COVENANTS IN DEEDS, and text, ante.

Conveyance—Deed Poll.

See subjects, DEED POLL and INDENTURE, in the text above.

Conveyance—Exchange Deed.

This form of conveyance is neither convenient nor customary. Where an exchange is made, separate deeds are given; the ordinary form is used in such cases.

Conveyance—Executor's Deed.

See various States, additional forms, ante.

This conveyance (deed, *or* indenture), made this —— day of ——, between E. X., of —— county, in the State of ——, executor (*or*, sole acting executor, *or*, sole surviving executor; *or*, *if there are several, say:* E. X., of, etc., and T. R., of, etc., executors) of the last will and testament of D. D., late of ——, in —— county, and State of ——, deceased, of the first part, and C. D., of —— county, State of ——, of the second part, witnesseth:

That the said party (*or*, parties) of the first part, by virtue of the power and authority to him (*or*, them) given in and by the said last will and testament, and in consideration of the sum of —— dollars to him (*or*, them) paid by the said party of the second part, the receipt whereof is hereby acknowledged, has (*or*, have) granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does (*or*, do) grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, all (*here follows the description*), together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party (*or*, parties) of the first part (*or*, either of them, have or) has, by virtue of the said last will and testament, or otherwise, of, in and to the above-granted premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above-granted premises, together with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns, forever.*

And the said party (*or*, parties) of the first part, for himself, his (*or*, themselves, their) heirs, executors, and administrators does (*or*, do) covenant, promise and agree, to and with the party of the second part, that he is (*or*, they are) lawfully the executor [s] of the last will and testament of said M. N., and has (*or*, have) power to convey as aforesaid, and has (*or*, have) in all respects acted, in making this conveyance, in pursuance of the authority granted in and by the said last will and testament; and that he has (*or*, they have) not made, done, or suffered any act, matter or thing, whatsoever, since he was (*or*, they were) executor as aforesaid, whereby the above-granted premises, or any part thereof, are, shall or may be impeached, charged or incumbered in any manner whatsoever.

In witness whereof, the said party (*or* parties) of the first part has (*or*, have) hereunto set his hand (and seal, [*or*, their hands] and seals), the day and year first above written. A. B., [*Seal.*]

Executor, etc.

Executed and delivered in presence of }

[*Signature of witness.*]

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Executor's Deed.

Several Executors Covenanting Severally and Each for himself Alone.

(*As in preceding form to the *, continuing thus:*

And the said parties of the first part, each for himself, his heirs, executors and administrators, does severally and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only, covenant, promise and agree, to and with the said party of the second part, that he is lawfully the executor of the last will and testament of the said D. D., and has power to convey as aforesaid, and has in all respects acted, in making this conveyance, in pursuance of the authority granted in and by the said last will and testament; and that he has not made, done, or suffered any act, matter or thing whatsoever, since he was executor as aforesaid, whereby the above-granted premises, or any part thereof, are, shall or may be impeached, charged or incumbered, in any manner whatsoever.

In witness whereof, the parties of the first part have hereunto set their hands and seals, the day and year first above written.

A. B., *Executor, etc.* [*Seal.*]
C. D., *Executor, etc.* [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Gift Deed.

This conveyance (deed, *or* indenture), made this —— day of ——, A. D. ——, between A. B., of —— county, and State of —— (and W. B., his wife), of the first part, and C. B., of the same place, son of the said A. B., of the second part, witnesseth:

That the said A. B., for and in consideration of the natural love and affection which he has unto the said C. B., by these presents does give, grant, alien, convey and confirm unto the said C. B., his heirs and assigns, forever, all (*here insert description of the premises*): together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right (dower and claim of dower), title, interest, property, claim and demand, whatsoever, of the said party (*or*, parties), of the first part, of, in and to the said premises, with the appurtenances, and every part thereof:

To have and to hold all and singular the above-granted premises, with the appurtenances, unto the said C. B., his heirs and assigns, forever.

In witness whereof, the party (*or*, parties) of the first part has (*or*, have) hereunto set his hand and seal (*or*, their hands and seals), the day and year above written. (*Signatures and seals.*)

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Ground-Rent Deed.

See PENNSYLVANIA FORMS, ante.

Conveyance—Guardian's Deed.

See forms under the various States, ante.

Conveyance—Husband and Wife.

See forms under the various States, ante.

Conveyance—Indenture.

See subjects, INDENTURE and DEED POLL, in the text above.

Conveyance—Life Estate.

See HABENDUM IN DEEDS, ante.

Conveyance—Masters in Chancery Deed.

This conveyance (deed, *or* indenture), made this —— day of ——, by M. C., a master in chancery in and for the State of ——, in —— county, party of the first part, and C. D., of ——, of the second part.

Whereas, at a court of chancery, held at ——, in ——, before the vice-chancellor of the —— circuit of the State of ——, on the —— day of ——, it was, among other things, ordered, adjudged and decreed by the said court, in a certain cause then pending in the said court between C. T., complainant, and D. T., defendant, that all and singular the mortgaged premises mentioned in the bill of complaint in said cause, and in said decree described, or so much thereof as might be sufficient to raise the amount due to the complainant for principal, interest, and costs in said cause, and which might be sold separately without material injury to the parties interested, be sold at public auction, according to the course and practice of this court, by or under the direction of a master thereof, in —— county of ——; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that said master give public notice of the time and place of such sale, according to the course and practice of said court, and as required by law, and that any of the parties in said cause might become a purchaser or purchasers on such sale; that the said master execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be so sold, a good and sufficient deed or deeds of conveyance for the same;

And whereas, a certificate of the enrolment of said decree, signed by the clerk of said court, has been presented to the said master in chancery, the party of the first part;

And whereas he, in pursuance of the order and decree of the said court, did, on the —— day of ——, sell by public auction, at ——, in the county of ——, (part of) the premises in the said order mentioned, due notice of the time and place of such sale being first given, agreeably to the said order at which sale the premises hereinafter described were struck off to said party of the second part, for the sum of —— dollars, that being the highest sum bid for the same:

Now this conveyance (deed, *or* indenture) witnesseth:

That the said master in chancery, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and decree of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, all those two certain lots, pieces or parcels of land, being (part of) the said mortgaged premises, situate, lying and being in —— county and State of (*etc., inserting the description*), together with all and singular the tenements, hereditaments, and appurtenances to the same belonging, or in anywise appertaining:

To have and to hold all and singular the above-granted premises, with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said M. C., master in chancery as aforesaid, hath hereto set his hand and seal, the day and year first above written.

M. C., [*Seal.*]
Master in Chancery.

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Mistake—To Correct.

Deed to Correct Mistakes in a Prior Conveyance.

This conveyance (deed, *or* indenture), made this —— day of ——, by A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth:

Whereas, the said A. B. did, on or about the —— day of ——, execute and deliver to the party of the second part (*or*, to one C. D., under whom the party of the second part hereto claims), for the consideration therein mentioned, a conveyance of certain lands in ——, hereinafter more particularly described, which said conveyance is recorded in the office of the ——, of —— county. book ——, page ——, of conveyances;

And whereas, in said conveyance, by mistake, the words —— were written instead of the words —— (*or otherwise, setting out the errors*):

And whereas, to prevent difficulties hereafter, it is expedient to correct said errors:

Now, therefore, this conveyance (deed *or* indenture) witnesseth:

That the said party of the first part, in consideration of the premises and of one dollar to him paid by the party of the second part, hereby grants, conveys, releases and confirms unto the said party of the second part, his heirs and assigns, forever, all (*etc., giving the description, and concluding as in other cases*).

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Partition Deed.

This conveyance (deed, *or* indenture), made the —— day of ——, between A. B., of —— county, and State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, and E. F., of —— county, and State of ——, of the third part:

Whereas, the parties hereto have and hold as tenants in common (*or* as joint tenants), in equal parts (*or*, viz, the said A. B. two equal undivided sixths, and the said C. D. one equal undivided sixth, and the said E. F. three, etc., of) a certain tract, piece, or parcel of land, situate in ——, being the same premises conveyed to them by D. D. by deed bearing date the —— day of —— (*or* devised to them by the will of D. D., *or otherwise, according to the fact*); and whereas, the parties hereto have mutually agreed to make partition of said land and hold their respective shares in severalty:

Now this conveyance (deed, *or* indenture) witnesseth:

1. The said A. B., party of the first part, shall from henceforth have, hold, possess and enjoy in severalty by himself, and to him, and his heirs and assigns, for his share and proportion of the said lands and premises, all (*here follows description of the part allotted to him*); and the said parties of the second and third parts, in consideration of the premises (and of the sum of —— dollars to them paid by the said A. B. for equality of partition, the receipt whereof is hereby acknowledged), do hereby give, grant, set over, convey, release and confirm unto the said A. B., the party of the first part, his heirs and assigns, forever, the last above-described premises, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest (dower and right of dower), property, possession, claim and demand whatsoever of the said parties of the second and third parts, both in law and in equity, of, in and to the above-granted premises, with the hereditaments and appurtenances:

To have and to hold all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the first part, his heirs and assigns, forever (*if there is any incumbrance, add*, subject to, *etc., specifying it*).

And the said parties of the second and third parts do hereby severally, and not jointly, but each for himself, and for his heirs, executors and administrators, covenant, promise and agree, to and with the said party of the first part, that he, the said A. B., his heirs and assigns, shall or lawfully may, from time to time, and at all times hereafter, forever, freely, peaceably and quietly have, hold, occupy, possess and enjoy the said first-described piece or allotment of land, with the appurtenances, and receive and take the rents, issues and profits thereof, without any molestation, interruption or denial of them, the parties of the second and third parts, their heirs or assigns, or of any other person or persons whatsoever, lawfully claiming or to claim by, from or under them or either of them, or by or with his or their act, privity or procurement.

2. The said C. D., party of the second part, shall from henceforth have, hold, possess and enjoy in severalty by himself, and to him, and his heirs and assigns, for his share and proportion of the said lands and premises, all (*here insert description of the part allotted to him*): and the said parties of the first and third parts do hereby give, grant, set over, convey, release and confirm unto the said C. D., the party of the second part, his heirs and assigns, forever, the last above-described premises: together with (*etc., as above; and so on with the allotment to the party of the third part*).

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written. (*Signatures and seals.*)

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Pew Deed.

By the Proprietors of a Church.

Know all men by these presents:

That we, the proprietors (*or*, trustees, etc.) of the —— Church, in ——, in consideration of —— dollars, to us paid by C. D., of ——, do hereby grant, bargain, sell and convey unto the said C. D., his heirs and assigns, the pew in the church aforesaid, numbered ——.

To have and to hold the same, with the privileges and appurtenances, to the said C. D., his heirs and assigns, forever:

And the said proprietors (*or*, trustees, etc.) hereby covenant with the said C. D., his heirs and assigns, that they are the lawful owners of the said pew, and have good right and authority to sell the same as aforesaid:

Provided, however, that this deed shall not be binding until recorded in the books of said church.

In testimony whereof, the said proprietors (*or*, trustees, etc.) have caused these presents to be signed by their treasurer, and their corporate seal to be hereunto affixed by their treasurer, this —— day of ——.

[*Seal.*] [*Signatures.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Quit-Claim Deed.

See various forms in different States, ante.

Conveyance—Referee's Deed.

Pursuant to a Judicial Sale—The following Parties Joining: Administratrix, Husband and Wife in Right of Wife; Wife an Executrix; and Infants, by their Guardians.

This conveyance (deed, *or* indenture), made this —— day of ——, in the year ——, by R. T., (special) referee and trustee, appointed by the —— court, party of the first part, A. X., of ——, administratrix with the will annexed of D. D., deceased, and the said A. X., in her own right, H. X., of ——, and W. X., his wife, in right of the said W. X., and the said W. X., as executrix of the last will and testament of D. D., deceased, I. N., of ——, and F. T., of ——, by G. N., their guardian, parties of the second part, and T. B., of ——, of the third part:

Whereas, at a special term of the —— court of the State of ——, held for the county of ——, at ——, on the —— day of ——, it was among other things ordered, adjudged and decreed by the said court, in a certain cause then pending in the said court, between (*here name the parties to the suit*), that the said R. R. T., as such referee and trustee, for that purpose appointed by the said decretal order, proceed with all convenient speed, to sell for cash, all real estate which the said D. D., deceased, died seized or possessed of or entitled to, and that each distinct farm, tract or lot be sold separately, and at public auction, in the county of ——, by or under the direction of said referee and trustee, and that said referee and trustee give public notice of the time and place of such sale, by advertising the same for three weeks, twice each week, in the county of ——, and for three weeks, once each week, in any other county in this State in which the property may be situated, as in case of sale of mortgaged premises in suits for the foreclosure of mortgages on lands, and that such referee and trustee execute to the purchaser or purchasers, good and sufficient deed or deeds of conveyance therefor:

And it was further ordered, adjudged, and decreed, in and by the said decretal order, that the parties to the said suit, respectively—that is to

say, the adult parties, personally, and the said infant defendants by their several guardians ad litem (who were thereby severally appointed and authorized for that purpose,)—unite with the said referee and trustee in such deed or deeds of conveyance; and that the said W. X., if living, unite in the said deed or deeds as such executrix as aforesaid, and in case the said E. D. should die before the said sale and conveyance, then it was ordered that no proceedings be had towards such sale, until some party to the said suit should obtain letters of administration with the will annexed, of the goods, chattels and credits not administered of the decedent, W. D., thereby left without a personal representative, and that the party obtaining such letters of administration also unite as such in the said deed or deeds of conveyance. And whereas the said R. R. T., the said party of the first part, as referee or trustee aforesaid, in pursuance of the said decretal order of the said court, did, on the —— day of ——, sell at public auction, at the ——, in ——, in the county of ——, the premises hereinafter mentioned and described, due notice of the time and place of such sale being first given, agreeably to the said decretal order, by advertising the same for three weeks and upwards, twice each week, in a newspaper published in the city of ——, and for three weeks and upwards, once each week, in a newspaper published in the county of ——, in which county part of the property to be sold is situated, such advertisement being as in the case of sales of mortgaged premises in suits for the foreclosure of mortgages on lands; at which sale the premises hereinafter described were struck off to the said party of the third part for the sum of —— dollars, that being the highest sum bidden for the same, and he being the highest bidder therefor:

Now this conveyance (deed, *or* indenture) witnesseth:

That the said party of the first part, as referee and trustee as aforesaid, and the parties of the second part to these presents, in order to carry into effect the sale so made by said party of the first part, and in pursuance of said decretal order, and in consideration of the premises, and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the third part to the said party of the first part, the receipt whereof is hereby acknowledged by the said party of the first part, have bargained and sold, and by these presents do bargain, sell and convey unto the said party of the third part all that certain lot, piece or parcel of land (*here follows the description of the premises conveyed*), together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest (dower and right of dower), property, possession, claim and demand whatsoever, as well at law as in equity, of the said parties of the first and second parts, and of each and every of them, of, in and to the above-described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the third part, his heirs and assigns forever.

In witness whereof, the said parties of the first and second parts have hereto set their hands and seals, the day and year first above written.

R. R. T., *Trustee and Referee.* [*Seal.*]
A. X., *Administratrix, etc.* [*Seal.*]
A. B., [*Seal.*]
H. X., [*Seal.*]
W. X., [*Seal.*]
W. X., *Executrix, etc.* [*Seal.*]
I. N. and F. T., by G. N., *their Guardian.* [*Seal.*]

Signed, sealed and delivered in the presence of }
(*Witnesses' signatures.*)

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Release Deed.

To all people to whom these presents shall come, A. B., C. D., E. F. and W., his wife, of ——, send greeting: *or,*

This conveyance (*or* deed, etc.), made this —— day of ——, by A. B., etc., to H. I., etc., witnesseth. *Or,*

Know all men by these presents, etc.

(*Insert recitals, etc., if any.*)

Now know ye; that said parties of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents remise, release, and forever quitclaim unto the said H. I., and to his heirs and assigns, all the estate and estates, shares, purports and dividends, right, title, interest, property, claim and demand whatsoever of them, the parties of the first part, in law or equity, or otherwise howsoever, of, in, to, or out of all that tract, part and parcel of land, situate, lying and being in the township of ——, county of ——, State of —— (in the actual possession and seizin of the said H. I.), bounded, limited, and described as follows, to wit: (*here follows the description of the premises*), together with all and singular the buildings, improvements, rights, members, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the premises hereby remised and released, or mentioned or intended to be, with the appurtenances, unto the said H. I., his heirs and assigns, forever. So that neither of said parties, nor their heirs, nor either or any of them, nor any other person or persons whomsoever, lawfully claiming or to claim by, from or under them or any of them, shall or may at any time or times hereafter, have, claim, or challenge, or demand any estate, right, title, or interest of, in, to, or out of the said premises, etc., hereditaments, etc., or any part or parcel thereof; but thereof and therefrom shall and will be utterly excluded and forever debarred by these presents.

In witness, etc.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Reversion in Fee.

Subject to an Outstanding Life Estate.

This conveyance (*or* deed, *or* indenture), made this —— day of ——, between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, and State of ——, of the second part:

Whereas, M. B. (mother of said party of the first part), holds for the term of her natural life the premises hereinafter described, the reversion and remainder whereof belongs to the party of the first part and his heirs:

Now this conveyance (*or* deed, *or* indenture) witnesseth:

That the said party of the first part, in consideration of —— dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, his heirs and assigns, forever, the reversion and remainder of all (*here insert description of the premises*)

To have and to hold the said reversion and remainder, and the rents, issues, and profits thereof, when it shall happen, upon the death of said M. B., in and of all and singular the above-granted premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. (*If there is any incumbrance, add,* subject to, *etc., specifying it.*)

And the said party of the first part, for himself, his heirs, executors and administrators, does covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that the said party of the first part is lawfully seized in his own right of a good, absolute and indefeasible estate in remainder in the fee of said premises, with the appurtenances, immediately from and after the decease of the said M. B. (*if conveyed subject to an incumbrance say,* subject as aforesaid).

That the said reversion and remainder now is, and the said premises and appurtenances immediately from and after the death of the said W. B., shall be free from all incumbrances (except as aforesaid); that the said party of the first part has good right, full power, and lawful authority to convey the same as aforesaid, and that after the decease of the said W. B., he, and his heirs, executors and administrators will warrant and defend the above-granted premises and appurtenances to the said C. D., his heirs and assigns, forever, against the lawful demands of all persons.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

A. B. [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Right of Way.

See PREMISES IN DEEDS, above.

Conveyance—Sheriff's Deeds.

See SHERIFF'S DEEDS in various States, ante.

Conveyance—Tenancy in Common.

Creating a Tenancy in Common.

This conveyance (*or* deed, *or* indenture), made the —— day of ——, by A. B., of —— county, in the State of —— (and W. B., his wife), of the first part, and C. D. and E. F., of —— county, in the State of ——, of the second part, witnesseth:

That the said party (*or* parties) of the first part, in consideration of the sum of —— dollars to him (*or* them) paid by the said parties of the second part, the receipt of which is hereby acknowledged, has (*or* have) (granted, bargained, sold, aliened, remised, released, conveyed, and confirmed), and by these presents does (*or* do) grant, bargain, sell, alien, remise, release, convey and confirm unto the said parties of the second part, and to their heirs and assigns, and the survivor of them, and the heirs and assigns of the survivor of them, forever, all (*here follows the description of the premises conveyed*), together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest (dower, *or* right of dower[e]), property, possession, claim and demand whatsoever, of the said party (*or* parties) of the first part, both in law and in equity, of, in, and to the above-granted premises, with the hereditaments and appurtenances.

To have and to hold all and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said parties of the second part, their heirs and assigns forever, as tenants in common, and not as joint tenants. And the said A. B. does hereby covenant, promise and agree, to and with the said parties of the second part, their heirs and assigns, in manner aforesaid, that (*etc., as in other cases*).

Conveyance—Joint Tenancy.

Creating a Joint Tenancy.

(*Same as above, except that the habendum will be*):

To have and to hold all and singular the above-granted premises, together with the appurtenances and every part thereof unto the said C. D. and E. F., their heirs and assigns, forever, as joint tenants, and not as tenants in common.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Trust Deed.

In Trust for Support of Grantor's Parents, with Power of Appointment to them, and a Reservation of Rents for Payment of Incumbrances.

This conveyance (*or* deed, *or* indenture) tripartite, made this —— day of ——, A. D. ——, between A. B., of ——, party of the first part, and C. D., of ——, party of the second part, and W. B., of ——, wife of B. B., of ——, party of the third part:

Whereas, the undersigned is desirous to make a provision and settlement for the benefit of his father, mother and sisters, by a conveyance in trust of the property hereinafter mentioned, subject, however, to the reservations herein provided, and to the trusts and powers herein contained:

Now this conveyance (*or* deed, *or* indenture) witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said parties of the second part, and to their successors and assigns forever, all (*here follows the description of the premises.*)

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever of the said party of the first part, both in law and in equity, of, in and to the above-granted premises, with the hereditaments and appurtenances:

To have and to hold all and singular the above-granted premises, together with the appurtenances, and every part, unto the said party of the second part, his heirs and assigns, forever. (*If there is any incumbrance add*, subject to, *etc., specifying it.*)

It is, however, to be taken and understood as part of this indenture, and as limiting and controlling the grant hereby made to the party hereto of the second part, that the party hereto of the first part hereby retains and reserves the possession, use, occupation, rents, issues and profits of the premises hereby conveyed, for the purpose of paying, and until the mortgage liens now existing upon the said premises shall be paid off or discharged, such retaining and reservation of the possession, use, occupation, rents, issues and profits not, however, to extend beyond the —— day of ——, but to terminate sooner if the aforesaid mortgage liens shall be sooner paid off or discharged, or if both B. B. and W. B., the father and mother of the party hereto of the first part, shall sooner depart this life;

In trust, nevertheless, subject to the reservation aforesaid, that the said party of the second part, his heirs, successors and assigns, shall manage said property hereby conveyed, and shall apply the net income and profits, after deducting for repairs, taxes, assessments and insurance, which shall, from time to time, be realized from the premises hereby conveyed, to the sole and separate use of the said W. B., during her natural life, free and discharged from any rights or claims of or against her husband; the separate receipt or settlement of the said W. B. therefor, to be a full and complete discharge of the said party of the second part; secondly, in trust from the death of the said W. B., to apply the said net income and profits as they shall from time to time arise, to the sole use of the said B. B., and for the support of himself and family during his life. It is further understood and to be taken as part of this conveyance, that the property and premises hereby conveyed at the death of the said B. and W. B. shall vest in the children of the said B. B., or in a trustee or trustees for their benefit, in such shares and proportions, and in such estates as the said B. B. shall by a conveyance or last will and testament order and appoint.

It being to be further understood and taken as part of this indenture, that the said B. B. shall have the power of ordering and appointing, or distributing among, or in trust for his children, the fee-simple of said property, or less estate therein, either by a conveyance or by a last will and testament, subject to the aforesaid reservation and life interest, and in such shares and proportions, and in such manner as he shall therein designate and direct, provided, however, that at

[e] Omit these words, unless a wife joins.

least one-fourth part thereof shall be appointed to the use of the party hereto of the first part.

It being the intent and meaning hereof to clothe the said B. B. with all the power and authority over three-fourths of said estate or property, in distributing the same among his children, subject to said reservation and life interests, as the party of the first part would have had, had not this indenture been executed.

And it is further understood and to be taken as part of this conveyance, that if the power of appointment and distribution aforesaid shall not be exercised by the said B. B. during his lifetime, that the same may be exercised by the said W. B., who, upon the death of the said B., without having by a conveyance or last will and testament exercised the power and authority hereby granted, shall have the same power and authority.

And the said party hereto of the second part is hereby authorized and directed to convey the property and premises herein and hereby conveyed in pursuance and upon the terms of the order and appointment of the said B. or W. B. legally made under the provisions of this conveyance (*or*, deed *or* indenture).

This conveyance (*or* deed, *or* indenture) further witnesseth, that the said party of the first part, for and in consideration of the sum of ten dollars to him in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, and the said party of the third part forever discharged therefrom, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth, for himself, his heirs and assigns, grant, bargain, sell, assign, transfer and set over unto the said party of the third part, her heirs and assigns, all the estate, premises and property hereinbefore described and intended to be conveyed, if any, which are not legally vested in or conveyed to the said party of the second part, his heirs and assigns, by virtue of the execution of this indenture, for the uses and purposes hereinbefore mentioned, or which cannot be claimed by the beneficiaries under or through the trusts, or persons, or the execution thereof, herein or hereunder intended to be legally created, authorized and executed, reserving and retaining, however, to the said party of the first part, the use, occupation, rents, issues and profits of the said property and premises, for the period hereinbefore reserved and retained.

In witness whereof, the said parties have hereunto set their hands (and seals), the day and year first above written.

(*Signatures and seals.*)

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Trust Deed.

With Warranty.

This conveyance (*or* deed, *or* indenture), made this —— day of ——, by and between A. B., of —— county, in the State of ——, of the first part, and E. F., of —— county, in the State of ——, of the second part, and C. D., of —— county, in the State of ——, of the third part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto said party of the second part, his successors and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describe it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, forever, in fee; in trust, nevertheless, and to and for the uses, interests and purposes hereinafter limited, described and declared—that is to say, in trust, to (*state the purposes, etc*.)

And said party of the first part does hereby covenant, promise, and agree that the within-described premises are free, clear, and discharged of and from all incumbrances, of whatever nature or kind soever; and that he will warrant and forever defend the same unto said parties of the second and third parts, their successors and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

And the said party of the second part covenant faithfully to perform and fulfil the trusts herein created.

In witness whereof, the said parties have hereunto set their hands, the day and year first above written. (*Signed*) A. B.

Executed in presence of E. F.

W. T., N. S. C. D.

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Warranty Deeds.

See forms given for the various States, ante.

Conveyance—Warranty Deed.

With Full Covenants.

This conveyance (deed, *or* indenture), made this —— day of ——, in the year ——, between A. B., of —— county, in the State of —— (and W. B., his wife), of the first part, and C. D., of ——, in the State of ——, of the second part, witnesseth:

That the said party (*or* parties) of the first part, in consideration of the sum of —— dollars, lawful money of the United States, to him (*or* them) paid by the said party of the second part, at or before the (sealing and) delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors and administrators, forever, released and discharged from the same by these presents; has, and by these presents does (*or* do) grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, all (*here follows the description of the premises*), together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest (dower and right of dower), property, possession, claim and demand whatsoever, both in law and in equity, of the said party (*or* parties) of the first part, of, in and to the above-granted premises, and every part and parcel thereof, with the appurtenances:

To have and to hold and singular the above-granted premises, together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns, forever. (*If there is any incumbrance state it thus:* subject, however, to a certain indenture of mortgage for —— dollars, and dated ——, and recorded in the office of ——, in mortgage record ——, at page ——, and also subject, etc.)

And the said A. B. (*naming only the party who warrants*), for himself, his heirs, executors and administrators, does covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that the said A. B., at the time of the (sealing and) delivery of these presents, is lawfully seized in his own right (*or otherwise, as the case may be*), of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted and described premises, with the appurtenances (*if conveyed subject to incumbrance say*, subject as aforesaid); and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party (*or* parties) of the first part, his (*or* their) heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever (*if conveyed subject to an incumbrance say*, except as afore said.)

And also, that the said party (*or* parties) of the first part, and his (*or* their) heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in, or to the above-granted premises, by, from, under or in trust for him (*or* them), shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or intended so to be in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

And the said A. B. (*name party who warrants*), and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and, by these presents, forever defend.

In witness whereof, the said party (*or* parties) of the first part has (*or* have) hereunto set his hand (and seal) (*or* their hands [and seals]), the day and year first above written.

(*Signatures* [*and seals.*])

Signed, sealed, acknowledged and delivered in the presence of }
(*Signature of witness.*)

For form of ACKNOWLEDGMENT, see that title.

Conveyance—General Warranty Deed.
By Attorney.

This conveyance (*or* deed, etc.), made this —— day of ——, by A. B., of —— county, in the State of ——, of the first part, by A. A., his attorney in fact, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate (with dower *or* without dower, *as the case may be*), situated in the county of ——, and State of ——, to wit: (*describe it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever.

And said (*party warranting*), for himself, his heirs, executors, or administrators, does hereby covenant, promise, and agree to and with said party of the second part, that at the delivery of these presents that he was lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted and described premises, with the appurtenances; that the same are free, clear, discharged and unincumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of whatever nature or kind soever; and that he will warrant and forever defend the same unto said party of the second part, his heirs and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said party has hereunto set his hand and seal, the day and year first above written. A. B., *By A. A., his Attorney in Fact.* [*Seal.*]

Signed, sealed, and acknowledged in presence of W. T., N. S. }

For form of ACKNOWLEDGMENT, see that title.

Conveyance—Special Warranty Deed.
This conveyance (deed, etc.), made this —— day of ——, by A. B. (and W. B., his wife), of —— county, in the State of ——, of the first part, to C. D., of —— county, in the State of ——, of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate (with dower *or* without dower), situated in the county of ——, and State of ——, to wit: (*describing it by metes and bounds*).

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever;

And said parties of the first part, for themselves, their heirs, executors, or administrators do hereby covenant, promise, and agree, to and with said party of the second part, his heirs and assigns, that they will warrant and forever defend the within granted and described premises, with the appurtenances, against the claims of all persons, claiming or to claim by, through, or under themselves (and themselves only).

In witness whereof, the said parties, etc. (*as in the first form*).

Conveyance—Water-Course.
See PREMISES IN DEEDS, ante.

Conveyance—Way—Right of.
See PREMISES IN DEEDS, ante.

LEASES are conditional conveyances; species of contracts for the possession and profits of lands and tenements, either for life or for a certain term of years, or during the pleasure of the parties. A lease is a contract for the possession and profits of lands and tenements on the one side, and a recompense of rent or other income on the other.[a]

One of the essential properties of a lease is that its duration must be for a shorter period than the duration of the interest of the lessor in the land; for if he disposes of his entire interest it becomes an *assignment*, and is not a lease. In other words, the granting of a lease always supposes that the grantor reserves to himself a reversion in the leased premises.

The party who leases is called the *lessor;* he to whom the lease is made, the *lessee;* and the compensation or consideration of the lease is *the rent.*

WHAT MAY BE LEASED. Anything corporeal or incorporeal lying in livery or in grant, may be the subject-matter of a lease; and, therefore, not only lands and houses, but commons, ways, fisheries, franchises, annuities, rent charges, and all other incorporeal hereditaments, are included in the common law rule.[b] Goods, chattels, or live-stock may also be leased, and although rent cannot technically be said to issue out of these, the contract for its payment is good, and an action for rent in arrear may be maintained on such leases.[c]

WHO MAY LEASE. All persons in possession of lands and tenements may grant leases of them, unless they are under some legal disability; as

a-Bac. Abr. *Lease.* b-Shepp. Touchst. 268; 23 Penn. St. 106; 3 N. Y. 151; 1 Root, 308. See 1 Washb. Real Prop. 310. c-Co. Litt. 57, *a;* 3 Hen. & M. 470; 31 Penn. St. 20.

unsound mind, immature age, or the like:[d] and in case of many of these disabilities, the leases are voidable merely, and not void.[e] But it is essential to the validity of a lease that the lessor has, at the time he undertakes to make the grant, possession of the premises, otherwise whatever he does will amount to nothing more than the assignment of a *chose in action*.[f] But, unless there is an *adverse holding*, possession will be deemed to follow the ownership; and although a lease may not be sufficient to authorize a lessee to demand possession for the want of a possessory title in his lessor, it will still operate by way of estoppel, and inure to his benefit if the lessor afterwards comes into possession of the land before the expiration of the lease.[g]

The power to lease will of course depend upon the extent of the lessor's estate in the premises; and if he has but an estate for life, his lease can only be co-extensive therewith; when, for a term of years, its commencement, as well as its termination, must be ascertained, for certainty in these respects is of the essence of a term of years. But although this term may not at first appear to be certain, it may be rendered so by reference to some fact or event; as, if a lease be made to a man for so many years as he has in the manor of Dale, and he happens to have a term of two years in that manor, the lease will be good for that period.[h]

In all cases of uncertain duration, or if no time has been agreed upon for the continuance of the term, or if after the expiration of a term the tenant continues to hold over, without any effort on the part of the landlord to remove him, the tenancy is at the will of either party; and it remains at will until after the payment and receipt of rent on account of a new tenancy, or until the parties concur in some other act which recognizes the existence of a tenancy, from which event it becomes a tenancy from year to year. After this, neither party has a right to terminate it before the expiration of the current year upon which they have entered, nor then without having first given reasonable notice to the other party of his intention to do so.[i]

TERMINATION OF LEASE. A lease may be terminated otherwise than by forfeiture before the prescribed period, if the premises are required to be taken for public uses or improvements, or the subject-matter of the lease wholly perishes, or is turned into a house of ill-fame.[j] The same result will follow when the tenant purchases in fee, or the fee descends to him as heir in law; for in either case the lease is merged in the inheritance: since there would be a manifest inconsistency in allowing the same person to hold two distinct estates immediately expectant on the other, while one of them includes the time of both, thus uniting the two opposite characters of landlord and tenant.[k] See LEASE FORMS, post.

LEASE FORMS.

Leases are made either by parol or in writing, but no particular form of expression is required in any case to create an immediate demise.[l] Any permissive holding is, in fact, sufficient for the purpose, and it may be contained in any written memorandum by which it appears to have been the intention of one of the parties voluntarily to dispossess himself of the premises for any given period, and of the other to assume the possession for the same period.[m] Any general description will suffice to pass the leased premises, if it be capable of distinct ascertainment and identification. Whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession, and the other come into it, for a determinate time, are of themselves sufficient, and will, in construction of law, amount to a lease, as well as if the most proper and pertinent words had been made use of for that purpose.[n] And inaccuracies as to qualities, names, amounts, etc., will be rejected, if there is enough to make the purposes and intentions of the parties certain.[o]

The formal parts of a lease in writing are:

1. **The introduction**, which may include the date.

THE DATE, which will fix the time for its commencement, unless some other period is specified in the instrument itself for this purpose; but if there is no date, or an impossible one, the time will be considered as having commenced from the delivery of the lease.[p]

2. **The premises**, which include:

1. THE NAMES OF THE PARTIES; and the law knows but one Christian name; and therefore the middle letter of the name of either party is immaterial, and a person may always show that he is as well known by one name as another.[q]

2. THE CONSIDERATION must appear, although it need not be what is technically called rent, or a periodical render of compensation for the use of the premises; but it may be a sum in gross, or the natural affection which one party has for the other. It may also consist in grain, animals, or the personal services of the lessee.[r]

3. THE DESCRIPTION OF THE PREMISES need not specify all the particulars of the subject-matter of the lease, for the accessories will follow the principal thing named; thus the garden is parcel of a dwelling-house, and the general description of a farm includes all the houses and lands appertaining to the farm.[s] But whether certain premises are parcel to those leased or not is always matter of evidence.[t]

3. **The habendum.**
4. **The reddendum.**
5. **Condition or proviso.**
6. **The covenants.**
7. **The conclusion.**
8. **The signatures** (and seals where required by law) of the grantors. And where the covenants in the lease are mutual both parties must sign.
9. **Attestation** of witnesses, when required by law.
10. **The acknowledgment**, when required by statute, as where the term is years.

The rights and liabilities of the respective parties are regulated by law, in the absence of any particular agreement in respect thereto: but express covenants are usually inserted in a lease for the purpose of limiting or

d-2 Exch. 487; 4 Id. 17; 9 Id. 309; 8 C. & P. 679; 10 Pet. 65; 5 Pick. 431; 11 Id. 304; 17 Wend. 133; 4 Dev. & B. 289; 1 N. H. 75. e-See as to infants, 10 Pet. 65; 5 Ohio, 251; 15 Id. 192; 11 Humph. 468; 11 Johns. 539; 14 Id. 124. Intoxicated persons, 13 M. & W. 623. Married women, Smith Landl. & Ten. 48; 1 Platt Leases, 48; 19 N. H. 483. f-Cro. Car. 109; Shepp. Touchst. 269. g-Bac. Abr. *Leases* (I. 4); Cro. Eliz. 109; 28 Barb. 240; 2 Hill, 554; 16 Johns. 110, 201; 5 Ark. 693; 7 Mann. & G. 701. h-Co. Litt. 45, *b*; 3 T. R. 463; 4 East. 29; 1 M. & W. 533. i-11 Wend. 616; 13 Johns. 109; 8 T. R. 3; 4 Ired. 294; 3 Zabr. 111. j-24 Wend. 454; 29 Barb. 116; 5 Ohio, 203. k-10 Johns. 482; 2 C. & P. 347; Tayl. Landl. & Ten. § 502. l-8 Bingh. 182; 9 Ad. & E. 650; 5 T. R 168; 2 Wend. 438; 1 Denio, 602; 8 Penn. St. 272; 12 Me. 135; Wms. Real Prop. 327. m-Tayl. Landl. & Ten. § 26; 1 Washb. Real Prop. 300 n-4 Burr. 2209; 1 Mod. 14; 11 Id. 42; 2 Id. 89; 3 Burr. 1446; Bac. Abr. Leases; 6 Watts, 362; 3 M'Cord, 211, 3 Fairf. 478; 5 Rand. 571; 1 Root, 318. o-1 M. & S. 342; Cro. Car 473; Cro Jac. 34; Plowd 187, 191; Dyer, 376, *b*; 1 M. & Sel 299; 5 B. & Ad. 43; 6 M. & W. 234, 269. p-14 Pet. 322. q-2 Johns. 231; 15 Wend 656; 4 B. & C. 272 r-3 Hill (N. Y.) 345; 1 Speers, 408. s-9 Conn. 374; 4 Rawle, 330, 9 Cow. 747. t-14 Barb. 434; 3 B. & C. 870

otherwise defining their rights and duties in relation to repairs, taxes, insurance, renewals, residence on the premises, modes of cultivation, fixtures and the like.

In every well-drawn lease provision is made for a forfeiture of the term in case the tenant refuses to pay rent, commits waste, or is guilty of a breach of the covenant to repair, insure, reside on the premises, or the like. This clause enables the lessor or his assigns to re-enter, in any such event, upon the leased premises and eject the tenant, leaving both parties in the same condition as if the lease were a nullity; but in the absence of a proviso for re-entry, the lessor would possess no such power, the mere breach of a covenant enabling him to sue for damages only.[u] The forfeiture will generally be enforced by the courts, except where the landlord's damages are a mere matter of computation, and can be readily compensated by money.[v] But in the case of a forfeiture for the non-payment of rent, the proviso is allowed to operate simply as a security for rent, and the tenant will be relieved from its effects at any time by paying the landlord, or bringing into court the amount of all arrears of rent, with interest and costs.

LEASES—VARIOUS DETAILS.

Introductions in Leases.

See other Conveyances.

The introduction to a conveyance, deed, lease, mortgage, etc., is called the "Testatum" clause. See the text preceding DEED FORMS, above.

A. B. (*or* A. B. and W. B. his wife [conveys, *or*] leases, etc.

I (*or* we, A. B., of ——, and W. B. his wife) for a consideration, etc. (convey, *or*) lease, etc.

This (agreement, *or* conveyance, *or* lease, *or* indenture, bipartite, tripartite, quadripartite, etc.) witnesseth:

That, etc.

This agreement (conveyance, *or* lease, etc.) made this —— day of ——, witnesseth:

That, etc.

This (agreement, *or* conveyance, *or* lease, etc.), made this —— day of ——, by A. B., of ——, to C. D., of ——, witnesseth:

That, etc.

This agreement (conveyance, *or* lease, etc.), made this —— day of ——, in ——, by A. B., of —— county, in the State (*or* Commonwealth) of ——, farmer, to C. D., of —— county, in the State (*or* Commonwealth) of ——, merchant, witnesseth:

That, etc.

Know all men by these presents:

That this (agreement, *or* conveyance, *or* lease, etc., *as above*).

Know all men by these presents:

That A. B., of ——, has, for a consideration of ——, etc., the receipt of which, etc., has leased and conveyed, and does by these presents lease and convey unto C. D., of ——, etc.

This (agreement, *or* conveyance, *or* lease, etc.), made and entered into this —— day of ——, by and between A. B., of —— county, and the State of ——, party of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That, etc.

Saving and excepting, etc.

To all to whom these presents may come greeting (*or* To all whom it may concern):

Know ye:

That this (agreement, *or* conveyance, *or* lease, etc.), by and between the ——, a corporation existing under the laws of the State (*or* Commonwealth) of ——, of the first part, and C. D., E. F., and G. H., a company doing business under the firm-name and style of the D., F., H. —— manufacturing company, of the second part, witnesseth:

That, etc.

u-3 Wils. 127; 2 Cow. 591; 2 Overt. 233. v-7 Johns. 235; 4 Munf. 332; 2 Price, 290.

Premises in Leases.

See other Conveyances.

1. STATEMENT OF PARTIES.
See DEEDS, ante, p. 299.

2. RECITALS FOR EXPLANATION.
See DEEDS, ante, p. 299.

3. DESCRIPTIONS OF PROPERTY LEASED, WITH EXCEPTIONS, ETC.
See DEEDS, ante, p. 300.

Habendum in Leases.

See Other Conveyances.

The habendum limits and defines what estate the grantee is to have in the premises conveyed, as, an estates for lives, years, or a less period; an absolute or conditional, joint or several, restricted, or limited estate, etc., etc

HABENDUM—LIFE ESTATE.

To have and to hold the same during the natural life (*or* lives) of ——.

Another.

To have and to hold said premises, with their appurtenances, unto said C. D., and his legal representatives, from —— last past, for and during (the term of ninety-nine years thence next ensuing, and to be fully complete and ended if) (*or* for and during the lives of) D. D. (daughter of said C. D.), S. D. (son of said C. D.), and N. D. (nephew of said C. D.), or any or either of them shall so long live.

HABENDUM—LIVES AND YEARS.

To have and to hold said premises, together with all and singular the buildings, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, unto said C. D., his executors, administrators (and assigns), from henceforth, for and during the natural life and lives of him, the said C. D. (aged about —— years), of D. D., his daughter (aged about —— years), and of S. D., his son (aged about —— years), and of the survivor of them, and for and during the further term of —— years, to commence from and immediately after the death of the survivor of them.

Yielding and paying therefor, etc.

HABENDUM—YEARS.

To have and to hold said premises, etc., for and during the term of —— years from and after the —— day of ——, last past.

Reddendum or Reservation in Leases.

See Other Conveyances.

The reddendum (or reservation) is that clause in a conveyance, deed, lease, etc., by which the grantor reserves something new to himself out of that which he granted before. It usually follows the habendum.

REDDENDUM OR RESERVATION—BALCONY, OBSERVATORY, ETC.

Excepting and always reserving unto said C. D., etc., their executors, administrators and assigns, liberty for them and such other persons as they or either of them shall elect (not exceeding —— in number at any one time) to pass and repass to and from and stand on and occupy the —— balcony (*or* observatory, etc.), and witness all exhibitions, pastimes, parades, reviews, shows, or other public affairs, etc., that shall be or appear in and upon the streets near the same, from time to time, and at all times during the said term hereunder granted.

REDDENDUM OR RESERVATION—DRIVE, ROADWAY, ETC.

Excepting and always reserving out of the premises hereby leased and conveyed unto said A. B., etc., the —— drive or roadway (*describing it*) through and over said premises, for the said A. B., to and from —— to ——, for any purpose whatsoever.

REDDENDUM OR RESERVATION—PRIVATE PASSAGE, ROADWAY, OR WAY.

Excepting and always reserving unto said A. B., his executors, administrators, tenants, and assigns, and all other persons whatsoever, free leave and liberty to pass and repass, by or

through, the passage, roadway, or way, lying through the said premises, out of —— into ——, on the back part of said premises called the ——, leading from —— into —— (at all convenient times in the daytime only), during the term of years hereinbefore (*or* hereinafter) granted.

REDDENDUM OR RESERVATION—TIMBER, ETC.

Excepting and always reserving out of the premises herein leased and conveyed all timber, trees, etc., standing and being on ——, etc.

REDDENDUM OR RESERVATION—WATER-COURSE.

Excepting and always out of the present lease reserving unto said A. B. and W. B. his wife, their executors, administrators and assigns, and the inhabitants of said premises, the water-course or passage made through and under the —— of said premises for the conveyance of water from —— to ——, and free liberty of ingress, egress, and regress in and upon said premises, for them, the said A. B. and W., their executors, administrators, tenants, workmen, servants, and assigns, at all times convenient and necessary, during the term hereby granted, to cleanse, repair and use said water-course.

Conditions and Provisos in Leases.

See Other Conveyances.

The condition in a conveyance or deed, lease, etc., is a qualification or restriction annexed to the conveyance, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. "Subject to," or "Subject, nevertheless, to," or "On condition," "Provided," "Provided always," "Provided nevertheless," etc. Thus the property conveyed may be subject to the payment of an annuity, an easement, an incumbrance, a mortgage, or other condition, qualification, restriction, etc.

See DESCRIPTION, ETC., WITH EXCEPTIONS, and HABENDUM and REDDENDUM, above· MORTGAGES TRUST DEEDS, post.

CONDITION OR PROVISO—DEATH OF LESSEE.

Provided always, and these presents are upon this condition:

That if, during the time hereby conveyed and leased, said C. D. shall die, and his executors, administrators or assigns shall at any time after —— be desirous to leave and quit said premises, they shall, after full payment of all rent accrued and to accrue, give or leave —— months' warning, in writing, to said A. B., or his heirs, executors, administrators or assigns, at his or their places of abode, and at the expiration of said —— months these presents, and the term hereby granted, as for any further continuance, shall cease, determine, and be utterly void, anything herein to the contrary notwithstanding.

CONDITION OR PROVISO—NOTICE TO DETERMINE LEASE.

Provided always, and these presents are upon this condition:

That it shall be lawful to and for either said A. B. or his legal representatives, or said C. D. or his legal representatives, to determine and make void this lease at the expiration of —— (months, *or* years, etc.), of the said term of —— (months, *or* years, etc.), in causing notice or warning, in writing, for that purpose, to be given to or left for the other of them, his (*or* her) legal representatives at his (*or* their) usual or last place of abode, —— months at least before the time limited for determining the same as aforesaid (anything herein contained to the contrary notwithstanding).

CONDITION OR PROVISO—RE-ENTRY FOR NON-PAYMENT OF RENT.

Provided always, and these presents are upon this express condition:

That if said (monthly, *or* quarterly, *or* yearly, etc.) rent or sum of —— dollars, or any part thereof, shall be behind and unpaid for the space of —— days next after the said days of payment (whereon the same is appointed to be paid as aforesaid), then it shall be lawful to and for said A. B., his heirs, executors, administrators or assigns, to re-enter said premises or any part thereof, and the same to repossess and enjoy, as in his and their former estate, anything herein contained to the contrary notwithstanding.

CONDITION OR PROVISO—RE-ENTRY, OCCUPATION, OR TRADE BEING OFFENSIVE, ETC.

Provided always (*or* nevertheless):

That if said C. D., his executors, administrators or assigns shall permit or suffer any person or persons to occupy said premises or any part thereof who shall engage in, use, follow, or permit the business, trade or occupation of —— therein, then and from thenceforth, and from any of said causes, it shall be lawful for said A. B., his heirs or assigns, and without notice thereof, to re-enter and enjoy said premises, in part or in whole, as in their former estate and right (anything herein to the contrary notwithstanding).

CONDITION OR PROVISO—RE-ENTRY FOR VARIOUS CAUSES, WITH WAIVER OF NOTICE, ETC.

Provided, however, and it is further agreed:

That if said rent shall remain unpaid —— days after the same shall become payable as aforesaid, or if said party of the second part shall assign this lease, or underlet, or otherwise dispose of the whole or any part of said leased premises, or use the same for any purpose save that hereinbefore authorized and agreed upon, or shall make any alteration therein without the consent of said party of the first part being first obtained in writing, or shall commit waste or suffer it to be committed on said premises, or injure or misuse the same, then this lease shall thereupon and without notice or demand from said party of the first part expire, and said party of the first part may re-enter said premises or any part thereof and repossess and recover the same to all intents and purposes as though said party of the second part had never occupied the same, and that without such re-entry, and without demand for rent, said party of the first part may recover possession thereof in the manner prescribed by statute relating to summary proceedings in such cases.

Covenants in Leases.

See Other Conveyances

For the law concerning covenants, see COVENANTS, etc., in the text to DEEDS, above.

COVENANT—ASSIGNMENT OF LEASE ALLOWED.

That said C. D. may assign, lease, or otherwise dispose of or part with all or any part of the premises and tenements to him conveyed and leased by these presents, or by a (conveyance *or*) lease bearing date the —— day of ——, unto ——, etc., for all or any part of his estate, interest, or terms thereunder, or by virtue of his said lease, any restriction therein to the contrary notwithstanding.

COVENANT—ASSIGNMENT OF LEASE PROHIBITED.

That said party of the second part (his executors, administrators or assigns, or any or either of them), shall not at any time hereafter during the term hereby granted, assign, convey, lease, or transfer any of his or their estate, interest, or term or any part thereof in said premises or their appurtenances, to any person or persons whomsoever (without the consent of said party of the first part, his heirs, etc., in writing, being first obtained), anything hereinbefore contained in anywise to the contrary thereof notwithstanding.

COVENANT—BUILDING, ETC.

See LEASE—BUILDING, ETC., post.

COVENANT—BLINDS, BOARDS, ETC., TO OBSTRUCT VIEW, ETC.

And it is hereby covenanted and agreed by and between all said parties to these presents, their executors, etc., as follows (that is to say):

That any of said parties, their executors, etc., shall and may at their pleasure fasten and set up blinds or boards for the purpose of hindering and obstructing the outlook or prospect of the —— windows, in the —— part (*or* side) of the —— building of the premises hereby conveyed and

leased. Provided said blinds or boards shall not obstruct or hinder the light coming through said windows into said building.

COVENANT—DEATH OF LESSEE.
See CONDITIONS OR PROVISOS, above.

COVENANT—DWELLING IN PREMISES.
That said C. D. shall dwell in and personally inhabit and occupy said premises, or a part thereo., with his family, and not close and desert the same during said term.

COVENANT—ENTRY, ETC.
See CONDITIONS OR PROVISOS, RE-ENTRY, ETC., above.

COVENANT—FIRE CLAUSE.
That in case the building hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible by and at the expense of said party of the first part (a proportionate reduction of rent being made for the time of said damaged portion is untenantable). Provided the damage be not caused by the carelessness of the party of the second part, his agents or employees.

That in case the damage is so extensive as to render the building untenantable, the rent shall cease until the same is repaired. Provided the damage be not caused by the carelessness of the party of the second part, his agents or employees.

If the building be so damaged that the owner shall decide to rebuild, said term shall cease, the premises be surrendered, and the accrued rent be paid up to the time of the fire.

COVENANT—FIXTURES—TO BUY.
And said parties hereby covenant and agree:

That at the expiration of the present lease, or of the renewal thereof, the same be accepted: Said party of the first part shall and will purchase of said party of the second part all the machinery and fixtures that shall have been placed in and upon said premises during the whole time he shall have occupied the same by virtue of this lease, allowing the full valuation at which said machinery and fixtures shall be estimated in said buildings, and not for the purpose of removal.

In case said parties shall not agree upon such valuation, then the same shall be made by three disinterested persons, one each to be chosen by said parties, and they to choose the third, etc.

See AGENCY, ARBITRATION FORMS, ante.

COVENANT—IMPROVEMENTS, ETC.
Said A. B. hereby covenants with said C. D. that he, the said A. B., shall and will, within —— next after the date hereof, lay out and expend the sum of —— in repairing, bettering, and improving said premises, and the buildings, etc., thereon, as follows: (*specifying the particular improvements and repairs, etc.*)

COVENANT—INHABITING PREMISES.
See COVENANT—DWELLING IN PREMISES, above.

COVENANT—INSURANCE BY LESSOR, ETC.
That said A. B., his executors, administrators, and assigns, shall and will, at his or their own cost and expense, from time to time, sufficiently insure all and every building and tenement, etc., erected and to be erected on the land hereby conveyed and leased, or any part thereof, from casualty, damage, and loss by fire during the time hereby granted, in some one or more responsible and secure insurance company or companies.

That in case said buildings, tenements, etc., or any of them, or any part of them, shall at any time or times during the said term be burned down, destroyed, or damaged by fire, said A. B. shall and will from time to time immediately thereafter rebuild, or sufficiently repair and insure the same.

COVENANT—NOTICE TO DETERMINE LEASE.
See CONDITION OR PROVISO, NOTICE, ETC., ante.

COVENANT—NOXIOUS OR OFFENSIVE OCCUPATION—NOT TO PURSUE.
That said C. D., his executors, administrators, and assigns, shall not at any time during the continuance of said term permit or suffer any person or persons to follow, in or upon said premises, or any part thereof, the trade of brewer, butcher, distiller, dyer, glue manufacturer, soap boiler, tallow chandler, etc., etc., or any other nauseous, noxious, or offensive occupation whatsoever, without the assent of said A. B., his executors, administrators, or assigns, being first obtained in writing for that purpose.

COVENANT—PAYING RENT, ETC.
See LEASE—BUILDING, ETC., above.

COVENANT—QUIT AT END OF TERM.
That said C. D. shall and will at the expiration or other sooner determination of the said term peaceably and quietly surrender and yield up said premises unto said A. B., his heirs and assigns, together with all fixtures and appurtenances, and all other things fastened or standing in and upon the same or any part thereof for the last —— years of said term.

COVENANT—RE-ENTRY, ETC.
See CONDITIONS OR PROVISOS—RE-ENTRY, ETC., above.

COVENANT—RENEWAL.
That said A. B. (his executors, etc), at the cost and expense of said C. D. (his executors, etc.), (when requested by him or them —— months before the expiration of the term hereby granted) shall and will grant a further lease of the aforesaid premises for the further term of ——, to commence from the term hereby granted, at and under the same yearly rent, and containing therein the like agreements and covenants as are in these presents contained.

Another—By Indorsement.
That in case said party of the second part shall with the written consent of said party of the first part, indorsed hereon, or on the duplicate hereof, at any time hold over the said premises beyond the period above specified as the termination of this lease, then said party of the second part shall hold said premises upon the same terms and under the same agreements and covenants as are contained in this lease: and no holding over by said party of the second part shall operate to renew this lease without said written consent.

COVENANT—REPAIRS.
See COVENANT—IMPROVEMENTS, ETC., above.

COVENANT—SELL ON REQUEST.
That in case said C. D., his heirs, executors, administrators, or assigns, shall during said term desire and intend to purchase the premises hereby leased, and shall give notice of such desire and intention in writing during said term unto said A. B., his heirs or assigns, at his or their usual or last place of abode, then said A. B., his heirs and assigns, shall at the costs and expense of said C. D., his heirs, etc., convey said premises, with the appurtenances and every part thereof unto said C. D., his heirs, executors, etc., as he or they shall direct, upon the payment by said C. D., his heirs, executors, etc., the sum of ——, as the consideration of said purchase, and also paying to him or them all arrears of rent which shall be then due, etc.

COVENANT—TAXES—PAYMENT OF BY LESSOR.
That said A. B., his executors, administrators, and assigns, shall and will from time to time during said term pay all assessments, dues, rates and taxes whatsoever, when due, that may be assessed, charged, imposed, or rated on the premises hereby leased, or any part thereof, and therefrom save harmless and keep indemnified said C. D., his executors, administrators, and assigns, his and their goods, chattels, lands, and tenements.

COVENANT—TAXES AND REPAIRS.
Lessee to Deduct Out of Rent.
That said C. D., his executors, administrators, and assigns, shall and may retain out of every

year's rent agreed to be paid to said A. B. as aforesaid, so much money as he, the said C. D., shall from time to time, during said term, have paid for the taxes agreed to be paid by said A. B., his heirs, executors, etc. And also for such additions, amendments, and repairs by him made and done, in and about said premises, by and with the consent and direction of said A. B., his heirs, etc., or without such consent, so that such money be laid out and expended in repairing and supporting said premises or some part thereof.

COVENANT—UNDER-LEASE PROHIBITED.

That said C. D., his executors or administrators, shall not at any time during said term assign, set over, under-lease or under-let said premises, or any part thereof, or in any other manner part with the possession or occupation of the same without the special consent or license of said A. B., his heirs or assigns, in writing under his or their hands (and seals) first had and obtained.

COVENANT—USE OF PREMISES LIMITED.

That said premises, and every part thereof, shall during said term of —— be used only for the following business and purposes, to wit: (*describing them*).

Another.

That said premises, nor any part thereof, shall not at any time during said term of ——, be used as (*state what*).

COVENANT—WATER RATE OR TAX, ETC.

That said A. B. shall pay the —— water rate or tax, and keep all plumbing, pipes, drains, etc., etc., in said premises, in repair, and leave the same in as good state and condition as reasonable use and wear thereof will permit.

Conclusions in Leases.

See Other Conveyances.

Signed (and sealed); *or,*

Signed, sealed, and acknowledged; *or,*

Witness our hands (and seals); *or,*

Given under our hands (and seals); *or,*

In witness whereof, we hereunto set our hands, etc.; *or,*

In witness whereof, the parties to these presents have hereunto set their hands, etc.; *or,*

In witness whereof, we have hereunto set our hands (and affixed our seals) (at ——), this —— day of ——; *or,*

In witness whereof, we have hereunto set our hands (*or* subscribed our names), the day and year first (*or* last) above written; *or,*

In witness whereof, A. B., the party of the first part, and C. D., the party of the second part, in their own proper persons have hereunto respectively and severally set their hands and seals, this —— day of —— (*or* the day and year first, *or* last) above written.

Signature (and Seals).

See DEEDS and other conveyances, ante.

Attestation or Witness Clauses.

See DEEDS and other conveyances, ante.

Acknowledgment of Leases.

All instruments for the conveyance of real estate or any interest therein must be recorded in the proper office for the recording of deeds, etc., in order to affect judgment creditors, mortgagees, subsequent purchasers, etc. It is customary to only record leases for years, and not for a shorter period. See GENERAL STATUTES.

SHORT FORM LEASES.

A. B. leases to C. D. (*description of premises*), for a term of ——, upon the payment of ——.

Dated the —— day of ——. A. B.

Another.

I, A. B., doth lease and convey unto C. D. (*description of premises*), for a term of —— the said demised premises, and remove all upon the payment of ——, as follows: ——, to have again, Witness my hand, this —— day of —— first and ——ned to ——ing.

Another

I, A. B., in consideration of —— dollars, paya—r ——, do hereby lease and demise unto C. D., the following premises (*describing them*), for a term of —— from the date hereof.

Witness the following signature and seal.

A. B. [*Seal.*]

Another.

Know all men by these presents:

That I have, this —— day of ——, let and rented unto C. D. my house and premises, number ——, in —— street, in ——, with the —— appurtenances, and the sole and uninterrupted use and occupation thereof for one year, to commence the —— day of —— next, at the yearly (*or* quarterly, *or* monthly) rent of —— dollars, payable (in advance, *or* at the end of each month, *or* quarter).

Witness my hand, etc. A. B.

GENERAL FORM LEASES.

Lease—General Form.

It is agreed, the —— day of ——, between A. B., of ——, and C. D., of ——.

The said A. B. doth let unto the said C. D., and he takes, all (*describing premises*), for one year from ——, and for such longer time after the expiration of the said one year, as both the said parties shall agree, and until the end of three months after notice shall be given, by either of the said parties to the other of them, for leaving the said premises, at, etc., for the yearly rent of ——, to be paid quarterly on the —— days of ——, etc., by even and equal portions, which said yearly rent the said C. D. does hereby, for himself, his executors and administrators, covenant and agree to pay to the said A. B. (*if freehold, say*, "and his heirs"), (*but if otherwise, say*, "executors, administrators and assigns"), accordingly, for so long time as he shall hold and enjoy the said premises as aforesaid, and until the end of the said three months, next after notice shall be given by either of the said parties, to the other of them, for leaving the said premises as aforesaid.

In witness whereof, etc.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of —— party of the first part, and C. D., of ——, party of the second part, witnesseth:

That the said party of the first part does by these presents lease to the said party of the second part the following-described property, to wit (*describe the property*).

To have and to hold the same to the said party of the second part, from the —— day of —— to the —— day of ——.

And the said party of the second part covenants and agrees with the party of the first part to pay the said party of the first part, as rent for the same, the sum of —— dollars, payable as follows, to wit (*state the times and terms of payment*).

The said party of the second part further covenants with the said party of the first part, that at the expiration of the time mentioned in this lease, peaceable possession of the said premises shall be given to said party of the first part, in as good condition as they now are, the usual wear, inevitable accidents, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid, the said party of the first part may, at his election, either distrain for said rent due, or declare this lease at an end, and recover possession as if the same was held by forcible detainer: the said party of the second part hereby waiving any notice of such election, or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness said parties' hands and seals.

(*Signature of Lessor.*) [*Seal.*]
(*Signature of Lessee.*) [*Seal.*]

leased. Provi... obstruct or ... windows ...

...ble ... A. B. ... from date, ... 317

...m.
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...eed that C. D. may ...nt, laying it out in ... said house, and the ...n and about the said

painting ...
overplus (if any) ...
house:

And further, that the said C. D. may enter at any time before midsummer.

Provided, that if either of said parties, their executors or administrators, should desire to determine the said lease, and should leave and give notice thereof in writing to the other, his executors or administrators, one-quarter of a year before the end of any year, then, from the end of the same year, the said lease shall determine and be void.

In witness whereof, etc.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made the —— day of ——, witnesseth:

That I, A. B., of ——, do hereby lease, demise, and let unto C. D., of ——, a certain tract of land, in —— county, and State of ——, with all the buildings thereon standing and the appurtenances to the same belonging, bounded and described as follows, to wit (*or* a certain house in said city, on lot number ——, in —— street, etc., with the land under and adjoining the same).

To hold the same for the term of ——, from the —— day of ——.

Yielding and paying therefor the —— rent of ——.

And said lessee agrees to pay the said rent in four quarterly payments on the —— days of ——: to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly, at the end of the term, in as good order and condition, reasonable use and wearing thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor: to pay the rent as above stated, and all taxes and duties levied or to be levied thereon, during the term, and also the rent and taxes, as above stated, for such further time as the lessee may hold the same. And also not to make or suffer any waste thereof; nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same: or make or suffer to be made any alteration therein but with the approbation of the lessor thereto, in writing, having been first obtained: And further that the lessor may enter to view, and make improvements, and to expel the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof.

In witness whereof, the said parties have hereunto interchangeably set their hands (and seals), the day and year first above written.

A. B. [*Seal.*]
Signed, sealed and delivered in presence of } C. D. [*Seal.*]
(*Signatures of witnesses.*)

Lease—General Form.

This (agreement, conveyance, indenture, *or* lease) made this —— day of ——, by A. B., of ——, of the first part, to C. D., of ——, of the second part, witnesseth:

That the party of the first part does hereby let and rent unto the party of the second part, and the party of the second part does hereby hire and take from the party of the first part the following described premises: (*here follows the description*).

For a term of —— years, commencing the —— day of ——, and ending the —— day of ——.

At the yearly (quarterly, *or* monthly) rent of —— dollars, payable in equal (quarterly, *or* monthly) payments, on the first days of (each month, *or* January, April, July, and October) in each year.*

That if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for said party of the first part to re-enter said premises and remove all persons therefrom (said party of the second part waiving notice to quit, or of intention to re-enter).

And said party of the second part covenants that at the expiration of said term, or other determination of this lease, to quit and surrender said premises to said party of the first part, or his assigns, in as good a state and condition as reasonable use and wear thereof will permit, damage by the elements excepted.

And said party of the first part covenants that on paying the said yearly (quarterly, *or* monthly) rent, and performing the covenants aforesaid, said party of the second part shall and may peaceably and quietly have, hold, and enjoy said leased premises for the term aforesaid.

In witness whereof, said parties have interchangeably set their hands (and seals) the day and year first above written.

A. B.
Executed in presence of } C. D.
W. T., N. S.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth:

That the said party of the first part, in consideration of the rents, covenants and stipulations hereinafter mentioned, and hereby agreed to be paid, kept and performed by the said party of the second part, his executors, administrators and assigns, has leased, and by these presents does lease, to the said party of the second part the following described premises (*describe the house, as of brick, or stone, or wood, number of stories*), lot number ——, in block number ——, in the city of ——.

For and during the term of ——, to commence on the —— day of ——, at the annual rent of ——, payable in four equal quarterly payments, beginning three months from the date hereof.

Any failure to pay each payment of rent when due, to produce a forfeiture of this lease, if so determined by said lessor or his successors.

The lease of said tenement or any part of it is not assignable, nor is said tenement or any part of it to be underlet, without the written consent of said lessor, under penalty of forfeiture.

And it is hereby covenanted, that, at the expiration of this lease, the said tenement and premises are to be surrendered to said lessor, his heirs, assigns, or successors, in the condition received, only excepting its natural wear and decay, or the effects of accidental fire.

All repairs deemed necessary by said lessee to be made at his expense.

All fixtures shall be bound for the rent.

The said lessee, and all holding under him, hereby engages to pay the rent above reserved, and double rent for every day when he or any one else in his name shall hold on to the whole or any part of said tenement, after the expiration of this lease, or of its forfeiture for non-payment of rent, etc.

This tenement and premises to be kept free of any nuisance in or adjacent thereto, at the expense of said lessee.

A. B. [*Seal.*]
C. D. [*Seal.*]
Executed in presence of } W. T., N. S.

Lease—General Form—With Waiver, etc.

This lease, made this —— day of ——, by A. B. (of ——), of the first part, to C. D. (of ——), of the second part, witnesseth:

That the said party of the first part, in consid-

eration of the rents, covenants and agreements, of the said party of the second part, hereinafter set forth, does by these presents grant, lease and rent to the said party of the second part the following described property, situated in the county of ——, and State of ——, to wit: (*describing it*).

To have and to hold the same unto the said party of the second part, from the —— day of —— to the —— day of ——.

And the said party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the said party of the first part to pay the said party of the first part, his heirs or assigns, as rent for the same, the —— rent or sum of —— dollars, in —— payments, as follows, to wit: (*giving time, place, amount, and manner of payment*).

(Hereby waiving the benefit of the exemption, valuation and appraisement laws of said State of ——, to secure the payment thereof.)

The said party of the second part further covenants with said party of the first part, that at the expiration of the time mentioned in this lease to give peaceable possession of the said premises to said party of the first part, in as good a condition as they now are, the usual wear, inevitable accidents and loss by fire excepted, and will not make or suffer any waste thereof, nor lease, nor underlet, nor permit any other person or persons to occupy the same, or make or suffer to be made any alteration therein without the consent of said party of the first part, in writing, having been first obtained, and not use or occupy said premises for any business or thing deemed extra hazardous on account of fire: and that upon the non-payment of the rent as aforesaid the said party may, at his election, either distrain for said rent due, or declare this lease at an end, and recover the same as if held by forcible detainer, the said party of the second part hereby waiving any notice of such election or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

In witness whereof, the said parties have hereunto set their hands, the day and year first above written. A. B.

[*Witnesses.*] C. D.

For form of ACKNOWLEDGMENT, see that title.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by A. B., of ——, of the first part, to C. D., of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the said party of the second —— part, his executors, administrators and assigns, to be paid, kept, and performed, has and by these presents does convey and lease unto the said party of the second part, and his executors, administrators and assigns, all (*describe the premises*).

To have and to hold the said above-mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the —— day of ——, for, during and until the full end and term of —— thence next ensuing; and fully to be complete and ended.

Yielding and paying therefore unto the said party of the first part, his heirs or assigns, yearly, and every year during the said term hereby granted, the yearly rent or sum of ——, in equal quarter-yearly payments, to wit: (*naming the dates of payments*), in each and every of the said years;

Provided always, nevertheless, that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants herein contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, to re-enter into and upon the said demised premises, and every part thereof, and remove all persons therefrom, and the same to have again, repossess and enjoy, as in his or their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And the said party of the second —— part, for himself and his heirs, executors and administrators, does covenant and agree, to and with the said party of the first part, his heirs and assigns, by these presents, that the said party of the second —— part, his executors, administrators, or assigns, shall and will yearly, and every year during the said term hereby granted, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid, for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents.

And that the said party of the second part, his executors, administrators, or assigns, shall and will, at their own costs and charges, bear, pay, and discharge all such taxes, duties, and assessments whatsoever, as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises.

And that on the last day of the said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will peaceably and quietly leave, surrender and yield up unto the said party of the first part, his heirs or assigns, all and singular the said demised premises.

And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant and agree to and with the said party of the second —— part, his executors, administrators, and assigns, by these presents, that the said party of the second —— part, his executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his and their part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises, without any obstruction, suit, trouble or hindrance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

In witness whereof, the said parties have hereunto set their hands (and seals). A. B. [*Seal.*]
Executed in presence of } C. D. [*Seal.*]

Lease—General Form.

Water-Rate or Tax, Fire Clause, etc.

This (agreement, conveyance, indenture, *or*) lease, made by A. B., of ——, party of the first part, to C. D., of ——, party of the second part, witnesseth:

That the said party of the first part has agreed to, and hereby does let, and the said party of the second part has agreed to, and hereby does take, the following described premises (*describe the premises*) for the term of ——, to commence the —— day of ——, and to end the —— day of ——, to be occupied (*here describe the intended occupation*) and not otherwise.

And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part the annual rent or sum of —— dollars, payable (*here set forth the times and terms of the payments*).

That said party of the second part shall pay the —— water rate or tax; keep the plumbing work, water-pipes, glass, and the premises generally in repair, and will surrender them at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit.

That said party of the second part shall not assign, let, or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said party of the first part, under the penalty of forfeiture and

Lease—Memorandum.

Memorandum, That A. B., of ——, has leased to C. D., of ——, the premises or tenement in S. street, in ——, in which the said A. B. lately dwelt, to *hold* for one whole year from —— next ensuing, and so from year to year; yielding and paying yearly and every year unto the said A. B. the sum of ——, by —— even and equal payments, the first payment to be made on ——, the second payment on ——, etc., in every year.

And the said A. B. has agreed to repair the premises, other than the glass windows thereof and pales before the door;

And the said C. D. has agreed to repair the windows during the term;

And the said A. B. has agreed that C. D. may retain the first quarter's rent, laying it out in painting the outside of the said house, and the overplus (if any) otherwise in and about the said house:

And further, that the said C. D. may enter at any time before midsummer.

Provided, that if either of said parties, their executors or administrators, should desire to determine the said lease, and should leave and give notice thereof in writing to the other, his executors or administrators, one-quarter of a year before the end of any year, then, from the end of the same year, the said lease shall determine and be void.

In witness whereof, etc.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made the —— day of ——, witnesseth:

That I, A. B., of ——, do hereby lease, demise, and let unto C. D., of ——, a certain tract of land, in —— county, and State of ——, with all the buildings thereon standing and the appurtenances to the same belonging, bounded and described as follows, to wit (*or* a certain house in said city, on lot number ——, in —— street, etc., with the land under and adjoining the same).

To hold the same for the term of ——, from the —— day of ——.

Yielding and paying therefor the —— rent of ——.

And said lessee agrees to pay the said rent in four quarterly payments on the —— days of ——: to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly, at the end of the term, in as good order and condition, reasonable use and wearing thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor: to pay the rent as above stated, and all taxes and duties levied or to be levied thereon, during the term, and also the rent and taxes, as above stated, for such further time as the lessee may hold the same. And also not to make or suffer any waste thereof; nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same: or make or suffer to be made any alteration therein but with the approbation of the lessor thereto, in writing, having been first obtained: And further that the lessor may enter to view, and make improvements, and to expel the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof.

In witness whereof, the said parties have hereunto interchangeably set their hands (and seals), the day and year first above written.

A. B. [*Seal.*]
Signed, sealed and delivered in presence of } C. D. [*Seal.*]
(*Signatures of witnesses.*)

Lease—General Form.

This (agreement, conveyance, indenture, *or* lease) made this —— day of ——, by A. B., of ——, of the first part, to C. D., of ——, of the second part, witnesseth:

That the party of the first part does hereby let and rent unto the party of the second part, and the party of the second part does hereby hire and take from the party of the first part the following described premises: (*here follows the description*).

For a term of —— years, commencing the —— day of ——, and ending the —— day of ——.

At the yearly (quarterly, *or* monthly) rent of —— dollars, payable in equal (quarterly, *or* monthly) payments, on the first days of (each month, *or* January, April, July, and October) in each year.*

That if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for said party of the first part to re-enter said premises and remove all persons therefrom (said party of the second part waiving notice to quit, or of intention to re-enter).

And said party of the second part covenants that at the expiration of said term, or other determination of this lease, to quit and surrender said premises to said party of the first part, or his assigns, in as good a state and condition as reasonable use and wear thereof will permit, damage by the elements excepted.

And said party of the first part covenants that on paying the said yearly (quarterly, *or* monthly) rent, and performing the covenants aforesaid, said party of the second part shall and may peaceably and quietly have, hold, and enjoy said leased premises for the term aforesaid.

In witness whereof, said parties have interchangeably set their hands (and seals) the day and year first above written.

A. B.
Executed in presence of W. T., N. S. } C. D.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth:

That the said party of the first part, in consideration of the rents, covenants and stipulations hereinafter mentioned, and hereby agreed to be paid, kept and performed by the said party of the second part, his executors, administrators and assigns, has leased, and by these presents does lease, to the said party of the second part the following described premises (*describe the house, as of brick, or stone, or wood, number of stories*), lot number ——, in block number ——, in the city of ——.

For and during the term of ——, to commence on the —— day of ——, at the annual rent of ——, payable in four equal quarterly payments, beginning three months from the date hereof.

Any failure to pay each payment of rent when due, to produce a forfeiture of this lease, if so determined by said lessor or his successors.

The lease of said tenement or any part of it is not assignable, nor is said tenement or any part of it to be underlet, without the written consent of said lessor, under penalty of forfeiture.

And it is hereby covenanted, that, at the expiration of this lease, the said tenement and premises are to be surrendered to said lessor, his heirs, assigns, or successors, in the condition received, only excepting its natural wear and decay, or the effects of accidental fire.

All repairs deemed necessary by said lessee to be made at his expense.

All fixtures shall be bound for the rent.

The said lessee, and all holding under him, hereby engages to pay the rent above reserved, and double rent for every day when he or any one else in his name shall hold on to the whole or any part of said tenement, after the expiration of this lease, or of its forfeiture for non-payment of rent, etc.

This tenement and premises to be kept free of any nuisance in or adjacent thereto, at the expense of said lessee.

A. B. [*Seal.*]
C. D. [*Seal.*]
Executed in presence of —— W. T., N. S. }

Lease—General Form—With Waiver, etc.

This lease, made this —— day of ——, by A. B. (of ——), of the first part, to C. D. (of ——), of the second part, witnesseth:

That the said party of the first part, in consid-

eration of the rents, covenants and agreements, of the said party of the second part, hereinafter set forth, does by these presents grant, lease and rent to the said party of the second part the following described property, situated in the county of ——, and State of ——, to wit: (*describing it*).

To have and to hold the same unto the said party of the second part, from the —— day of —— to the —— day of ——.

And the said party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the said party of the first part to pay the said party of the first part, his heirs or assigns, as rent for the same, the —— rent or sum of —— dollars, in —— payments, as follows, to wit: (*giving time, place, amount, and manner of payment*).

(Hereby waiving the benefit of the exemption, valuation and appraisement laws of said State of ——, to secure the payment thereof.)

The said party of the second part further covenants with said party of the first part, that at the expiration of the time mentioned in this lease to give peaceable possession of the said premises to said party of the first part, in as good a condition as they now are, the usual wear, inevitable accidents and loss by fire excepted, and will not make or suffer any waste thereof, nor lease, nor underlet, nor permit any other person or persons to occupy the same, or make or suffer to be made any alteration therein without the consent of said party of the first part, in writing, having been first obtained, and not use or occupy said premises for any business or thing deemed extra hazardous on account of fire: and that upon the non-payment of the rent as aforesaid the said party may, at his election, either distrain for said rent due, or declare this lease at an end, and recover the same as if held by forcible detainer, the said party of the second part hereby waiving any notice of such election or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

In witness whereof, the said parties have hereunto set their hands, the day and year first above written. A. B.

[*Witnesses.*] C. D.

For form of ACKNOWLEDGMENT, see that title.

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by A. B., of ——, of the first part, to C. D., of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the said party of the second —— part, his executors, administrators and assigns, to be paid, kept, and performed, has and by these presents does convey and lease unto the said party of the second part, and his executors, administrators and assigns, all (*describe the premises*).

To have and to hold the said above-mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the —— day of ——, for, during and until the full end and term of —— thence next ensuing; and fully to be complete and ended.

Yielding and paying therefore unto the said party of the first part, his heirs or assigns, yearly, and every year during the said term hereby granted, the yearly rent or sum of ——, in equal quarter-yearly payments, to wit: (*naming the dates of payments*), in each and every of the said years;

Provided always, nevertheless, that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants herein contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, to re-enter into and upon the said demised premises, and every part thereof, and remove all persons therefrom, and the same to have again, repossess and enjoy, as in his or their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And the said party of the second —— part, for himself and his heirs, executors and administrators, does covenant and agree, to and with the said party of the first part, his heirs and assigns, by these presents, that the said party of the second —— part, his executors, administrators, or assigns, shall and will yearly, and every year during the said term hereby granted, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid, for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents.

And that the said party of the second part, his executors, administrators, or assigns, shall and will, at their own costs and charges, bear, pay, and discharge all such taxes, duties, and assessments whatsoever, as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises.

And that on the last day of the said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will peaceably and quietly leave, surrender and yield up unto the said party of the first part, his heirs or assigns, all and singular the said demised premises.

And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant and agree to and with the said party of the second —— part, his executors, administrators, and assigns, by these presents, that the said party of the second —— part, his executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his and their part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises, without any obstruction, suit, trouble or hindrance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

In witness whereof, the said parties have hereunto set their hands (and seals). A. B. [*Seal.*]
Executed in presence of } C. D. [*Seal.*]

Lease—General Form.

Water-Rate or Tax, Fire Clause, etc.

This (agreement, conveyance, indenture, *or*) lease, made by A. B., of ——, party of the first part, to C. D., of ——, party of the second part, witnesseth:

That the said party of the first part has agreed to, and hereby does let, and the said party of the second part has agreed to, and hereby does take, the following described premises (*describe the premises*) for the term of ——, to commence the —— day of ——, and to end the —— day of ——, to be occupied (*here describe the intended occupation*) and not otherwise.

And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part the annual rent or sum of —— dollars, payable (*here set forth the times and terms of the payments*).

That said party of the second part shall pay the —— water rate or tax; keep the plumbing work, water-pipes, glass, and the premises generally in repair, and will surrender them at the expiration of the said term, in as good atate and condition as reasonable use and wear thereof will permit.

That said party of the second part shall not assign, let, or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said party of the first part, under the penalty of forfeiture and

damages; that he will not occupy the said premises, nor permit the same to be occupied for any business deemed extra-hazardous without the like consent, under the like penalty.

That said party of the second part shall permit the said party of the first part, or his agent, to show the premises to persons wishing to hire or purchase, and three months next preceding the expiration of the term will permit the usual notices of "to let," or "for sale," to be placed upon the windows, walls, or doors of said premises, and remain thereon without hindrance or molestation.

That if default be made in any of the covenants herein contained on the part of the party of the second part, or if the said premises or any part thereof shall become vacant during the said term, the said party of the first part may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor, and relet the said premises or any part thereof in one or more parcels, as the agent of the said party of the second part, and receive the rent thereof, applying the same, first to the payment of such expense as he may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said party of the second part; and, in case of deficiency, said party of the second part will pay the same.

That said party of the second part hereby further covenants that if any default be made in the payment of the said rent or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said party of the first part, shall wholly cease and determine; and the said party of the first part shall and may re-enter the said premises, and remove all persons therefrom; and the said party of the second part hereby expressly waive the service of any notice in writing of intention to re-enter, as provided for in the —— section of an act entitled "An act," etc. (*reciting the title of the act*), Approved (*or* Passed), etc.

And it is further agreed between the parties to these presents, that, in case the building hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible by the party of the first part; that, in case the damage shall be so extensive as to render the building untenantable, the rent shall cease until the same be repaired; provided the damage be not caused by the carelessness or negligence of the party of the second part, or his agents or servants.

If the building be so damaged that the owner shall decide to rebuild, the term shall cease, the premises be surrendered, and the accrued rent be paid up to the time of the fire.

In consideration of the letting of the premises above-mentioned to the above named C. D., and of the sum of one dollar to him paid by the said party of the first part, the said party of the second part does hereby covenant and agree to and with the party of the first part above-named, and his legal representatives, that if default shall at any time be made by the said party of the second part in the payment of the rent and performance of the covenants above contained on his part to be paid and performed, that he will well and truly pay the said rent or any arrears thereof, that may remain due unto the said party of the first part and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said party of the first part.

Witness our hands (and seals) this —— day of ——.

A. B. [*Seal.*]
C. D. [*Seal.*]

Executed in presence of }
(*Signature of witnesses.*) }

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made and entered into on the —— day of ——, by and between A. B., of ——, party of the first part, and C. D., of ——, party of the second part, witnesseth:

That the said party of the first part, in consideration of the rents reserved, and the covenants hereinafter contained, does hereby lease unto the said party of the second part (*here describe the premises*).

To have and to hold the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part, and his executors, administrators and assigns, for and during the full end and term of ——, commencing on the —— day of ——, and ending on the —— day of ——, under and subject to the stipulations hereinafter contained, the said party of the second part yielding and paying to the said party of the first part, for the said premises, the annual rent of —— dollars, payable in equal —— payments, as follows: on the —— —— during said term; which rent the said party of the second part, for himself and his executors, administrators and assigns, covenants well and truly to pay, at the times aforesaid.

And the said party of the second part covenants and agrees:

That if the rent aforesaid should at any time remain due and unpaid, the same shall bear interest at the rate of —— per cent. per annum, from the time it so becomes due until paid.

That it shall be lawful for the said party of the first part, and those having freehold estate in the premises, at reasonable terms, to enter into and upon the same, to examine the condition thereof;

That the said party of the second part and his legal representatives shall and will, at the expiration of this lease, whether by limitation or forfeiture, peaceably yield up to the said party of the first part, or his legal representatives, the said premises, in the condition received, only excepting natural wear and decay, and the effects of fire;

That the said party of the second part, for and during all the time that he or any one else in his name shall hold over the premises after the expiration of this lease, in either of said ways, shall and will pay to said party of the first part double the rent hereinbefore reserved;

That any failure to pay the rent bereinbefore reserved, when due and within —— days after a demand of the same, shall produce an absolute forfeiture of this lease, if so determined by said party of the first part, or his legal representatives;

That this lease shall not be assigned, nor the said premises, or any part thereof, underlet, without the written consent of the said party of the first part, or his legal representatives, under penalty of forfeiture;

That all repairs of a temporary character, deemed necessary by said party of the second part, shall be made at his own expense, with the consent of the said party of the first part, or his legal representatives, and not otherwise.

Provided always, that if the said party of the second part, or his legal representatives, shall fail to pay the rent hereinbefore reserved, for the space of —— days after the same shall have become due, or shall fail to perform any of the covenants hereinbefore entered into on his and their part, then the said party of the first part shall be at liberty to declare this lease forfeited, by serving a written notice to that effect on the said party of the second part, or his legal representatives, and to re-enter upon and take possession of the demised premises, free from any claim of the lessee or any one claiming under him; and all estate herein granted shall, upon service of such notice, forthwith cease, and said lessor, his heirs, legal representatives or assigns, shall be forthwith entitled to the possession of the demised premises without any further proceeding at law or otherwise, to recover possession thereof.

And the said party of the first party covenants and agrees with the said party of the second part, and his legal representatives, that, the covenants herein contained being faithfully performed by the said party of the second part, he shall peaceably hold and enjoy the said demised premises, during the term aforesaid, without hindrance or interruption by the said lessor or any other person.

In witness whereof, the said parties have hereunto set their hands (and affixed their seals), the day and year first above written.

A. B. [*Seal.*]
Executed in presence of C. D. [*Seal.*]

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by and between A. B., of the —— of ——, in the county and State of ——, party of the first part, and C. D., of ——, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators and assigns, has leased to the said party of the second part all those premises situate, lying and being in the township of ——, county of ——, and State of ——, known and described as follows, to wit: (*describe the premises in a manner to identify by situation, metes, and bounds, etc.*)

To have and to hold the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators and assigns, from the —— day of ——, for, during, and until the —— day of ——, he paying rent therefor as hereafter stated.

And the said party of the second part, in consideration of the leasing of the premises aforesaid by the said part of the first part to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for the said demised premises, the sum of —— dollars, annual rent, payable quarterly, in four equal quarterly payments, the first payment to be due and made in three months from the date of this lease, payable at ——.

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said leased premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises or any part thereof, or assign this lease without the written assent of said party of the first part, first had and obtained thereto.

It is expressly understood and agreed by and between the parties aforesaid:

That if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day and at the place of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said leased premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate;

That it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified, for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the said party of the second part shall offer to pay the same then and there, such offer shall prevent said forfeiture.

That it shall not be necessary in any event for the party of the first part or his assigns to go on or near the said leased premises to demand said rent, or elsewhere than at the place aforesaid.

That in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he now has or may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way.

That it is intended hereby to give to the said party of the first part and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding.

That if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant, promise, and agree to surrender and deliver up said above-described premises and property, peaceably, to said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if he shall remain in the possession of the same —— days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In witness whereof, the said parties have hereunto set their hands (and seals), the day and year first above written.

A. B. [*Seal.*]
Executed in presence of C. D. [*Seal.*]

Lease—General Form.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of the city of ——, in —— county, and State of ——, party of the first part, and C. D., of ——, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, or his executors, administrators and assigns, has conveyed and leased to the said party of the second part all those premises situate, lying and being in the city of ——, in county of ——, and State of ——, and known and described as follows, to wit (*here describe the premises*).

To have and to hold the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators and assigns, from the —— day of ——, for, during, and until the —— day of ——, the said party of the second part paying rent therefor, as hereinafter stated.

And the said party of the second part, in consideration of the leasing the premises aforesaid, by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators and assigns:

That he will pay the said party of the first part, at the house (office, *or* store) of the said party of the first part, number ——, in —— street, ——, or at the house or office of his assigns, as rent for the said leased premises, the sum of (*state the annual rent*), payable as follows: (*here state the amounts, times and terms of the payments*).

That said party of the second part shall and will pay, or cause to be paid, promptly, as soon as the same becomes due, all assessments for water-rents that may be levied upon said demised premises, during the continuance of this lease, by the board of water commissioners of the city of ——, and save the said premises and the said party of the first part harmless therefrom.

That he will keep said premises in a clean and healthy condition, in accordance with the ordinances of the city and the direction of the sewerage commissioners.

That in case of delay in payment of any water-rent levied upon said premises during said term, to pay said party of the first part, as liquidated damages for such breach of covenant, double the sum of such rent so assessed upon said premises as aforesaid.

That at the expiration of the time in this lease mentioned he will yield up the said demised premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereto.

It is expressly understood and agreed, by and between the parties aforesaid:

That if the rent above reserved, or any part thereof, shall be behind or unpaid on the day and at the place of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, or his executors, administrators and assigns, it shall and may be lawful for the said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his or their first and former estate; and it shall be the duty of the said party of the second part, his executors, administrators or assigns, to be and appear at the said place above specified for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the party of the second part or his legal representatives shall offer to pay the same then and there, such offer shall prevent such forfeiture.

That it shall not be necessary in any event for the party of the first part, or his assigns, to go on or near the said demised premises to demand said rent, or elsewhere than at the place aforesaid.

That in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way.

That it is intended hereby to give to the said party of the first part, and his heirs, executors, administrators and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding.

That if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself, and his executors, administrators, and assigns, does hereby covenant, promise and agree to surrender and deliver up said above-described premises and property, peaceably to the said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if he shall remain in the possession of the same —— days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated; and in order to enforce a forfeiture of this lease for non-payment of rent when due, no demand for rent when due shall be required, any demand being hereby expressly waived.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written. A. B. [*Seal.*]
Executed in presence of C. D. [*Seal.*]

Lease—By Attorney.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, etc., by A. A., his attorney, of the one part, and C. D., of ——, of the other part, witnesseth:

Whereas the said A. B., by a certain writing, or letter of attorney, under his hand and seal, duly executed, dated the —— day of ——, amongst other things therein contained, did authorize the said A. A., in the name of him, the said A. B., and on his behalf, to execute leases of such part of his lands, tenements, and hereditaments, in ——, as by the said A. A. should be thought fit to be leased:

Now this indenture witnesseth:

That for and in consideration of the sum of ——, to the said A. B. paid by the said C. D., the receipt of which is hereby acknowledged, he, the said A. B., by his said attorney, does lease unto the said C. D. the following described premises (*describing them*).

To have and to hold, etc.

Yielding and paying, etc.

And the said C. D. covenants with the said A. B., his heirs, etc., to pay the rent, etc.

And the said A. B., by his said attorney, for himself, his heirs, executors, administrators, and assigns, covenants with said C. D., etc.

See CONTRACTS, DEEDS, ante.

Lease—Building-Lease.

With various Special Clauses.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That the said A. B., for and in consideration of the covenants and agreements, hereinafter reserved and contained, on the part of the said C. D., his executors, etc., to be done and performed, does lease unto the said C. D., his executors, etc., all that piece or parcel of ground, situate in ——, containing in breadth on the north side thereof ——, and in depth on the east side thereof ——, be the same more or less, together with the tenements and buildings thereon, which the said C. D. shall have full liberty to pull down, and to convert to his own use, which said piece or parcel of ground abuts north on aforesaid; east, etc., and is more fully delineated and described in the plan or ground-plot thereof, in the margin of these presents, together with all buildings to be erected thereon, and all ways, easements and appurtenances whatsoever, belonging to the said premises, or any part or parcel thereof:

To have and to hold the said premises unto the said C. D., his executors, etc., from the —— day of ——, last past before the date hereof, for and during the full end and term of —— years from thence next ensuing.

Yielding and paying therefor yearly, for and during the said term, unto the said A. B., his heirs and assigns, the yearly rent or sum of ——, by half-yearly payments, on the —— day of ——, and —— day of —— in each year, by equal portions, the first payment thereof to be made on ——; the said several rents to be paid and payable, from time to time during the said term, free and clear of all charges, assessments, and payments whatsoever, assessed or imposed upon the said premises, or any part thereof, in anywise whatsoever, during the continuance of said term.

To Build and Repair, etc.

That said C. D., his executors, administrators, or assigns, shall and will, before the expiration of the first year of the said term, at his and their own proper costs and charges, erect, build, and complete, in a workmanlike manner one or more good and substantial brick buildings, upon some part of the ground hereby leased, and shall and will lay out and expend therein the sum of —— or upwards;

That he, the said C. D., his executors, etc., shall and will, from time to time, and at all times from and after the said buildings on the said ground shall be respectively completed and finished, during the remainder of the said term, when and as often as need shall require, at his and their own proper costs and charges, well and sufficiently repair, maintain and keep the said buildings, and all the pavements, sinks, and drains thereunto belonging.

To Repair.

And that the said C. D., his executors, etc., shall and will, within three months next after every such notice or warning shall be given or left, at his and their own proper costs and charges, well and sufficiently repair and amend all and every the defects, whereof such notice or warning shall be so given or left, as aforesaid.

To Insure.

That said C. D., his executors, etc., shall and will, at his and their own proper costs and charges, from time to time, sufficiently insure all and every the buildings, which shall be erected upon the said piece of ground hereby demised, or any part thereof, from casualties by fires during the then remainder of the said term in some one of the public offices kept for that purpose in ——, and in case the said buildings or any part thereof shall at any time or times during the said term be destroyed or damaged by fire, shall and will, immediately afterwards, rebuild, or well and sufficiently repair the same.

That Lessor may Enter to Make an Inventory, etc.

Said A. B., his heirs and assigns, with workmen or without, to enter upon the said premises, and every part thereof, at seasonable and convenient times in the daytime, as well at any time or times during the last —— years of the said term, to make an inventory or schedule of the several fixtures and things then standing and being in and upon the said premises, which are to be left at the end of the said term to and for the use of the said A. B., his heirs and assigns, pursuant to the covenant hereinbefore contained, as also twice or oftener in every year during the said term to view and examine the defects and want of repairs of the said premises, and to repair and amend the same.

Not to Carry on any Offensive Trades.

That said C. D., his executors, etc., shall not nor will during the said term permit or suffer any person or persons to exercise, or carry on in and by the said premises, or any part thereof, any trade or business which may be nauseous or offensive, or grow to the annoyance, prejudice or disturbance of any of the other tenements of the said A. B., near adjoining thereto.

To Pay the Rent, Taxes, etc.

That said C. D., his heirs, executors, administrators, and assigns, shall and will, during the said term, well and truly pay, or cause to be paid unto the said A. B., his heirs and assigns, the said yearly rent or sum of ——, on the several days and times, and in manner hereinafter appointed for payment thereof, without making any abatement thereof, for or in respect of any taxes, duties, or impositions whatsoever, assessed or imposed upon the said premises, or any part thereof, during the said term; all which taxes, duties, or impositions, he, the said C. D., his executors, administrators, or assigns, shall and will pay and discharge, and therefrom save harmless and keep indemnified the said A. B., his heirs and assigns.

Re-Entry on Non-Payment of Rent, etc.

That if the said yearly rent or sum of —— hereby reserved, or any part thereof, shall be behind and unpaid, for the space of —— days next after either of the said days of payment (being lawfully demanded), or if the said C. D., his executors, etc., shall not well and truly perform, fulfil and keep all and every the covenants, conditions and agreements, in these presents expressed and contained, on his and their part and behalf to be performed and kept, according to the true intent and meaning thereof, then it shall and may be lawful to and for the said A. B., his heirs and assigns, to re-enter into and upon the said leased premises, or any part thereof, in the name of the whole, and the same to repossess and enjoy, as in his and their first and former estate, and from thence utterly to expel the said C. D., his executors, administrators or assigns, and all other tenants and occupiers of the said premises.

That from and after such re-entry made, this present lease, and every clause, article and thing herein contained, on the lessor's part and behalf, from thenceforth to be done and performed, shall cease, determine, and be utterly void, to all intents and purposes whatsoever, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, etc.

To Yield Up Quietly, etc.

That said C. D., his executors, etc., shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly surrender and yield up unto the said A. B., his heirs and assigns, together with all its fixtures and appurtenances, and all other things which shall be in anywise fastened, and standing in and upon the said premises, or any part thereof, within the last —— years of the said term.

Lease—Certificate.

Landlord's Agreement.

This is to certify that I have, this —— day of ——, let and rented unto C. D. my house and lot, known as number ——, in —— street, in the —— of ——, with the appurtenances, and the sole and uninterrupted use and occupation thereof, for one year, to commence the —— day of —— next, at the yearly rent of —— dollars, payable (monthly *or* quarterly) (*add, if agreed to*, with all taxes and assessments thereon).

A. B.

Lease—Certificate.

Tenant's Agreement.

This is to certify that I have hired and taken from A. B. his house and lot, known as number ——, in —— street, in the —— of ——, with the appurtenances, for the term of one year, to commence the —— day of —— next, at the yearly rent of —— dollars, payable quarterly. (*Insert the clause in relation to taxes, if necessary.*)

And I do hereby promise to make punctual payment of the rent in manner aforesaid, except in case the premises become untenantable from fire or any other cause, when the rent is to cease;

And I do further promise to quit and surrender the premises at the expiration of the term in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

Given under my hand (and seal), this —— day of ——.

In presence of }
G. H. }

Lease—Certificate.

Landlord's Agreement.

This is to certify that I, the undersigned, have, this —— day of ——, let and rented to C. D. the following premises, situated in ——, in —— county, and State of ——, to wit: (*describing the premises*), together with the appurtenances, and the sole and uninterrupted use and occupation thereof:

For a term of (*give the period for which rented*), from the —— day of ——, at the —— rent of —— dollars, payable (*state time, place, and amount of payments*).

And said tenant has agreed to make punctual payment of the rent in the manner aforesaid, except in case the premises become untenantable, from fire or any other cause, when the rent is to cease; to quit and surrender the premises at the expiration of said term, in as good a condition as reasonable use and wear thereof will permit, damages by the elements excepted. And not use or occupy said premises in any business deemed extra hazardous on account of fire or otherwise, nor let or underlet the same, except with the consent of said landlord, in writing, under penalty of forfeiture and damages. And has mortgaged and pledged all the personal property of what kind soever which he shall at any time have on said premises, whether exempt by law from distress for rent, or sale under execution, or not, waiving the benefits of and from the exemption, valuation and appraisement laws of said State to secure the payment thereof.

In witness whereof, he has hereunto set his hand, this —— day of ——, A. D. ——.

[*Witness.*] A. B.

Lease—Certificate.

Tenant's Waiver, Surety, etc.

This is to certify that I, the undersigned, have hired and taken from A. B. the following premises, situated in ——, in —— county, and State of ——, to wit: (*describing the premises*).

For a term of (*give the period for which rented*), from the —— day of ——, A. D. ——, at the —— rent of —— dollars, payable (*state time, place, and amount of payments*).

And I do hereby agree to make punctual payment of the rent in the manner aforesaid, except in case the premises become untenantable, from fire or any other cause, when the rent is to cease; to quit and surrender the premises at the expiration of said term, in as good a condition as reasonable use and wear thereof will permit, damages by the elements excepted. And not use or occupy said premises in any business deemed extra hazardous on account of fire or otherwise, nor let or underlet the same, except with the consent of said landlord, in writing, under penalty of forfeiture and damages. And do mortgage and pledge all the personal property of what kind soever which he shall at any time have on said premises, whether exempt by law from distress for rent, or sale under execution, or not, waiving the benefits of and from the exemption, valuation, and appraisement laws of said State to secure the payment thereof.

In witness whereof, he has hereunto set his hand, this —— day of ——, A. D. ——.

[*Witness.*] C. D.

Lease—Covenants.

See various clauses, above.

Lease—Farm.

Year to Year, Mode of Husbandry, etc.

Memorandum.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That said A. B. lets, and the said C. D. agrees to take and hold of him as tenant, all that, etc., situate, etc.

From —— day of —— next ensuing, upon the terms following, that is to say:

Said tenant shall be deemed a tenant from year to year;

That said tenant enter and take possession of said premises on —— next;

That either party may determine the tenancy by a notice in writing, —— months before the expiration of any year from the —— day of —— next preceding;

That said tenant shall go out of possession at the expiration or determination of his term;

That the rent of said premises shall be —— dollars per annum, payable in half yearly payments on, etc., and on, etc., without deduction on account of any tax or assessment now in existence or hereafter to be imposed, except, etc., which is to be paid by the said C. D.;

That the said tenant agrees to cause the following repairs to be made, viz. ——, etc., and to keep the buildings in tenantable repair;

That said tenant agrees to keep the gates and fences in good repair, said tenant finding rough timber or fencing stuff;

That said tenant shall not lop or cut any oak, etc., on the estate, except such as have usually been lopped, and those only to be used for making and repairing the fences to the estate, etc.;

That said tenant shall not mow any grass or meadow land above once in any one year of his tenancy, and if he breaks up any old meadow or old pasture land, unless with the said landlord's consent, in writing, then he shall pay the further yearly rent of —— dollars for every acre so broken up, and after that rate for any part of an acre;

That said tenant may crop the arable land in each year as follows, viz.: one equal third part thereof with wheat or barley, one other equal third part with beans, peas, clover, or oats, etc., and the remaining third part to lie in fallow;

That said land shall not be cropped with wheat twice, or barley twice, in any period of three years;

That said tenant shall use and consume on the farm all hay and straw made and grown thereon;

That said tenant shall use and spread dung and manure arising or made on the farm, in such manner as that every acre in tillage of the farm aforesaid may be well manured once in every three years of his tenancy. (Except that all hay and wheat straw on the farm unconsumed at the expiration of the tenancy may be purchased by the landlord or succeeding tenant, at a fair valuation by two indifferent persons, one to be named by each party.)

That said tenant shall leave on the premises, without compensation, not only all lent and white straw arising upon or from the premises, and remaining unconsumed thereon at the expiration of his tenancy, but also all dung and manure arising or made on the farm, and then remaining unconsumed;

That said tenant shall keep clean, by well hoeing, twice at the least, and weeding all the land whilst cropped with beans, peas, clover, etc.;

That said tenant shall endeavor to prevent any injury by persons, cattle, or sheep, to any of the hedges, or trees, or fences, and to preserve the same, and not to do any injury to any timber or other trees, in taking such loppings, as before allowed to him.

That said tenant shall not crop or sow any of the land with rape, flax, hemp, etc.

That said tenant shall not underlet or assign the premises or any part thereof, except, etc.

That said tenant on quitting the farm shall receive such pecuniary compensation for improvements in fencing, etc., as two arbitrators (one of which arbitrators shall be nominated by each party, and if either neglect to nominate his arbitrator, the other party may nominate both arbitrators) shall award, which arbitrators shall abate according to the benefit derived by the tenant from such repairs, improvements, and additions, and take into consideration how far, at the expiration of the tenancy, they may be beneficial to the estate.

In witness whereof, etc.

Lease—Goods and Furniture.

This (agreement, conveyance, indenture, *or*) lease, of two parts, made this —— day of ——, between A. B., of ——, and C. D., of ——, witnesseth:

That the said A. B., in consideration of the covenants hereinafter contained, on the part of the said C. D. to be performed, has leased to the said C. D., and his assigns, all the goods and

household furniture contained in the schedule hereunto annexed.

To hold to the said C. D., and his assigns, from the date hereof for the full term of three years:

Yielding and paying therefor the annual rent of fifty dollars, in four equal quarterly payments, viz., on the —— day of ——, on the —— day of ——, on the —— day of ——, and on the —— day of ——, in every year during the said term.

And the said A. B. covenants that the said C. D., etc., and his assigns, shall quietly hold and enjoy the leased premises, without the lawful hindrance of any person or persons whatsoever.

And the said C. D. covenants that he will pay the rent aforesaid in manner aforesaid, during the said term; that he will not assign this lease, or underlet the said goods, or any part thereof without the written consent of the said A. B.; that he will replace at his own expense any of the said goods, which may be casually lost or injured during the said term, and at the expiration of the said term, or other sooner determination of this lease will restore the said goods and household furniture to the said A. B., or his assigns, in the like good order and condition, as they now are, wear and tear arising from a reasonable use of the same, and loss from the casualty of fire, alone excepted.

In witness, etc.

FOR DETERMINING LEASE OF GOODS.

Provided, that if the said A. B., or his assigns, shall at any time during the said term tender to the said C. D., or his assigns, one dollar, with an intent to determine this lease, then this lease shall wholly cease and determine from the time of such tender, in like manner to all intents and purposes whatever, as if the said term of —— were fully complete and ended, and the said rent shall be so apportioned that the said C. D., or his assigns, shall pay, and the said A. B., or his assigns, shall receive, after the rate of fifty dollars per annum, for the use of the goods and household furniture aforesaid, during the time that they shall be used, or retained by the said C. D. in his possession, by virtue hereof.

PURCHASE OF GOODS, ETC.

And it is expressly covenanted by either of the said parties to the other of them, and their assigns respectively, that if, at any time during the said term, or within ten days after expiration or sooner determination thereof, as aforesaid, the said C. D., or his assigns, shall be minded to purchase the leased premises, at the prices set against them in the said schedule, amounting in the whole to the sum of five hundred and eighty dollars, and shall pay or tender the said sum to the said A. B., or his assigns, together with all arrearages of rent then due or to be apportioned as aforesaid, with intent to purchase the said goods, then the said A. B., or his assigns, in consideration of the said sums of money so tendered or paid as aforesaid, shall by a legal and sufficient bargain and sale, or other deed or conveyance, sell, and convey the said leased premises to the said C. D., or his assigns, to his or their sole use free from the lawful claims and demands of all persons whatsoever, and the said lease, if not otherwise determined, shall from thenceforth cease and determine, in the same manner as if the said term of three years had wholly expired and elapsed.

In witness, etc.

Lease—Ground Lease.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by and between A. B., of ——, party of the first part, and C. D., of ——, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, has demised and leased to the party of the second part all those premises situate in the —— of ——, in —— county, and State of ——, known and described as follows, to wit: (*here give description of the premises*)

To have and to hold the above-described premises, with the appurtenances, unto the party of the second part, from the —— day of ——, for, during, and until the —— day of ——.

And the party of the second part, in consideration of the leasing of the premises aforesaid, does covenant and agree with the party of the first part: That he will pay to the party of the first part as rent for said leased premises, at the office of ——, in ——, the sum of (*state the annual rent*), in four equal quarterly payments, each of them the sum of —— dollars, to be paid on the first (*or other*) day of the months of (April, July, October, and January, *or otherwise*) in each year.

That the said party of the second part will pay, or cause to be paid, all water-rates and all taxes and assessments that may be laid, charged or assessed on said demised premises, pending the existence of this lease;

That if at any time after any tax, assessment, or water-rate shall have become due or payable, the party of the second part, or his legal representatives, shall neglect to pay such water-rates, tax, or assessment, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be, so much additional and further rent, for the above demised premises, due from and payable by the party of the second part; and may be collected in the same manner, by distress or otherwise, as is hereinafter provided for the collection of other rents to grow due thereon.

That the whole amount of rent reserved, and agreed to be paid for said above-demised premises, and each and every instalment thereof, shall be and is hereby declared to be a valid and first lien upon any and all buildings and improvements on said premises, or that may at any time be erected, placed, or put on said premises by said party of the second part, or his heirs, executors, and administrators, or assigns, and upon his or their interest in this lease, and the premises hereby demised;

That whenever, and as often as any instalment of rent or any other amount above declared to be deemed and taken as rent, shall become due and remain unpaid for one day after the same becomes due and payable, said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, may sell at public auction to the highest bidder for cash, after having first given ten days' notice of the time and place of such sale in some newspaper published in ——, all the buildings and improvements on said premises, and all the right, title and interest acquired by said party of the second part, under this lease, to the premises herein described, and as the attorney of said party of the second part—hereby irrevocably constituted—may make to the purchaser or purchasers thereof a suitable and proper transfer bill of sale or deed of the same—and out of the proceeds arising from such sale, after first paying all costs and expenses of such sale, including commissions and attorney's fees—retain to himself the whole amount due on said lease, up to the date of said sale, rendering the surplus (if any) to said party of the second part, his heirs, executors, administrators, agent, attorney, or assigns, which sale shall be a perpetual bar to and against all rights and equities of said party of the second part, his heirs and assigns in and to the property sold.

That, at the expiration of the time in this lease mentioned, said party of the second part will yield up said leased premises to the party of the first part in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

That neither said party of the second part nor his legal representatives will underlet said premises or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereunto, nor use or suffer them to be used for any purpose calculated to injure the reputation of the premises or of the

neighbernood, or to impair the value of the surrounding neighborhood property for present use or otherwise.

It is expressly understood and agreed, by and between the parties aforesaid:

That if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained to be kept by the party of the second part, his executors, administrators, or assigns, it shall and may be lawful for the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their el_ction, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to reenter, and the party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as of his or their first and former estate; and to distrain for any rent that may be due thereon, upon any property belonging to the party of the second part, whether the same be exempt from execution and distress by law or not; and the party of the second part, in that case hereby waives all legal rights which he now has, or may have, to hold or retain any such property under any exemption laws now in force in this State, or in any other way;

That it is intended hereby to give the party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, a valid and first lien, upon any and all the goods, chattels, or other property belonging to the party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding;

That if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, as aforesaid, or in any other way, the party of the second part does hereby covenant and agree to surrender and deliver up said above-described premises and property, peaceably, to the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, immediately upon the determination of said terms, as aforesaid;

That if the said party of the second part, or his legal representatives, shall remain in possession of the same one day after notice of such default, or after the termination of this lease, in any of the ways above named, he or they shall be deemed guilty of a forcible detainer of the premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

That neither the right given in this lease, to said party of the first part, to collect the rent that may be due under the terms of this lease by sale, nor any proceedings under the same, shall in any way affect the right of said party of the first part to declare this lease void and the term hereby created ended, as above provided upon default made by said party of the second part.

That said party of the first part hereby waives his right to any notice from said party of the second part, of his election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent, or the possession of premises leased herein; but the simple fact of the non-payment of the rent reserved shall constitute a forcible entry and detainer as aforesaid.

That said party of the second part shall not remove any buildings or other improvements from said premises without written consent of said party of the first part.

That the said second party shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

It is further understood and agreed, That all the conditions and covenants contained in this lease shall be binding upon the heirs, executors, administrators, and assigns of the parties to these presents respectively.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written. A. B. [*Seal.*]
Signed, sealed, and delivered in presence of } C. D. [*Seal.*]

Lease—Habendum.

See VARIOUS CLAUSES, above.

Lease—House.

Lease of a House, with Various Clauses.

This (agreement, conveyance, indenture, *or*) lease, made and agreed on, this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That for and in consideration of the provisos and agreements hereinafter mentioned, and which on the part and behalf of the said C. D., his executors, administrators, and assigns, are to be done and performed, he, the said A. B., does lease, etc., unto the said C. D., his executors, administrators, and assigns, all that real property situate in S. (*known by the name of* ——), now (*or* lately) in the occupation of E. F., together with all the appurtenances whatsoever, to the same belonging or appertaining.

To have and to hold the said premises, hereby demised, with the appurtenances, unto the said C D., his executors, administrators, and assigns, from the day of the date hereof, for and during the full term of —— next ensuing.

Yielding and paying therefor (monthly, quarterly, *or* yearly), on every first day of ——, during the said term unto the said A. B., his heirs or assigns, the —— rent of —— dollars.

ENTRY—ON NON-PAYMENT OR ASSIGNMENT, ETC.

That if said rents, or either of them, shall be unpaid for the space of twenty days next after either of the said days of payment, or if the said C. D., his executors, or administrators, shall assign over this indenture, or the premises hereby leased, or any part thereof, to any person or persons whomsoever, without the consent of the said A. B., his heirs or assigns, first had and obtained in writing, for that purpose, then, and in either of the said cases, it shall be lawful for the said A. B., his heirs and assigns, into the said premises hereby leased, or any part thereof in the name of the whole, to re-enter and to have again, repossess, and enjoy the same, as of his and their first and former estate, anything herein contained to the contrary notwithstanding.

ENTRY—LESSOR MAY TO VIEW, ETC.

That said A. B., his executors, etc., or any of them, with workmen or others, or without, twice in every year during the continuance of this demise, at seasonable times in the daytime, may enter upon the said leased premises, or any part thereof, and view the state and condition of the same, and of all defects, and want of repairs, then and there found, to give or leave notice or warning in writing, at and upon the said premises, to said C. D., for the repairing and amending the same within the space of ——, then next following, in which said space or time, etc., after every or any such notice or warning, he, the said A. B., for himself, his executors, etc., does hereby covenant, etc., to and with the said C. D., his executors, etc., well and sufficiently to repair and amend the defects and want of reparation, so to be found as aforesaid (except as hereinbefore excepted).

QUIET ENJOYMENT—COVENANT FOR.

That he, the said C. D., his executors, etc., paying the said —— rent, and performing and keeping all and singular the covenants and agreements herein contained, on his and their part to be fulfilled and kept, shall and may peaceably and quietly use, occupy, and enjoy the said premises hereby leased, with the appurtenances, and every part and parcel thereof, for and during all the said term of —— hereby granted, without any hindrance, molestation, or interruption whatsoever, of or by the said A. B., or his heirs, or of, or

by any other person or persons whatsoever, lawfully claiming under them, or any, or either of them.

QUIT—LESSEE MAY GIVE NOTICE, ETC.

That in case said C. D., his executors or administrators, shall be desirous to quit and leave the said premises at the expiration of —— of the said term of —— hereby granted, and shall give notice in writing under his or their hands and seals, of such intention, unto the said C. D., or his heirs, —— months before the end and expiration of the said —— term of ——, then and at the end of such —— of the said term of —— hereby granted, this present lease, and the term hereby granted, shall cease, determine, and be utterly void, anything herein contained to the contrary notwithstanding.

In witness whereof, etc

POSSESSION—COVENANT TO DELIVER.

That at the end of the said term, or other sooner determination of this present demise, unto the said A. B., his heirs or assigns, shall and will peaceably and quietly leave and yield up, except as hereinbefore excepted.

RENT—COVENANT TO PAY.

And the said C. D. does hereby for himself, his heirs, executors, administrators, and assigns, covenant and agree that he (said C. D.), his executors, administrators, or assigns, shall and will, well and truly pay, or cause to be paid, unto the said A. B., his heirs and assigns, the said yearly rent of ——, in the manner hereinbefore limited and appointed, according to the reservation thereof and the true intent and meaning of these presents (except the premises or some part thereof, shall happen to be destroyed or damaged by reason of unavoidable casualty).

REPAIR—COVENANT TO.

And also, that he, the said C. D., his executors, administrators, or assigns, or some of them, shall and will at his, their, or some of their proper costs and charges, from time to time, and at all times hereafter during the said term, well and sufficiently repair, maintain, and keep the said premises, with the appurtenances hereinbefore demised, and every part and parcel thereof, with all and all manner of needful and necessary reparations whatsoever, and that, as often as need or occasion shall require, unavoidable casualties only excepted.

TAXES—LESSEE TO PAY.

That he, the said C. D., his executors, etc., shall and will, at all times hereafter during the said term hereby granted, pay and discharge all assessments, charges, duties, and taxes, which shall be assessed upon the said premises or any part thereof.

Lease—House and Lands.

With Exceptions and Special Covenants, etc.

This (agreement, conveyance, indenture, *or*) lease, made, etc., between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That for and in consideration of the covenants and agreements, hereinafter reserved and contained, and which on the part and behalf of the said C. D., his executors, administrators, and assigns, are to be done and performed, he, the said A. P., does lease and convey unto the said C. D., his executors, administrators, and assigns, all that real property, tenements, and farm-house (late in the possession of E. F.), with the appurtenances, situate in ——, together with all and singular the yards, gardens, orchards, outhouses, thereunto belonging, and also all those several closes, pieces or parcels of arable land, meadow, pasture, wood, and wood ground, containing by estimation —— acres (be they more or less, lying and being in ——, to the said messuage, tenement, or farm-house belonging, and therewith held, used, occupied, and enjoyed, as part and parcel thereof).

VARIOUS CLAUSES.

FALLOW AND UNSOWN, ETC.—TO LET LAND LIE EVERY THIRD YEAR, ETC.

That he, the said C. D., his heirs, executors, administrators, or assigns, shall not, nor will, at any time during this present lease, crop or sow above two years together, any of the arable lands and closes hereby leased, but every third year permit the same to lie fallow and unsown.

And that it shall be lawful for the said C. D., his heirs and assigns, with servants, and the necessary materials, at —— day next preceding the expiration of this present lease, to enter upon such enclosure and grounds, being a part of the said premises as then ought to lie fallow and unsown, and the same to plough, fallow and manure, and to have the grass, herbage, sheep-walks, and sheep commons thereof, and also to enter upon the dung which shall then be in the yard or yards, and at the same time to have the dung in the henhouse, and also to have some convenient place for the lodging of their servants and cattle, without extinguishment of any of the yearly rent hereinbefore reserved, and without giving or making any allowance or satisfaction for the same.

HABENDUM AND REDDENDUM.

To have and to hold the said premises, with their appurtenances (except as before excepted), unto the said C. D., his executors, administrators, and assigns, from the day of the date hereof, for and during the full term of —— years next ensuing, and fully to be complete and ended;

Yielding and paying therefor yearly, during the said term, unto the said A. B., his heirs or assigns, the yearly rent or sum of ——, on the first day of ——, in every year during the said term.

QUIET ENJOYMENT—COVENANT FOR.

That it shall and may be lawful to and for the said C. D., his executors, etc., performing the covenants and agreements, hereinbefore mentioned, peaceably and quietly, to hold and enjoy all and singular the said premises, with the appurtenances, during the said term of —— years hereby leased, without any molestation whatsoever, by him, the said A. B., his heirs or assigns, by any other person or persons lawfully claiming from or under him or them.

QUIT POSSESSION—AT THE END OF THE TERM.

That at the expiration or other sooner determination of this present lease, said C. D., etc., will yield up said premises, etc., unto the said A. B., his heirs or assigns.

REPAIRS—LESSOR TO FIND MATERIALS FOR, ETC.

That said A. B., his heirs and assigns, shall and will, from time to time, during this present lease, at reasonable time for cutting timber, provide and allow unto the said C. D., his, etc., on the said premises, or within four miles distant therefrom, necessary materials for the repairing and amending thereof, within forty days after notice of the want thereof, and demand of the same made by the said C. D., his executors, etc., the said materials to be carried to the said premises at the expense of the said C. D., his executors, etc.

REPAIRS—THE LESSOR TO FIND MATERIALS FOR.

That he, the said C. D., his executors, administrators, and assigns, shall and will, at his and their own proper costs and charges, well and sufficiently repair, maintain, and preserve, the said real property, tenements, and farm-house, and all other the outhouses, gates and fences belonging to the said premises, he, the said A. B., his heirs and assigns, upon notice and request to them made, finding and allowing on the said premises, or within four miles thereof, all materials whatsoever for the doing thereof, to be carried to the said premises at the charge of the said C. D., his executors, administrators, or assigns.

STRAW—NOT TO BURN, ETC.

That the said C. D., his executors, administrators and assigns, shall not, at any time or times, during the last two years of said term, sell, or otherwise dispose of, any of the straw which shall be growing and arising upon the said leased premises, and shall not burn any straw, except it be for the necessary singeing of his and their hogs for the use of their own families, etc.

TAXES—TO PAY.

That he, the said C. D., his executors, administ-

trators and assigns, shall and will, at at all times during the said term of years hereby leased, pay and discharge all such taxes and assessments as shall be levied or assessed upon the said premises, the land tax only excepted.

TIMBER—EXCEPTION OF, ETC.

Except, and always reserved, out of this present lease unto the said A. B., his heirs and assigns, all timber and timberlike trees, and all other trees whatsoever, but the fruit trees for their fruit only, and the pollard trees for their lops and tops only, which now are, or at any time or times hereafter shall be standing and growing in and upon the said premises, or any part thereof, with free liberty of ingress and egress to and for the said A. B., his heirs and assigns, servants and workmen, from time to time, and at all times during the term hereby leased, the same to cut down and carry away, in and through the said leased premises, or any part thereof (doing no wilful hurt or damage to the grain and grass of the said C. D., his executors, administrators, and assigns), at all times during the term hereby leased, and free liberty to enter into and upon the said premises, and every part thereof, to view the condition of the repairs thereof.

TIMBER TO REPAIR FARMING UTENSILS—LESSOR TO ALLOW.

And also shall and will, from time to time, during this present lease, allow unto the said C. D., his, etc., timber to be had and taken off and from the said premises (if any such there be), for necessary repair of all farming utensils, to be used and spent upon the said premises, and not elsewhere, and to be set out for that purpose by the said A. B., his heirs or assigns, on such notice as aforesaid of the want thereof.

TREES—NOT TO LOP, ETC.

That the said C. D., his executors, etc., shall not, nor will at any time during the term hereby leased, lop or cut any of the trees or spring wood belonging to the said premises, but such pollard trees and spring wood as have been usually lopped and cut by former and other tenants, and those only of twelve years' growth, and the same shall not be sold or disposed of in any other way whatsoever, and shall not nor will, at any time or times during this lease, inordinately burn or waste any of the firewood which is so allowed, and shall keep the said pollard trees, as also all the fruit trees and spring wood, from all wilful or negligent hurt or waste.

Lease—House Unfinished.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That, in consideration of the rent and covenants, hereinafter reserved and contained on the part of said C. D., his executors, administrators, and assigns, the said A. B. does lease unto the said C. D., all that parcel of ground, situate on the south side of —— street, in, etc., etc., together with the buildings erected thereon, being the —— house from ——, exclusive of the corner house; which said premises, with the dimensions and abuttals thereof, are particularly described in the ground plot thereof, drawn in the margin hereof; together with all the privileges and appurtenances to the said premises belonging (except, etc.)

To have and to hold the said premises unto the said C. D., his executors, etc., from the —— of day —— last, for the term of —— years, thence next ensuing;

Yielding and paying therefor yearly, during the said term, unto the said A. B., his heirs, executors, etc., the rent of —— dollars, by equal quarterly payments, on the —— day of ——, etc., etc., in every year, without any deduction whatsoever for taxes, assessments, etc.

VARIOUS CLAUSES.

ASSIGN—NOT TO, WITHOUT GIVING NOTICE.

That the said C. D., his executors, etc., will not assign the said premises or any part thereof, for the said term, without giving notice in writing within fourteen days then next, to the said A. B., his executors, etc., and will not, during the last seven years of the said term, assign or make over the said premises, or any part thereof, for all or any part of the residue of the said term, without the consent in writing of the said A. B., his executors, etc.

DRAINS, FENCES, PARTY WALLS, AND SEWERS, ETC., ETC.—TO CONTRIBUTE TO.

That said C. D. will, during the said term, contribute a reasonable proportion towards the expense of making, repairing and cleansing all party and fence walls, sewers, drains, watercourses, ways and other easements, used or to be used in common, by the occupier of the said premises, and the occupiers of the adjoining premises belonging to the said A. B.

FINISH HOUSE—LESSEE COVENANTS TO, ETC.

That said C. D., his executors, administrators, or assigns, will, at his or their own expense, before the —— day of —— next, finish and make fit for habitation the said tenements, with the appurtenances, to the approbation of the said A. B., his heirs, executors, etc., or his or their surveyor.

That said C. D. will pave a footway in front of the said dwelling, with a stone curb, etc., etc.

INSURE—LESSEE WILL, ETC.

That said C. D. will forthwith insure the buildings erected and hereafter to be erected on the ground hereby demised, to the full value thereof, in the —— insurance office, etc., and keep the same continually so insured during the said term; and will, upon request of the said A. B., his executors, etc., show the receipt for the premium paid for such insurance, for every current year.

PAINT—LESSEE TO, ETC.

That the said C. D., his executors, etc., will, in every fourth year of the said term, paint all the outside wood work and iron work belonging to the said premises, with two coats of proper oil colors, in a workmanlike manner.

REPAIR—LESSEE TO KEEP PREMISES IN.

That said C. D. will, as occasion shall require, during the said term, well and sufficiently repair, maintain and keep the said premises, with the appurtenances, in such good and substantial repair as is necessary for the occupation of a tenant at rack-rent.

REPAIRS—THAT LESSOR MAY ENTER TO INSPECT, ETC.

Said A. B., his executors, etc., at all seasonable times, during such term, may enter the said premises, and take a schedule of the same fixtures and things.

REBUILD, REPAIR, ETC., IN CASE OF FIRE, LESSEE WILL, ETC.

That said C. D. will, as often as the buildings already erected on the ground hereby demised shall be burnt down or damaged by fire, forthwith reinstate the same under the direction of the surveyor of the said A. B., his executors, etc.

That it shall be lawful for the said A. B., his executors, etc., at all seasonable times during the said term, to enter the said premises, to take plans and examine the condition thereof;

That all wants of reparation, which upon such views shall be found, and for the amendment of which notice in writing shall be left at the said premises, the said C. D., his executors, etc., will within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.

That the said C. D., his executors, etc., will not alter or injure any of the principal timbers, roofs, or walls of the said premises, nor use or occupy the said premises, or any part thereof, for any other purpose than as a private dwelling house, without the consent in writing of the said A. B., his executors, etc., nor by building or otherwise obstruct any light belonging to any building on the ground adjoining or contiguous, or suffer to be done anything which may tend to the annoyance or damage of the said A. B., his executors, etc., or any of his or their tenants.

Lease—Indenture.

This indenture (*or* lease), made this —— day of

——, between A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth:

That said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the party of the second part, his executors, administrators, and assigns, to be paid, kept and performed, hath granted, demised, and to farm letten, and by these presents doth grant, demise, and to farm let, unto the said party of the second part, his executors, administrators, and assigns, all (*give description of premises*):

To have and to hold the said above-mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the —— day of ——, for and during, and until the full end and term of ten years thence next ensuing, and fully to be complete and ended (*or*, for and during the natural life of E F)

Yielding and paying therefor, unto the said party of the first part, his heirs or assigns, yearly, and every year during the said term hereby granted, the yearly rent or sum of —— dollars, lawful money of the United States of America, in equal quarter (*or* half) yearly payments, to wit: on the first day of May, August, November, and February, in each and every year during the said term:

Provided always, nevertheless, that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid, on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants herein contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, into and upon the said demised premises, and every part thereof, wholly to re-enter, and the same to have again, re-possess and enjoy, as in his or their first and former estate, or to distrain for any rent that may remain due thereon, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And the said party of the second part, for himself and his heirs, executors, and administrators, doth covenant and agree, to and with the said party of the first part, his heirs and assigns, by these presents, that the said party of the second part, his executors, administrators, or assigns, shall and will yearly, and every year during the term hereby granted, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved, on the days and in the manner limited and prescribed as aforesaid for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents. (*If necessary, insert:* and that the said party of the second part, his executors, administrators, or assigns, shall and will, at their own proper costs and charges, bear, pay and discharge all such taxes, duties and assessments whatsoever, as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said described premises.)

And that on the last day of the said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will peaceably and quietly leave, surrender, and yield up unto the said party of the first part, his heirs or assigns, all and singular the said demised premises.

And the said party of the first part, for himself, his heirs and assigns, doth covenant and agree by these presents, that the said party of the second part, his executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his and their part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises, without any manner of let, suit, trouble, or hindrance, of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year above written. A. B. [L. S.]
Sealed, signed, and delivered in presence of G. H. } C. D. [L. S.]

Lease—Life Lease.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, by and between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That said A. B., in consideration of the rents and covenants hereinafter contained, on the part of the said C. D., to be paid and performed, does hereby lease and convey unto the said C. D., his executors, administrators, and assigns, all the following described real estate, etc. (*here describing the premises*), (being the same which were, together with certain other parcels of real estate, etc.), assigned to the said A. B., as her dower in the estate of her late husband, H. B., deceased;

To have and to hold said leased premises, to him, the said C. D., his executors, etc., from the day of the date hereof, for and during the natural life of the said A. B.;

Yielding and paying therefor the yearly rent of ——, in quarterly payments, every year during the life of the said A. B.; the first payment to be made on the —— day of —— next:

And the said C. D., for himself, his executors, etc., does hereby covenant with the said A. B., her executors, administrators, and assigns:

That he, his executors, etc., shall and will pay to the said A. B., her heirs, executors, etc., the said yearly sum of ——, at the several times hereinbefore limited for the payment thereof, during the continuance of this lease;

That he, the said C. D., his executors, etc., shall and will, from time to time, and at all times during the continuance of the said lease, at his and their own charges, well and sufficiently repair, support and amend said leased premises and every part thereof, with all manner of needful repairs and amendments, as often as occasion shall require;

That he will not, and his executors, etc., shall not, do, commit, or suffer any waste upon the demised premises during the said term;

That on the decease of the said A. B., will and shall, yield and deliver up the said premises to the legal owner, or proprietor thereof, in as good condition as they are now in, reasonable use and wear thereof, and also damage or destruction by fire, excepted;

That he, the said C. D., his executors, etc., shall and will pay and discharge all the rates and taxes, whether city, county, or State, or of the United States, which shall, from time to time, or at any time during the said lease, be lawfully assessed or imposed on the leased premises;

Provided always, nevertheless:

That, if it shall happen that the said rent of ——, or any part thereof, shall be in arrear and unpaid, by the space of —— days, next after the same shall become due, respectively, as before limited for the payment thereof; or, if the said premises shall not be sufficiently repaired and amended within four months after notice given to or left with the tenant of the same for the time being, of any deficiency or want of repairs of the same; or, if all or any such rates or taxes aforesaid, which shall be lawfully assessed on the leased premises, shall not be discharged in the manner, and by the times respectively limited and appointed for the payment thereof; then, and in any or either of the said cases, it shall and may be lawful for the said A. B., or her assigns, into the leased premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, and enjoy, as in her first and former estate, and the said C. D., his, etc., and all other tenants and occupiers of the said premises thereout, and from thence to expel, eject, and remove, anything hereinbefore contained to the contrary notwithstanding.

And the said A. B. does hereby covenant and agree, to and with the said C. D., his executors, etc., that he and they, paying the said yearly rent, hereby reserved, at the times hereinbefore appointed for the payment thereof, and performing all and singular the covenants and conditions herein contained, on his and their part to be performed and kept, shall and lawfully may, peaceably and quietly, hold and enjoy the leased premises for and during the term aforesaid, free from the lawful hindrance or interruption of any person or persons whatsoever.

Provided always, and it is hereby mutually agreed between the said parties, that if the said messuage, parcel of the said leased premises, during the said term, should accidentally be burned down, or destroyed by fire, this indenture of lease, and every clause, article, and covenant herein contained, shall thereafter cease and determine; and neither the said A. B., her, etc., nor the said C. D., his, etc., shall be obliged to rebuild the said house, but he, the said C. D., his, etc., shall yield and deliver up, to the said A. B., or her assigns, possession of the land on which the said messuage stood, together with the residue of the leased premises, and he and they shall be acquitted and discharged, from thenceforward, from the payment of rent therefor, and from the performance of the other covenants hereinbefore contained.

In witness whereof, etc.

Lease—Manufactory.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the first part, and C. D., of ——, of the second part, witnesseth:

That in consideration of the rent and royalties hereinafter reserved, and of the covenants hereinafter contained, and on the part of the said C. D., his executors, administrators, and assigns, to be observed and performed, said A. B. hereby grants and leases unto the said C. D., his executors, administrators and assigns, as follows:

First. All that tenement chiefly used as an engine-house, situate in and fronting —— street in the city of ——, which said premises are more particularly delineated in the map or plan hereto annexed, and therein marked ——, and the use and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises.

Second. All and singular the manufactories, buildings, boiler-houses, kilns, erections, offices, buildings and premises situate between —— street and —— quay in the said city of ——, which said premises secondly hereinbefore described are more particularly delineated in the said map or plan, and therein marked ——, and the use and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises secondly hereinbefore described (excepting, nevertheless, and reserving unto the persons in favor of or to whom the same have previously to the date of these presents been excepted and reserved, their executors, administrators, and assigns, all the rooms which form the upper story of the several buildings hereby demised, and the absolute use and enjoyment thereof, whether for the purposes of business, or otherwise, and unto the same persons, their executors, administrators and assigns, and unto their servants, workmen, or any other persons on their behalf),

Third. All that tract and parcel of ground bounded and described as follows (*describing it*): the same to occupy and use, either on foot or by means of carts or other vehicles, horses, or other animals, full and free right and liberty of ingress, egress, regress, passage and way at all times over the said piece of land colored —— on the said plan from the point at which the said piece of land adjoins the wharf, and by all the other internal and external passages and ways by which the said rooms respectively are or can be now approached from the said street from the point aforesaid:

To have and to hold all the said premises hereby leased, or expressed so to be, unto the said C. D., his executors, administrators, and assigns, for the term of —— years from the —— day of —— next:

Yielding and paying in respect of the premises hereby demised every year during the said term of —— years the clear yearly rent of —— dollars, and yielding and paying every year during the said term a royalty of —— per ——, in respect of all —— which shall be made or manufactured and sold by the said C. D., his executors, administrators or assigns, or any person or persons on his or their behalf, either on the premises hereby demised or on any part thereof, or on any other premises or in any other place or places whatsoever, such rent and royalties to be paid by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, clear of all deductions, the first quarterly payment of the said rent and royalties respectively to be made on the —— day of —— next.

And the said C. D. hereby, for himself, his heirs, executors, administrators, and assigns, covenants with the said A. B., his executors, administrators and assigns, that the said C. D., his executors, administrators, and assigns, shall and will, during the said term, pay the said rent and royalties respectively on the said days of payment whereon the same respectively are hereinbefore made payable, without any deduction, and also pay and discharge all present and future taxes, charges, rates and assessments upon the said premises hereby leased, or on the occupier or occupiers thereof in respect of the same, and will at all times keep indemnified the said A. B., his heirs, executors, administrators and assigns, from the payment thereof respectively;

And further, that the said C. D., his executors, administrators and assigns, shall and will, at all times during the said term of —— years, carry on, within the said city of ——, the business of making or manufacturing ——, and selling the same there and elsewhere to the best possible advantage; and shall and will at all times during the said term keep proper books of account on the said premises hereby leased, or on some part thereof, and shall from time to time make such entries therein as shall clearly show the quantity of —— which shall from time to time be manufactured and sold by him or them, or any person or persons on his or their behalf, and also the amount of royalties which shall from time to time become payable in respect thereof, and also all other matters which ought to be entered in such books in relation to the said business; and shall and will on the first day of every month during the said term, at his or their own expense, supply the said A. B., his executors, administrators and assigns, with a proper and faithful account, in writing, of all the —— which shall have been manufactured or sold as aforesaid during the then preceding month, together with all vouchers and such other evidence as may be required in order clearly to show the accuracy of such account; and shall and will, if and when required so to do by the said A. B., his executors, administrators, or assigns, further evidence the accuracy of every such account by the oath or affirmation of the said C. D., his executors, administrators or assigns; and shall and will on every quarter-day during the said term during which the royalties hereby reserved are made payable by these presents, pay the full amount of the royalties which shall have become payable in respect of all the —— which shall have been manufactured or sold during the then preceding quarter of a year.

And further, that in case the said rent and royalties hereby reserved, or any of them, or any part thereof respectively, shall at any time or times during the said term, fail to be paid at the times and in the manner hereinbefore provided for this purpose, then (in addition to the powers of distress and entry which he or they may possess independently of any special clause to this effect) it shall be lawful for the said A. B., his executors, administrators or assigns, into or upon the said premises hereby leased, or expressed so to be, or any part thereof, or any other premises wherein or whereupon the said business may for the

time being be carried on, to enter and distrain for the same rent and royalties so in arrear, and the distress or distresses there found to impound and detain, sell and dispose of in such manner as landlords are by law authorized to do in respect of arrears of rent reserved upon common lease, to the intent that the said A. B., his executors, administrators, or assigns, may by such distress or distresses be from time to time satisfied, all such rent and royalties as may be so unpaid as aforesaid, and all costs and expenses occasioned by non-payment or default in payment thereof.

In witness whereof, etc.

Lease—Mill.

With Proviso.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, in —— county, and State of ——, of the first part, and C. D., of ——, in —— county, and State of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the party of the second part, his executors, administrators and assigns, to be paid, kept and performed, the —— mill property of the party of the first part, now run by R. & R., which is —— stories high, —— feet in length, and contains —— looms, being one of the mills known and designated as the R. & R. Mills, in the city of ——; together with all the machinery now in the same belonging to the said party of the first part, and all stoves, boilers, fixtures, heaters, and machinery, and every article now in the said mill which appertains to the same, and is necessary to its successful operation; and also all the dwellings and storehouses used in connection with said mill, which now belong to said party of the first part.

And the said party of the first part further agrees to pay all taxes and insurances on said premises, and to furnish water-power, water-wheels, main-shafting and gearing sufficient at all times to keep in constant and full operation said mill, and all the running works of the same, and all machinery driven by water-power now in said mill.

And the said party of the first part further agrees to secure to the said party of the second part the quiet and peaceable possession of all and every part of said premises, machinery and tools, and all grounds appertaining to said mill, and all passage-ways to and from the same which are now used and may be necessary for the accommodation of the same, for —— years from the first day of —— next.

It is mutually understood and agreed between the parties hereto, that in case said mill should be necessarily stopped from casualty, or in case there shall be a want of or failure of water-power, the rent above mentioned to be paid shall cease, and not be chargeable during the continuation of such stoppage, want, or failure.

In witness whereof, etc.

Lease—Mining, Etc.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, in —— county, and State of ——, of the first part, and C. D., of ——, in —— county, and State of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, do lease and convey to said party of the second part, his heirs, executors, administrators and assigns, the right of entering in and upon the following described lands, situated (*here insert description*), for the purpose of searching for mineral and fossil substances, and of conducting mining and quarrying operations to any extent he may deem advisable.

For the term of —— years, from the —— day of ——, A. D. —— (but not to hold possession of any part of said lands for any other purpose whatsoever), paying for the site of buildings (*or designate other works*) necessary thereto, a reasonable rent.

And said party of the second part hereby agrees that he, his heirs, executors, administrators, or assigns, will pay or cause to be paid to said party of the first part, his heirs or assigns, as follows: (*here state payments*).

And said party of the second part covenants that no damage shall be done to or upon said lands and premises other than may be necessary in conducting said operations.

And said parties of the first and second part, each for themselves, their heirs, executors, administrators, and assigns, covenant and agree, and this indenture is made with this express proviso, that if no mineral or fossil substance be mined or quarried, as now contemplated by said parties, within the period of —— years from the —— day of ——, then these presents, and everything contained herein, shall cease, and be forever null and void.

In witness whereof, etc.

Lease—Oil, Mineral, or Salt Lands.

This (agreement, conveyance, indenture, *or*) lease, made and concluded this —— day of ——, between A. B., of —— of ——, county of ——, and State of ——, party of the first part, and C. D., of ——, party of the second part, witnesseth:

That the said party of the first part, for himself and his heirs, executors, administrators, and assigns, for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and for the further consideration hereinafter mentioned, and on account of covenants hereinafter contained, hereby leases to the said party of the second part, his heirs, executors, administrators, and assigns, the following-described piece or parcel of land, situated in —— township, —— county, and State of ——, bounded and described as follows: (*describe the premises*).

The said land more fully described in deed of conveyance by C. D. to said party of the first part, containing —— acres, more or less, for the purpose of boring, mining, and operating for oil, salt, and other minerals on said land, for the term of —— years.

Said second parties shall have the exclusive right to mine for oil, salt, and other minerals, on said land, during the continuance of said term; shall have the privilege of taking sufficient coal and wood for conducting said boring and mining operations, and timber for derricks and mill-frames and for refineries, and the right to erect all necessary buildings upon said premises for carrying on the business of boring for oil, and mining, refining and storing away oil and other minerals; shall have the necessary roads to and from any well or wells that may be bored, or any mines; and shall have possession whenever they shall be ready to commence operations.

In case successful in obtaining oil or other minerals, agree to deliver to the said party of the first part (*state the part or proportion to be given to the lessor*) of all oil, salt, or other minerals obtained.

Said party of the first part shall find his own barrels, and remove the oil and other minerals belonging to him as often as required by the second parties.

In case said second parties should not be successful in obtaining oil or other minerals, they shall have the right to remove all engines, tools, machinery, and buildings.

And further, it is agreed that the parties of the second part shall have the right to sub-lease said land for the purpose of boring for oil or other minerals, and the said lessee or lessees shall have all the rights and privileges herein granted to the said party of the second part.

Witness our hands (and seals), this —— day of ——.

A. B. [*Seal.*]
(*Witness.*) C. D. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Lease—Pew.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That in consideration of the rents and covenants hereinafter reserved and contained, and which on the part of the said C. D., his executors, administrators and assigns, are to be paid and performed, the said A. B. does lease, etc., to the said C. D., his executors, etc., all that pew or seat in the —— meeting-house, situate in said S., numbered ——, with free liberty of ingress and egress into and from the same at all times of divine service, and at all seasonable times whatsoever;

To hold the said pew or seat to the said C. D., his executors, etc., from the day of the date hereof, for and during the full term of —— years thence next ensuing;

Yielding and paying therefor, on every first day of —— during the said term, unto the said A. B., his heirs or assigns, the yearly rent of —— dollars.

Provided always, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid by the space of twenty days next after it shall become due as aforesaid, then this lease and every article and thing herein contained, on the part of the said A. B. to be done and performed, shall determine and be utterly void.

COVENANT TO PAY TAXES, ETC.

That said C. D., his executors, etc., at all times hereafter during the term aforesaid, shall and will pay and discharge all taxes and parish duties, which shall be duly and legally assessed on the said pew or seat.

See other covenants, above and below.

Lease—Renewal, etc.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between the within-named A. B., of the one part, and the within-named C. D., of the other part, witnesseth:

That for and in consideration of the covenants and agreements, hereinafter contained, which on the part and behalf of the said C. D., his executors, administrators, and assigns, are to be done and performed, the said A. B. by these presents doth lease, etc., unto the said C. D., his, etc., all the following described real estate (*describing it*), and all and singular other the premises respectively comprised in the within-written lease, and thereby leased to the said C. D. (except as therein is excepted).

To have and to hold the said piece or parcel of ground, messuage or tenement, and all and singular other the premises hereby leased (except as aforesaid) unto the said C. D., his executors, etc., from the —— day of ——, which will be in the year ——.

And when the said within-written lease will expire, for and during and unto the full end and term of —— years longer, from thence next ensuing, subject to the like rent, and payable in like manner as within mentioned, and subject to the like power of entry, as well on non-payment of rent as on the happening of any other of the incidents mentioned in the within-written proviso, or condition of re-entry.

And it is hereby declared and agreed by and between the said parties to these presents, that they and their respective heirs, executors, administrators, and assigns, shall and will by these presents, during the additional term of —— years hereby granted, stand and be bound, for the said premises, with the appurtenances, in the same covenants, conditions, and agreements respectively, as they, the said parties, and their respective heirs, executors, administrators, and assigns, do now stand bound, in and by the said within lease; it being the intent and meaning hereof, that this present indorsed lease, and the additional term hereby granted, shall be upon the same footing, and all the covenants, conditions, and agreements, respectively therein contained, be equally available, and have the like force and effect, to all intents and purposes, as if every article, matter, and thing, contained in the said within lease, were inserted and contained in this present indenture.

In witness whereof, etc.

Lease—Surety.

Suretyship Agreement.

In consideration of the letting of the premises above described, and for the sum of one dollar I, the undersigned, do hereby become surety for the punctual payment of the rent, and performance of the covenants in the within-written agreement mentioned, to be paid and performed by the within-named tenant; and if any default shall be made therein I do hereby promise and agree to pay on demand, unto the within-named landlord, such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of the said agreement, without requiring any notice of non-payment, or proof of demand being made.

Given under my hand, this —— day of ——, A. D. ——.

E. F.

Lease—Surrender of a Term of Years.

To the Person Having the Reversion.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

Whereas, the said C. D., by his indenture of lease, bearing date, etc., did lease, etc. (*recite the property and term as in the lease*).

Now these presents witness:

That for and in consideration of —— dollars, to the said A. B. in hand paid at the sealing and delivery of these presents by the said C. D., and to the intent and purpose that the said term in the said lands and premises may be wholly merged and extinguished, he, the said A. B., hath given, granted, and surrendered, and by these presents doth give, grant, and surrender unto the said C. D., and his heirs, all the said lands and premises in the said indenture of lease contained and demised as aforesaid, and all the estate, right, title, interest, term of years, property, claim, and demand whatsoever, of him, the said A. B., of, in, to, or out of the same, or any part or parcel thereof:

To have and to hold the said lands and premises to the said C. D., his heirs and assigns, and to their own proper use and behoof.

And the said A. B. does hereby, for himself, his heirs, executors, and administrators, covenant and agree, to and with the said C. D., his heirs and assigns, that he, the said A. B., hath not, at any time heretofore, made, done, committed, executed, permitted, or suffered any act. deed, matter or thing whatsoever, whereby, or wherewith, or by reason or means whereof, the said lands and premises hereby assigned or surrendered, or any part or parcel thereof, are, or is, or may, can, or shall be, in anywise impeached, charged, affected, or incumbered.

In witness whereof, etc.

Lease—Surrender—By Indorsement.

Know all men by these presents:

That I, the within-named A. B., in consideration of —— dollars, to me in hand paid at and before the ensealing and delivery of these presents, do, for myself, my executors and administrators, bargain, sell, surrender, and yield up, from the day of the date hereof, unto the within-named C. D., and his heirs (*or* his executors and administrators), as well the within indenture of lease, as the lands and premises therein mentioned, and the term of years therein yet to come, with all my right, title, and interest, thereto; and I do hereby covenant that the same are free and clear of all incumbrances of what kind soever, at any time by me, or by my privity, consent, or procurement, done, committed, or suffered.

Given under my hand, etc.

Lease—Tenendum.

See HABENDUM, above.

Lease—Underlease.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That, in consideration of the covenants and conditions herein contained, on the part of the said C. D., his executors, etc., to be respectively

observed and performed, the said A B. does lease unto the said C. D., his executors, etc., all real estate and buildings (which are now held by the said A. B. under a lease granted to him by E. F., by indenture bearing date, etc)

For a term of —— years, from the —— day of —— then last past, together with all easements and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining;

To have and to hold the said premises, with their appurtenances, to the said C. D., his executors, administrators, and assigns, from the —— day of —— now last past, for the full term of —— years and three-quarters of another year, wanting two days;

Yielding and paying therefor yearly, and every year, during the said term hereby granted, except the three last quarters of a year, wanting two days, unto the said A. B., his executors, etc., the rent or sum of —— dollars, in even portions quarterly, beginning on the —— day of the present month, clear of all deductions for taxes or on any other account; And for the last three quarters of a year, wanting two days, of the said term, the rent or sum of —— dollars, to be payable, clear of all deductions as aforesaid, on the days and in the manner as follows: the sum of —— dollars on, etc., the sum of —— dollars on, etc., and the remaining sum of —— dollars on the last day but one of the said term hereby granted.

COVENANT TO PAY THE RENT RESERVED BY THE ORIGINAL LEASE.

That said A. B., his executors, etc., will pay or cause to be paid the yearly rent reserved by the said lease so granted to him by the said E. F. as aforesaid, and observe and perform the covenants, conditions and agreements therein contained, and will keep the said C. D., his executors, administrators and assigns, indemnified against the payment of the same rent, and the performance of the same covenants, conditions and agreements, except so far as such covenants, conditions and agreements are conformable to the covenants, conditions and agreements hereinbefore contained, and ought to be observed and performed by the said C. D., his executors, administrators, and assigns.

COVENANT TO PRODUCE THE ORIGINAL LEASE, ETC.

That said A. B., his executors, etc., shall and will from time to time, during the term hereby granted, upon every reasonable request and notice thereof in writing, for that purpose given to him by the said C. D., his executors, etc., produce or cause to be produced and shown, to the said C. D., his executors, etc., or to such person or persons as they shall desire or require, the said lease, bearing date, etc., as aforesaid and hereinbefore referred to, unless the said A. B., his heirs, executors, etc., shall be prevented or hindered from so doing by fire or other inevitable accident

In witness whereof, etc.

Lease—Wharf, Machinery, Etc.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, lessor of one undivided half of the premises, of the first part, C. D., of ——, lessor of other undivided half of premises, of the second part, and E. F., of ——, lessee, of the third part.

Whereas, the said A. B. and C. D. are seized of and absolutely entitled to the dwelling-house, ground, warehouses, offices, erections, wharf, fixtures, machinery, and things hereinafter mentioned, and intended to be hereby demised, as tenants in common in equal shares;

And whereas, the said A. B. and C. D. have agreed to grant to the said E. F. a lease of the said premises, upon the terms and in the manner hereinafter expressed:

Now this indenture witnesseth:

That in consideration of the rent hereinafter reserved, and of the covenants hereinafter contained, and on the part of the said E. F., his executors, administrators and assigns, to be observed and performed, they, the said A. B. and C. D. (according to their respective shares in the property intended to be hereby demised), do, and each of them does, hereby grant and demise unto the said E. F., his executors, administrators and assigns, all that messuage or dwelling-house, etc., and also all that piece or parcel of ground, etc., with the warehouses, offices or buildings, and other erections now standing and being thereon; and also all that wharf adjoining thereto, now called and known by the name of —— wharf, situate, lying, and being in ——, in the county of ——, and bounded (*here follows the description*), and now in the occupation of ——, and all which said hereditaments and premises are more particularly described or delineated in the map or plan drawn in the margin of (*or* annexed to) these presents. And also the use and enjoyment of all the machinery, cranes, fixtures, implements, utensils and things which now are in or upon the said premises, and the particulars whereof are specified in the schedule hereto annexed:

To have and to hold the said premises hereinbefore demised or expressed so to be, unto the said E. F., his executors, administrators and assigns, from the —— day of ——, for the term of —— years thenceforth.

Yielding and paying therefor yearly, and every year during the said term of —— years, the rent of —— dollars, by equal half-yearly payments, on the —— day of —— and the —— day of ——.

And the said E. F. hereby for himself, his heirs, executors, administrators and assigns, covenants in manner following:

That the said E. F., his executors, administrators and assigns, shall and will (*here follows a covenant to pay rent and taxes, etc.*)

That said E. F. shall and will at all times, during the said term, at his and their own costs, as often as occasion shall require, well and sufficiently repair, support, maintain and keep in good and substantial repair and condition the dwellings, wharf, machinery, and premises hereby leased or expressed so to be, and also all other the erections and buildings which shall at any time during the said term be erected and set up on or upon the said leased premises, and the same in such good and substantial repair and condition, shall and will, at the expiration or other sooner determination of the said term of —— years, peaceably and quietly surrender and give up unto the said A. B. and C. D., their heirs and assigns, the reasonable use and wear thereof in the meantime only excepted.

Provided always, and it is hereby agreed and declared, that if the said E. F., his executors, administrators or assigns, shall be desirous of determining the said term of ——, at the expiration of their first —— years of the said term, and of such his or their desire shall for that purpose deliver to the said A. B. and C. D., respectively, or their respective heirs or assigns, —— months' previous notice in writing, and shall pay and discharge all arrears of rent, and perform all the covenants hereinbefore contained, and on his and their part to be observed and performed, then and in such case, at the expiration of the said term of —— years, this present lease, and everything herein contained, shall absolutely cease and determine to all intents and purposes.

In witness whereof, etc.

Lease—Years.

Lease for Years.

This (agreement, conveyance, indenture, *or*) lease, made this —— day of ——, between A. B., of ——, and C. D., of ——, witnesseth:

That the said A. B. does hereby lease and convey unto the said C. D. all that, etc. (*describe the premises*).

To hold for the term of —— years from the date hereof;

Yielding and paying therefor yearly on every first day of —— during the said term unto the said A. B., or his assigns, the yearly rent of —— (*or thus:* yielding and paying therefor, during the said term the yearly rent of —— dollars, in two equal semi annual payments; *or thus:* yielding and paying therefor during the said term the yearly rent of —— dollars, in four equal payments quarter-yearly).

And the said C. D. covenants:

That he will pay the said rent in manner aforesaid;

That he will deliver up the premises to the said A. B., or his attorney, peaceably and quietly at the end of the said term, in as good condition as the same now are, or may be put into by the said A. B., reasonable use and wear and tear thereof and fire and other casualty excepted;

That he will pay all taxes and duties lawfully levied and imposed on the premises demised during the said term;

That he will not do or suffer any waste in the demised premises;

That he will not underlet the same or any part thereof, nor permit any other person or persons to occupy the same or any part thereof, nor make or suffer to be made any alteration therein, without the consent of the said A. B., or his assigns, for that purpose in writing first had and obtained;

That the said A. B., or his attorney or agent, may enter the premises for the purposes of viewing or making improvements at reasonable times in the daytime. (*Other clauses may be inserted according to circumstances.*)

MORTGAGES are conditional conveyances; conveyances of estates or property by way of pledge, for the security of debt, and to become void on payment of it.[m] It is an estate created by a conveyance absolute in form, but intended to secure the performance of some act (generally specified in the conveyance as the condition, etc.), such as the payment of money, and the like, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed (in the conveyance or) at the time of making such conveyance.[n]

All kinds of property, real or personal, which are capable of an absolute sale, may be the subject of a mortgage; rights in remainder and reversion, franchises and choses in action, may, therefore, be mortgaged. But a mere possibility or expectancy, as that of an heir, cannot.[o]

Both real and personal property may be mortgaged, and in substantially the same manner, except that a mortgage being in its nature a transfer of title, the laws respecting the necessity of possession of personal property and the nature of instruments of transfer being different, require the transfer and conveyance to be made differently in the two cases.

Mortgages are to be distinguished from sales with a contract for repurchase; the distinction is important,[p] but turns rather upon the evidence in each case than upon any general rule of distinction.[q]

A mortgage differs from a pledge; the general property passes by a mortgage, whilst by a pledge only the possession, or at most, a special property passes. Possession is inseparable from the nature of a pledge, but is not necessary to a mortgage.[r]

TRANSFER OF PERSONAL PROPERTY by way of mortgage is a common class of transfers on condition, and is regulated by statute. A mortgage of personal property, like that of real estate, may (in the absence of a statute otherwise) consist of an absolute bill of sale; and a separate instrument of defeasance given at the same time.[s] And although the bill of sale is absolute, and no *writing* of defeasance is given back, parol testimony is still admissible to prove that it was intended only as collateral security.[t] It is well settled that mortgages of personal property need not be under seal.[u] In the absence of stipulations to the contrary, the mortgagee of personal property has the legal title thereto, and the right of possession; and he may have an action against any one taking them from the mortgagor.[v] And parol proof is not admissible to show an agreement that the mortgagor should remain in possession, the mortgage itself being silent upon the subject.[w] And although the mortgage contains an express stipulation that the mortgagor shall remain in possession until default of payment, and with a power to sell for the mortgage debt, the mortgagee may nevertheless sustain trover against an officer attaching the goods as the property of the mortgagor.[x] As between the *mortgagor* and *mortgagee*, a mortgage is valid, although there be no delivery of the property, and no possession by the mortgagee, or deposit of the mortgage in the proper office for record.[y] But as to creditors, subsequent purchasers and mortgagees in good faith, the mortgagee must have *and retain* the possession of the mortgaged property, or the mortgage acknowledged, must be recorded in the proper office in the county in which the property conveyed, or a greater part thereof, shall be. Such record is equivalent to actual delivery and continued possession of the property.

A MORTGAGE MUST BE IN WRITING when it is intended to convey the legal title.[z] It must be in one single deed which contains the whole contract. In the absence of a statute to the contrary it may be in two separate instruments —the one containing an absolute conveyance and the other a defeasance;[a] and generally whenever it is proved that a conveyance was made for the purposes of security, it will be treated as a mortgage, and all the incidents thereof attached thereto.[b] The defeasance must be of as high a nature as the conveyance to be defeated.[c] The rule as to the admission

m-4 Kent. Comm. 136. n-1 Washb. R. Prop. 475. o-2 Story Eq. Jur. § 1012; 4 Kent. Comm. 144; 1 Powell Mortg. 17, 23; 3 Mer. Ch. 667. p-2 Call. 428; 7 Watts, 401. q-6 Blackf. 113; 15 Johns. 205; 4 Pick. 349. r-3 Mo. 516; 5 Johns. 258; 10 Id. 741; 12 Id. 146; 2 Pick. 610; 2 N. H. 13; 5 Vt. 532; 26 Me. 499. s-8 Johns. 96; 2 Port. (Ala.) 433; 18 Me. 132; 7 Mo. 566; 12 S. & M. 306; 34 Me. 208. t-5 Greenl. 96; 10 S. & M. 527; 13 Ala. 246; 20 Pick. 399; 10 Mo. 506. u-12 N. H. 205; 7 Met. 244; 11 E. L. & E. 584, S. C.; 7 Exch. 581. v-15 Me. 48; 12 Met. 308; 20 Vt. 78. w-4 Blackf. 425. x-3 Fairf. 282; 16 Pick. 462; 25 Me. 86; 26 Id. 499. y-11 N. H. 55; 2 Story, 492; 2 Green. (N. J.) 18. z-1 Penn. 240. a-2 Johns. Ch. 189; 15 Johns. 555; 3 Wend. 208; 7 Id. 248; 2 Me. 152; 11 Id. 346; 12 Mass. 456; 7 Pick. 157; 3 Watts, 188; 6 Id. 405. b-9 Wheat. 489; 1 How. 118; 12 Id. 139; 2 Des. Eq. 564; 1 Hardin, 6; 2 Cow. 246; 9 N. Y. 416; 25 Vt. 273; 1 Md. Ch. 536; 3 Id. 508; 1 Murphy, 116; 10 Yerg. 376; 3 J. J. Marsh, 353; 5 Ill. 156; 4 Ind. 101; 2 Pick. 211; 20 Ohio, 464; 36 Me. 115; 1 Cal. 203; 1 Wis. 527; 9 S. & R. 434. c-1 N. H. 39; 13 Pick. 411; 22 Id. 526; 43 Me. 206; 2 Johns. Ch. 191; 7 Watts, 361.

of parol evidence to establish the character of a conveyance varies.[d]

ASSIGNMENT of mortgages must be made in accordance with the requirements of the statutes of frauds.

SATISFACTION of mortgages upon real or personal property may be either:

1. By an entry upon the margin of the record thereof, signed by the mortgagee or his attorney, assignee, or personal representative, acknowledging the satisfaction of the mortgage, in the presence of the recording officer; *or*

2. By a receipt indorsed upon the mortgage, signed by the mortgagee, his agent or attorney, which receipt may be entered upon the margin of the record; *or*

3. It may be discharged upon the record thereof whenever there is presented to the proper officer an instrument acknowledging the satisfaction of such mortgage, executed by the mortgagee, his duly authorized attorney-in-fact, assignee, or personal representative, and acknowledged in the same manner as other instruments affecting real estate.

See MORTGAGE FORMS, below.

ALABAMA.

Mortgages of real and personal property are usually executed with powers of sale in event of a breach of condition. The power of sale may be executed by an assignee or personal representative, or person who becomes entitled by assignment or otherwise to the money secured.[f]

Mortgages of Real Property.[g]

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure without the intervention of a court, by publication of notice, is usually provided for by a power of sale in the mortgage authorizing such proceedings. If the mortgage provides for foreclosure upon a breach of any of the conditions, the courts will foreclose. They may be foreclosed by bill in equity.

Married women cannot mortgage their statutory separate estate for the purpose of subjecting it to sale for the payment of the husband's debt.

Recording. See DEEDS, above.

Redemption may be effected within two years.

Sale. See FORECLOSURE, above.

See GENERAL FORMS, post.

Mortgages of Personal Property.

Chattel mortgages to secure debt, or provide indemnity, are executed in the same manner as any other simple agreement of conditional sale, with the addition of registering—or in certain cases recording.

Registering. They must be registered in the proper office within four months.

Recording. If the property is removed to a different county from that in which the grantor resides, the conveyance or mortgage must be recorded within six months from such removal.

See GENERAL FORMS, post.

ARKANSAS.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure is by complaint in equity in which no interlocuting orders or day of payment need be given.

A personal decree is also given for the amount due on the mortgage.

Lien attaches when filed for record.

Married women may execute a mortgage as though single.

Recording. Same as DEEDS, above.

Sales of land are not on less than three nor more than six months' credit, the purchaser giving bond with surety.

See GENERAL FORMS, post.

Mortgages of Personal Property.

Sales of personal property under a decree are made on a credit of three months.

See GENERAL FORMS, post.

CALIFORNIA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure must be by action or suit for that purpose in the superior court.

Married Woman need not sign except when property mortgaged is the homestead, or is her separate property, unless she is named as a mortgagee.

Recording. See DEEDS, above.

Redemption may be made within six months after sale; the same right exists as in execution.

Satisfaction is entered on the margin of the record, signed by the mortgagee, and witnessed by the recorder.

See GENERAL FORMS, post.

Mortgages of Personal Property.

Chattel mortgages may be given upon locomotives, engines, and other stock of a railroad; steamboat machinery, machinery used by machinists, foundrymen and mechanics; steam engines and boilers; mining machinery; printing presses and material; professional libraries; instruments of surveyors, physicians, or dentists; upholstery and furniture used in hotels and lodging houses; oil paintings, pictures and works of art; all growing crops, including grapes and fruit; vessels of more than five tons burden; instruments, negatives, furniture, and fixtures of a photograph gallery; machinery, casks, pipes, tubes and utensils used in the manufacture or storage of wine, fruit brandy, fruit syrups or sugar; also, wines, fruit brandy, fruit syrup, or sugar, with the cooperage in which the same is contained; pianos and organs; iron and steel safes; neat cattle, horses, mules, swine, sheep, and the increase thereof.

Chattel mortgages must show on their faces: 1. The residence of the mortgagor and mortgagee. 2 Their occupation, profession, or trade. 3. The rate of interest, and when and where the same is payable. 4. The affidavit of both mortgagor and mortgagee that the mortgage is *bona fide*, and made without any design to hinder, defraud or delay creditors. 5. It must be recorded to be valid against creditors, etc.

Chattel mortgages may be foreclosed by action or suit after the debt secured becomes due.

See GENERAL FORMS, post.

COLORADO.

Mortgages of Real Property.

See DEEDS, above; GENERAL FORMS, below.

Mortgages of Personal Property.

Acknowledgment must be before a justice of the peace of the precinct in which the mortgagor resides in order to affect third parties.

Possession may be retained by the mortgagor if so stipulated by the mortgagee.

Recording in the office of the recorder of the county is necessary to be valid against creditors, etc.

Two years is the longest period for which a chattel mortgage can be given, if debt does not exceed $2,500.

See GENERAL FORMS, post.

CONNECTICUT.

Mortgages of Real Property.

Acknowledgments. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure is effected by bill in equity.

Satisfaction, release, or discharge is by a quit-claim deed from the mortgagee.

Mortgages of Personal Property.

Machinery, engines, and implements used and being in any manufacturing or mechanical establishment; presses and material pertaining to a printing establishment; household furniture used for housekeeping, etc.;

[d] See 26 Ala. (N. S.) 312; 29 Id. 254; 7 Ark. 505; 18 Id. 34; 8 Cal. 424; 9 Id. 538; 8 Conn. 186; 15 Ill. 519, 528; 4 Blackf. 67; 2 B. Mon. 72; 9 Dana, 109; 36 Me. 562; 43 Id. 206; 6 Harr. & J. 138, 435; 3 Md. Ch. Dec. 508; 13 Pick. 411; 22 Id. 526; 3 Mich. 645; 23 Miss. 375; 10 Mo. 483; 22 Id. 77; 11 N. H. 571; Saxt. (N. J.) Ch. 534; 10 Barb. 582; 1 Johns. Ch. 425, 594; 5 Paige Ch. 9; 9 N. Y. 416; 2 Jones Eq. 172, 256; 33 Penn. St. 158; 1 R. I. 30; 3 Rich. 153; 10 Yerg. 373; 11 Humph. 587; 3 Texas, 1; 14 Id 142; 9 Vt. 279; 19 Id. 9; 2 Call. 421; 2 Munf. 40; 1 Wis. 527; 4 Kent. Comm. 143; 1 Washb. R. Prop. 483.

hay in a building, etc., may be mortgaged by the owner thereof.

Possession may be retained by the mortgagor.

Foreclosure may be made on breach of conditions, and sale made under order of court.

DELAWARE.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above. A default clause is generally inserted.

Foreclosure is effected by proceedings in the superior court by writ of *scire facias*.

Lien of purchase-money mortgages, if so specified and recorded within thirty days, has preference over prior judgments against the mortgagor.

Recording must be within sixty days after the mortgage is executed.

Sale after judgment is made of the premises under a writ of *levari facias*.

Chattel Mortgages may be made to run three years, must be recorded within ten days after execution, and endorsed bona fide for debt or indemnity. Can be foreclosed in sixty days after default. Otherwise same as real property mortgages. (March 23d, 1877.)

DISTRICT OF COLUMBIA.

Trust Deeds of Real and Personal Property.

Security for debts and loans are made uniformly by deeds of trust.

Acknowledgment, where real property is transferred, same as DEEDS, above.

Execution. Same as DEEDS OF TRUST, above; and in addition confer power upon the trustee to sell upon default in payment of the debt, note, or interest, after giving notice by advertisement.

Release is by deed of release from the trustee.

Sale. After a sale under a deed of trust there is no redemption; and such sale is avoided by suit in equity upon special grounds which justify setting aside such sale.

See TRUST DEEDS, above.

FLORIDA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure is effected by bill in equity, or by petition to the circuit court of the county in which the property is situated.

Married women need not join unless named as a mortgagor, or unless it is her separate property.

Recording is necessary in order to be effectual against creditors or subsequent purchasers, etc.

Satisfaction. Mortgages may be discharged by acknowledging satisfaction thereof before the clerk of the circuit court where recorded, and proper entry upon the record, or by a satisfaction piece either indorsed upon the mortgage or separate therefrom, duly proved or acknowledged as a deed, etc., is acknowledged.

See GENERAL FORMS, post.

Mortgages of Personal Property.

Chattel mortgages are in the usual form.

Foreclosure is same as of a mortgage of real property, and must be in the county in which the mortgaged property may be. It may be foreclosed at any time.

Recording is necessary to its validity, and record must be made in the county in which the property is situated, within ninety days of the execution of the mortgage, unless the property included in it be delivered to the mortgagee, and continue to remain truly and *bona fide* in his possession. Such mortgage must be acknowledged to entitle it to record.

They are admitted to record upon the same proof as real property, or by proof being made upon oath by at least one credible person, before the recording officer, of the handwriting of the mortgagor, in cases in which there is no attesting witness.

See GENERAL FORMS, post.

GEORGIA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above, in presence of a witness.

Foreclosure is effected by petition to the superior court of the county in which the property is situated.

Recording must be within one month from date.

Sales are made by the sheriff under the same regulations as govern sheriff's sales under execution.

See GENERAL FORMS, post.

Mortgages of Personal Property.

No particular form is necessary, so the general requisites are embraced.

IDAHO.

Mortgages must be recorded as deeds. **Lien** enforced by decree of district court. Chattel mortgage may be foreclosed by suit, or by notice and sale by the sheriff of the county in which the mortgaged premises are situated. Sheriff must make return of sale to district court, and mortgagee may contest.

Lien of exists till debt secured thereby is barred by limitation. Assignment carries the security with it.

See GENERAL FORMS, below.

ILLINOIS.

Mortgages of Real Property.

Acknowledgment & Recording same as DEEDS.

"Sec. 11. Mortgages of lands may be in the following form, substantially:

The mortgagor (here insert name or names), **mortgages and warrants to** (here insert name or names of mortgagee or mortgagees), **to secure the payment of** (here recite the nature and amount of indebtedness, showing when due, and rate of interest, and whether secured by note or otherwise) **the following described real estate** (here insert description thereof), **situated in the County of ——, and State of Illinois.*** A. B. [L. S.]

Dated this — day of ——, A. D. ——."

"Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee to secure the payment of moneys therein specified; and if the same contains the words "and warrants" the same shall be construed the same as if full covenants of seizin, good right to convey against incumbrances, of quiet enjoyment and general warranty, as expressed in Section nine (9) of this Act, were fully written therein; but if the words "and warrants" are omitted, no such covenants shall be implied." R. S. 1877, Ch. 33, p. 271.

*See title DEEDS, p. 276, Sec. 11. . . ante.

In addition, the mortgage may contain a power of sale, authorizing the mortgagee to foreclose by publication of notice, and may also contain a provision authorizing the Sheriff to execute the power of sale.

Foreclosure is by scire facias or bill in equity.

Redemption must be within one year of sale.

Satisfaction is by entry on the margin of the record, or any instrument of release by the mortgagee.

Trust Deeds are no longer permitted.

Mortgages of Personal Property,

Are in the usual form, and are limited to 2 years.

Acknowledgment is required. **Foreclosure** is effected on default; delay invalidates mortgagee's lien.

INDIANA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure is effected upon any breach of condition, or default. If the property is not divisible, judgment may be rendered for the whole debt, both for the amount due and the instalments subsequently to fall due, rebating interest

Any mortgage of lands worded in substance as follows:[a]

"A. B. mortgages and warrants to C. D." (*here describe the premises*), **"to secure the repayment of"** (*here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or description thereof, sought to be secured; also the date of repayment*).

The said mortgage being dated, and duly signed, sealed, and acknowledged by the grantor, shall be deemed and held a good and sufficient mortgage to the grantee, his heirs, assigns, executors, and administrators, with warranty from the grantor and his legal representatives, of a perfect title in the grantor and against all previous incumbrances. If in the above form the words, **"and warrant"** be omitted, the mortgage shall be good, but without warranty.[a]

Recording. See DEEDS, above.

Satisfaction, where the mortgage is foreclosed and judgment paid or satisfied, is immediately entered by the clerk of the circuit court on the record in the recorder's office where the mortgage is recorded.

[a]-R. S. 1881, § 2930.

When satisfied without foreclosure the mortgagee enters satisfaction either on the margin of the record, or by separate instrument duly acknowledged and recorded.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are in the usual form. To be valid they must be accompanied by immediate delivery and changed possession of the mortgaged goods unless the mortgage is recorded in recorder's office of county where mortgagor resides within ten days from the time it is executed.

IOWA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure is effected only by an action in court or by equitable proceedings.

Married women need not join unless named as a mortgagor, or unless the property belongs to her.

Possession is retained by the mortgagor unless otherwise agreed.

Recording. See DEEDS, above.

Redemption may be effected within one year after sale.

Satisfaction, in case of foreclosure, is entered by the clerk of the court. In other cases it must be entered upon the margin of the record, or by a satisfaction piece duly acknowledged and recorded.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are in the usual forms.

Foreclosure is effected at any time. Due notice thereof must be served upon the mortgagor and upon all purchasers from him subsequent to the execution of the mortgage, and upon all persons having recorded liens upon the same property which are prior to the mortgage.

Possession, in the absence of stipulations to the contrary, is and remains in the mortgagee.

Sale. After notice has been served upon the parties, it must be published in the same manner and for the same length of time as is required in cases of the sale of like property on execution, and the sale is concluded in the same manner. The sheriff conducting the sale executes to the purchaser a bill of sale of the property, which effectually transfers to the purchaser all the title and interest on which the mortgage operated as a lien.

Recording. Necessary immediately against third persons.

KANSAS.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure may be effected at any time after default, by action or suit for that purpose in the district court.

Possession remains in the mortgagor in the absence of stipulations to the contrary.

Recording. Same as DEEDS, above.

Redemption may be had within 18 months after sale.

Satisfaction may be by: 1. Receipt indorsed on the mortgage; 2. Entry upon the margin of the record in presence of the register of deeds; or, 3. By an instrument duly acknowledged and recorded.

Trust Deeds.

Trust deeds are in use, but do not substitute mortgages in general practice.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Acknowledgment is unnecessary.

After condition broken, the mortgagee or his assigns may proceed to sell the mortgaged property, or so much thereof as may be necessary to satisfy the mortgage and costs of sale, having first given notice of time and place of sale, by written or printed hand-bills, posted up in at least four public places in the township or city in which the property is to be sold, at least ten days previous to the sale.[a]

A chattel mortgage which is not accompanied by an immediate delivery and followed by an actual and continued possession of the things mortgaged is void unless such mortgage is forthwith deposited in the office of the register of deeds in the county in which the property is then situated, or the mortgagor resident, etc.

Chattel mortgages are renewable. yearly.

See GENERAL FORMS, below.

a-G. S. 1868, Ch. 68, § 17. b-R. S. Ch. 90, §§ 1-5; Laws 1872, Ch. 27. c-Id. Ch. 91, §§ 1-6.

KENTUCKY.

Mortgages of Real Property.

Acknowledgment, execution, (adding clause for defeasance) and **Recording.** Same as DEEDS. **Foreclosure** is by decree in equity. **Homestead exemption** may be waived. **Married women** must join in the mortgage to bardower. See DEEDS ETC., below.

Mortgages of Personal Property.

And the usual form **Acknowledged** and **Recorded.** See GENERAL FORMS, post.

LOUISIANA.

Mortgages of Real Property.

Acknowledgment, Execution and **Recording.** Same as DEEDS. **Foreclosure** is by suit.

See GENERAL FORMS, post.

MAINE.

Mortgages of Real Property.

Acknowledgment, Execution and **Recording.** Same as DEEDS.

"**Sec. 5.** If, after breach of the conditions, the mortgagee or any person claiming under him is not desirous of taking and holding possession of the premises, he may proceed for the purpose of foreclosure in either of the following modes: R. S. 1871, Ch. 90.

"**First,** he may give public notice in a newspaper printed in the County where the premises are situated, if any, or if not, in the State paper, three weeks successively, of his claim by mortgage on such real estate, describing the premises intelligibly, and naming the date of the mortgage, and that the condition in it is broken, by reason whereof he claims a foreclosure; and cause a copy of such printed notice, and the name and date of the newspaper in which it was last published, to be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded, within thirty days after such last publication.

"**Second,** he may cause an attested copy of such notice to be served on the mortgager or his assignee, if he lives in this State, by the **Sheriff** or his **Deputy** of the same County, by delivering it to him in hand, or leaving it at his last and usual abode; and cause this original notice and the **Sheriff's** return thereon to be recorded within thirty days after such service as aforesaid. And in all cases the certificate of the **Register of Deeds** shall be prima facie evidence of the fact of such entry, notice, publication of foreclosure, and of the **Sheriff's** return."

"**Sec. 6.** The mortgagor, or person claiming under him, may redeem the mortgaged premises within three years next after the first publication or service of the notice mentioned in the preceding Section, and if not so redeemed the right of redemption shall be forever foreclosed."

"**Sec. 26.** In all cases the mortgage may be discharged by the deed of release from the person authorized to discharge it, or by causing satisfaction and payment under his hand to be entered in the margin of the record of each mortgage in the **Register's** office." But the practice is to make the time of foreclosure one year by agreement of parties in the instrument.

Mortgages of Personal Property.c

Chattel mortgages are void against third parties unless recorded in the clerk's office of the town where the mortgagor lives, or possession is taken and retained by the mortgagee.

The right of redemption is lost after sixty days' notice of foreclosure. A bill of sale gives absolute title to the grantee and must be recorded.

See GENERAL FORMS, below.

MARYLAND.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, containing power authorizing sale on nonfulfilment of conditions

Foreclosure in Baltimore is effected by a decree of sale from the court of equity; a trustee is appointed by the court, who gives bond, advertises the property, makes sale thereof, and reports to said court for confirmation, etc.

In the various counties the mortgagee, or his legal representative, sells under the power in the mortgage, after due notice, and giving bond, makes sale, and reports the same to the court of equity for confirmation.

Recording. Same as DEEDS, above.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are in use, but in practice are equivalent only to bills of sale. See title SALE.

MASSACHUSETTS.

Mortgages of Real Property.

Acknowledgment, Execution and Recording. Same as DEEDS, above.

Execution. Same as DEEDS, above; with the insertion of the condition, with provisions authorizing a sale of the premises in case of failure by the mortgagor to perform the condition.

Foreclosure is effected either by an action at law, or by entry and possession continued peaceably for three years, or else by a sale in accordance with the provisions of the power in the mortgage.

Redemption cannot be made after a valid sale.

Satisfaction, release, or discharge of a mortgage may be on the margin of the record, as follows:

I, C. D., acknowledge to have received full payment and satisfaction for the debt secured by the within deed of mortgage here recorded, given to me by A. B., and do hereby cancel and discharge the same. Witness my hand. C. D.

See GENERAL FORMS, below.

Mortgages of Personal Property, etc.

Chattel mortgages need not be acknowledged nor under seal. **Foreclosure** may be effected at any time within the statutes of limitation. **Recording.** Absolute bills of sale, intended to operate as mortgages, must be recorded. Chattel mortgages must be recorded on the records of the city or town where the mortgagor resides when the mortgage is made, and on the records of the city or town in which he principally transacts his business. If the mortgagor is a non-resident of the State, then the recording must be in the city or town where the property then is. Unless so recorded the mortgage is not valid except between parties, unless the mortgagor has and continues actual possession of the mortgaged goods. Vessels and goods at sea, mortgages or transfers thereof need not be recorded.

MICHIGAN.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above. **Execution.** Same as DEEDS, above; with power of sale on breach of condition, etc. **Foreclosure** is effected either in chancery, or by advertisement under a power of sale. **Recording.** Same as DEEDS, above. **Sale** may be had one year after foreclosure by a court of chancery, or after notice of foreclosure for twelve successive weeks in the county newspaper.

Satisfaction or discharge may be by the mortgagee or his personal representative, acknowledging the same in writing on the margin of the record in presence of the register, or by a written certificate, duly acknowledged and recorded at length in the same manner as the original mortgage. See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are in the usual form; they are absolutely void unless accompanied by an immediate delivery of the goods and chattels mortgaged, and a continued possession of the same by the mortgagee, unless the mortgage, or a true copy thereof, shall be filed in the office of the township clerk of the township, or city clerk of the city, where the mortgagor resides.

Concealment, disposition, embezzlement, or removal of property thus mortgaged is a misdemeanor.

Renewal. Chattel mortgages extend and are valid for one year only, but may be extended from year to year upon the mortgagee's affidavit annexed to a copy of the mortgage, stating the mortgagee's interest.

See GENERAL FORMS, below.

MINNESOTA.

Mortgages of Real Property.

Acknowledgment, Execution and Recording. Same as DEEDS, above. They usually contain a power of sale authorizing foreclosure by advertisement, in which case, upon six weeks' publication of the notice of sale prescribed by law, the premises may be sold to satisfy the mortgage debt. An absolute conveyance in form, if intended as security, will be deemed a mortgage.

Foreclosure may be effected by an action at law, and a personal decree obtained in the same action against the mortgagor for any deficiency from the debt and costs arising on the sale of the mortgaged premises.a The mortgagee has his action for a strict foreclosure, but a final decree cannot be rendered until one year after judgment for the amount due on the mortgage.b

Redemption, where the mortgage is foreclosed by publication, can be made within one year from the date of sale. If foreclosed by action at law and sale of premises, the right of redemption expires one year from the date of confirmation, at which time the purchaser is entitled to a final decree c

Satisfaction or discharge of a mortgage is made by an entry on the margin of the record thereof, signed by the mortgagee or his legal representative, acknowledging satisfaction, etc.; also by a separate instrument in the usual form, duly executed, acknowledged, and recorded in the same manner as the original mortgage.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Acknowledgment before some officer authorized to take acknowledgments or a town clerk is necessary. They must be filed in the office of the town or city clerk, both where the property is situated and where the mortgagor resides at the time of the execution thereof.

Are liens till paid, but never over six years.

See GENERAL FORMS, below.

MISSISSIPPI.

Mortgages of Real Property.

Acknowledgment and Executions. Same as DEEDS, above. **Foreclosure** is effected by bill in equity in the chancery court, which may be filed at any time after the debt secured becomes due. **Lien** of the mortgage attaches only from the date of delivery to the clerk for record. **Recording** and acknowledgment must be same as deeds. **Satisfaction.** Upon receiving satisfaction the mortgagor shall enter the same upon the margin of the record of the mortgage, upon which the title invests in the mortgagor. Deeds of trust are in frequent use instead of mortgages where a trustee to sell is named. They save foreclosure proceedings.

See GENERAL FORMS, below.

MISSOURI.

Mortgages of Real Property.

Acknowledgment, Execution and Recording. Same as DEEDS, above. **Foreclosure** by action at law. **Sale** after foreclosure. GENERAL FORMS, below.

Trust Deeds.

Trust deeds are the common form of security.

Acknowledgment and Execution. Same as DEEDS, above. The property is conveyed to a trustee with power to sell and to convey the property absolutely if the debt is not paid. **Foreclosure or suit.** These transactions are without foreclosure or suit. **Releases** are made by deed. Trustees must be joined by the creditors in order to give a valid release.

Mortgages of Personal Property.

Chattel mortgages and deed of trust upon personal property are void as against third persons unless the property is delivered to and possession retained by the mortgagee, or beneficiary, or trustee, unless the instrument is recorded in the county wherein the grantor resides.

MONTANA.

Mortgages of Real Property

Are executed and acknowledged in the usual form.

Foreclosure is by the usual action in equity.

Discharge or release may be, 1, by entry in the margin of the record signed by the mortgagee or his personal representative or assignee, acknowledging satisfaction thereof in presence of the recorder or his deputy, who subscribes the same as a witness; also, 2, by a certificate acknowledged or proved, same as the original mortgage.

A mortgage may give a power of sale to the mortgagee, and provide that the sheriff shall sell.

NEBRASKA.

Mortgages of Real Property.

Acknowledgment, Execution and Recording. Same as DEEDS, above. Every deed, though absolute, shown by any other instrument of writing to be intended as a security in the nature of a mortgage, is deemed a mortgage. **Foreclosure** may be effected after any delinquency or default of condition or payment, and sale may be made by decree of court. **Possession** remains in the mortgagor.

a-G. S Ch. 81, § 24, *et seq.* b-Laws, 187, p. 129 c-G. S. Ch. 81, §§ 13, 31.

Redemption is not allowed.

Satisfaction is entered by the mortgagee, his assigns, or personal representative, by entry on the margin of the record, signed by such person in presence of and attested by the clerk or his deputy, or by such entry made and signed by the clerk on presentation to him of a certificate that such mortgage has been satisfied, signed by the mortgagee, and acknowledged or proved in the same manner as a deed.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages, unless followed by an immediate and continued change of possession, is void as against creditors, subsequent purchasers, etc., unless the mortgage itself or a true copy thereof is filed and recorded in the office of the county court.

Chattel mortgages are valid five years only after the filing thereof, against creditors, purchasers or mortgagees in good faith

Foreclosure by public sale after 20 days' advertisement.

Removal of property mortgaged out of the jurisdiction of the district court of the county where the goods are mortgaged is a felony.

See GENERAL FORMS, below.

NEVADA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure is effected by an action at law for that purpose.

Recording. Same as DEEDS, above.

Satisfaction is made in any of the usual forms.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are void as against third parties, etc., unless possession of the property mortgaged is delivered to and retained by the mortgagee, or unless the mortgage is duly executed and recorded in the county of the mortgagor. Growing crop liens good till delivery of crop to mortgagee.

See GENERAL FORMS, below.

NEW HAMPSHIRE.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, with conditions expressed and stating distinctly the sum of money secured, etc., or thing to be done.

Foreclosure is effected: 1. By entry and possession for one year under process of law. 2. By peaceable entry upon the premises and unbroken, actual possession thereof for one year, and a publication in a newspaper in the county three weeks, stating the names of the parties, the date of the mortgage, a description of the premises, the time of taking possession, and the object thereof; such publication must be more than six months before the time of redemption is expired. 3. By publication as aforesaid, by the mortgagee in actual possession, giving notice that after a certain specified day, not more than twenty-eight days after the last publication, possession is to be holden for the purpose of foreclosure, and by retaining actual possession of the premises for one year from and after the day specified in the notice or publication.[a]

Recording. Same as DEEDS, above.

Satisfaction may be indorsed on the mortgage, thus: "I discharge the within mortgage." (*Signed*) "C. D." The wife need not join; such discharge should be entered on the margin of the record of the mortgage by the register of deeds of the county.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are absolutely void as to third parties, unless the property or goods mortgaged are delivered to and possession had and retained by the mortgagee, or unless the mortgage is recorded in the office of the clerk of the town where the mortgagor resides.

If a firm is a party, any partner may make and subscribe the affidavit. If a corporation is a party, it may be done by a director or other person duly qualified and authorized. Both parties must make and subscribe the following affidavit, which must be indorsed upon or annexed to the mortgage and recorded therewith:

State of New Hampshire, —— county, ss.

We severally swear that the foregoing (above *or* within) **mortgage is made for the purpose of securing the debt** (*or* securing the indemnity, *or* performance, etc.) **specified in the condition thereof, and for no other purpose whatever, and that said debt** (*or* obligation, etc.) **was not created for the purpose of enabling the mortgagor to execute said mortgage, but is a just debt** (*or* obligation, etc.) **honestly due and owing from the mortgagor to the mortgagee. So help us God.**

Subscribed and sworn to before me, this —— day of ——. J. P., *Justice of the Peace.*

Foreclosure is effected by a sale of the property mortgaged at public auction at any time after thirty days from condition broken. Upon notice, in writing, to the mortgagor, at least four days prior to sale, and pasting notices of sale in two public places in the town.

See GENERAL FORMS, below.

NEW JERSEY.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, pursuing the common law form.

Foreclosure must be by suit in equity.

Married women must join in the mortgage.

Recording. Same as DEEDS, above.

Redemption cannot be effected after sale under a decree.

Satisfaction is entered by the clerk of the county upon application of the mortgagor or person satisfying the mortgage and producing the mortgage cancelled, or a receipt thereon duly signed and acknowledged, or a separate instrument acknowledging satisfaction, duly executed and acknowledged.[b]

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages, unless accompanied by immediate delivery and followed by a continued possession of the property mortgaged, are absolutely void as against creditors, subsequent purchasers, etc., unless said mortgage duly acknowledged as deeds are, with affidavit of consideration and amount due, and to grow due, is filed in the office of the clerk or register, if any, of the county where the mortgagor resides, or, if non-resident, then where the property is at the time of its execution So recorded it remains a lien until cancelled of record.

Foreclosed at any time after breach of conditions.

Chattel mortgages under the old law have ceased to be valid against creditors, etc., unless within one year from March 25th, 1881, the mortgage or a true copy has been recorded as above. If so recorded it remains a lien until paid. Wife must join in chattel mortgage on household goods.

NEW YORK.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above. Absolute conveyances, which by any other instrument appear to have been intended as a mortgage, is so considered, and the recording of such conveyance has no effect unless such other written instrument is executed therewith and at the same time.[d]

Foreclosure. Mortgages containing a power of sale may be foreclosed by publication and service of notices without the intervention of the court, and the premises sold at public auction to satisfy the mortgage debt.[e] Mortgages may be foreclosed by action and a personal decree obtained in such action against the mortgagor for any deficiency of the debt upon sale of the mortgaged premises.

Married women are not entitled to dower as against the mortgagee for purchase-money, although she did not unite in the mortgage. But where such lands are sold by the mortgagee after the death of the husband, the widow takes her interest in the surplus.[f]

Recording. Same as DEEDS, above.

Redemption is not allowed after a mortgage sale.

Satisfaction is entered in any of the usual forms.

Trust Deeds.

Express trusts are created as follows:[g]

1. To sell lands for the benefit of creditors.

2. To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon.

a-G. S. 253. b-Nixon's Digest, 611, Ch. 557. c-Id. p. 613. d-1 R. S. 746. e-4 Id. Ch. 308. f-Id. 740 g-See Id. 723, 726.

3. To receive the rents and profits of lands, and apply them to the use of any person during the life of such person.

4. To receive the rents and profits of lands, and to accumulate them for the benefit of minors.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are void as to third parties unless they are accompanied with an immediate delivery and a continued possession of the property or goods mortgaged; or unless such mortgage is filed in the office of the town clerk where the mortgagor resides; or, if non-resident, then in the town the property so mortgaged is when the mortgage is executed.

Chattel mortgages are not valid after one year unless within thirty days preceding the expiration of each year a copy of such mortgage is refiled, together with a statement of the amount due on such mortgage at the date of refiling.[h]

See GENERAL FORMS, below.

NORTH CAROLINA.

Mortgages and Trust Deeds of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS; TRUST DEEDS, above

Foreclosure is effected in case of mortgage.

Re-conveyance is made in case of trust deeds.

Recording. Same as DEEDS, above.

Satisfaction. In case of mortgage, by receipt indorsed upon the mortgage and duly recorded; marginal entry on the record of satisfaction in the presence of the register; or by separate instrument of release or satisfaction duly executed, acknowledged, and recorded. In case of trust deed, by a reconveyance of the property.

See GENERAL FORMS, below; TRUSTEES, above.

NORTH DAKOTA.

Mortgages executed same as deeds. Wife need not join except in mortgage of homestead. Mortgages containing power of sale foreclosed by advertisement, but all mortgages may be foreclosed by action. Right of redemption exists as in sale under execution. Satisfaction had by duly executed certificate. Chattel mortgages void unless registered in register's office of county; and then good for only three years, unless registered anew within ninety days. To destroy, conceal, or remove mortgaged property is a felony.

See GENERAL FORMS, below.

OHIO.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above.

Foreclosure by action for that purpose in the common pleas court.

Married women need not join with their husbands, or *vice versa*, in mortgages of their separate estate, unless relinquishment of dower is sought.

Lien attaches from presentment for record, and in the order presented to the recorder of deeds for record.

Recording. Same as DEEDS, above.

Satisfaction may be entered on the mortgage or record of the mortgage. No acknowledgment, witness, or seal is necessary. When entered on the mortgage, the recorder should enter the same on the record of the mortgage as satisfied.

See GENERAL FORMS, below.

OKLAHOMA.

Mortgages executed and acknowledged same as deeds. Must be recorded. Must be signed by husband and wife if on homestead. No witnesses to execution necessary. Foreclosure may be had by suit. May stipulate attorney's fee. Must be in writing. A conveyance, though absolute on its face, if intended as security, is a mortgage, and must be foreclosed as such.

See GENERAL FORMS, below.

OREGON.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above An absolute conveyance intended as security is deemed a mortgage.

Foreclosure is effected by suit for that purpose in equity, in which the plaintiff obtains personal judgment for any balance due after the property is sold.

Recording. Same as DEEDS, above.

h-Laws 1833, Ch. 279; Laws 1873, Ch. 501. i-Laws 1870–72. Ch. 277. j-G. S. 651, 652. k-Id. 1866, p. 39, § 62.

Redemption. A decree of foreclosure bars the equity of redemption.

Satisfaction or discharge may be by entry of the mortgagee, his assignee, or personal representative on the margin of the record of the mortgage, acknowledging satisfaction of the mortgage, in presence of the county clerk, or his deputy, who must subscribe the same as a witness. Such entry has the same effect as a deed of release duly executed, acknowledged, and recorded.[j]

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages or copies thereof must be filed with the county clerk.

Chattel mortgages are valid for one year from date, but may be renewed and extended upon the mortgagee, his agent, or attorney, making and affixing to the instrument, or copy, on file, an affidavit setting forth the mortgagee's interest, within thirty days next preceding the expiration of the year from the filing of the same.

If acknowledged and recorded same as a real estate mortgage, the mortgagee need not renew within a year. No particular form of such mortgage required. No witnesses necessary. Bills of sale to secure debt are chattel mortgages in effect.

PENNSYLVANIA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above. An absolute conveyance as security is deemed a mortgage. A mortgage is usually accompanied by a bond and warrant to confess judgment thereon, which may be entered in any court at any time and execution issued when any part of the debt or interest is due.

Foreclosure is effected by writ of *scire facias*, according to statute. This cannot be sued out within a year after the mortgage becomes due, unless it contains an express waiver of delay. Ejectment is rarely resorted to on account of the equity of redemption.

Lien of a mortgage (except for purchase-money) dates from the time of recording it. When a mortgage is prior in time to all other liens except other mortgages and ground rents, the lien is not discharged by a sale under execution upon any other lien. Otherwise, it is discharged by any judicial sale.

Married woman need not join in a mortgage of her husband's property unless in fraud of her rights. A sheriff's sale of the mortgaged property discharges her dower.

Recording. Same as DEEDS, above.

Redemption need not be provided for in writing, but may be proved by oral testimony.

Satisfaction is entered by record in the usual form. See CHATTEL MORTGAGES, below.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are little used in Pennsylvania, and to be valid against third parties must be accompanied by delivery of mortgaged goods to mortgagee.

See ACKNOWLEDGMENT, EXECUTION, ETC.

The following, other than real estate, can be mortgaged, under act of Assembly:—Leasehold interests in collieries, mining lands, manufactories or other premises, with buildings, fixtures and machinery belonging to lessees; iron ore mined and prepared for use, pig-iron, rolled or hammered iron or steel in sheets, bars or plates, nails, boilers, engines, oil, gas and artesian well supplies, steel and iron castings not in place, petroleum crude or refined in barrels, tanks or reservoirs, roofing and manufactured slate, quarried slate unmanufactured, asphaltum blocks and all materials used in manufacture thereof, cement in bags, barrels, or other form, and all materials used in the manufacture thereof; in the following form duly acknowledged:—

To all to whom these presents shall come, greeting:

Know ye that M. R. is indebted to M. E. in the sum of —— dollars and —— cents.

Now for securing the payment of the said debt and the interest from the date hereof, the said M. R. does hereby sell, assign, and transfer to the said M. E. all the goods, chattels, and property described in the following schedule, viz.:

Said property now being and remaining in the possession of M. R. (*or* M. E., *as agreed upon*).

Provided always, and this mortgage is on the express condition that if the said M. R. shall pay

to said M. E. the sum of ——, with interest, as follows, viz., ——, which said sum and interest the said M. R. hereby covenants to pay, then this transfer to be void and of no effect;

But in case of non-payment of said sum, at the time or times above mentioned, together with interest, ——, the said M. E. may give to the said M. R., or to the person in possession of the property, claiming the same, written notice as required by law of his intention to foreclose the mortgage for breach of condition thereof, and if the said sum is not then paid, the said M. E. shall have full power and authority to enter the premises of M. R., and any other place or places where the goods and chattels aforesaid may be, and take possession of said property, and sell the same according to law, and the avails, after deducting all expenses of the sale and keeping of the said property, to apply in payment of the above debt;

If from any cause said property shall fail to satisfy said debt, interest, costs, and charges, the said M. R. covenants and agrees to pay the deficiency;

In witness whereof, M. R. has hereunto set his hand and seal the —— day of ——, in the year of our Lord one thousand eight hundred and ——, etc. (*Signed*) M. R. [*Seal.*]

Sealed and delivered in presence of W. S.

Parties may include in the mortgage covenants not inconsistent with the provisions of the act.

Assignments and releases may be by instrument in writing, signed by the mortgagee, or his agent, and recorded.

Foreclosure is effected after breach upon thirty days' notice, either personally or by public advertisement inserted weekly four times, etc., and sale of the mortgaged property at public sale.

Where goods remain in possession of the mortgagor, the mortgage must be recorded in the recorder's office of the county where goods are.

Lien takes effect from the time of filing and indexing the mortgage.

Mortgagor must disclose to any person or corporation about to purchase the fact of property being so mortgaged, the amount of mortgage, place of recording, and time of its maturity, under penalty.

Redemption may be at any time before foreclosure, on payment of the debt.

Renewal. Such mortgages are good for only three months after maturity of the obligation they secure; but time may be extended one year, by mortgagee filing a statement of his interest within those three months.

Satisfaction is entered in like manner as mortgages of real estate.

RHODE ISLAND.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above.

Foreclosure is effected by sale under a power given in the mortgage after ten or twenty (as stipulated therein) days' notice by advertisement in a public newspaper, twenty days after default. In the absence of such power the mortgagee must foreclose by bill in equity, usually within a year; or he may obtain possession of the real estate by suit at law in six or nine months. Possession of real estate may also be taken by the mortgagee by peaceable and open entry in the presence of two witnesses, whose certificate thereof must be recorded.

Recorded in the town clerk's office of the town wherein the real estate is situated.

Redemption. When foreclosed by action or suit, or possession obtained, it may be had within three years.

Satisfaction or discharge may be made on the face of the record by the mortgagee, or by a separate instrument of satisfaction or release.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are executed, acknowledged, and recorded same as mortgages of real property. If the mortgagee takes possession of the chattels, that will dispense with recording.

Foreclosure, redemption, and satisfaction. Same as other mortgages.

See GENERAL FORMS, below.

SOUTH CAROLINA.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above.

Foreclosure is effected by an ordinary suit for that purpose.

Recording must be within forty days after execution.

Satisfaction is made and entered of record in any of the usual forms.

See GENERAL FORMS, below.

SOUTH DAKOTA.

Mortgages of realty executed and acknowledged as deeds. Mortgagee must state post-office address before recording. Foreclosure by power in mortgage or by suit. Redemption within year from sale. Chattel mortgage may be foreclosed without suit.

See GENERAL FORMS, below.

TENNESSEE.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Execution. Same as DEEDS, above.

Foreclosure by suit and decree in accordance with the terms of the instrument.

Registration. Same as DEEDS, above.

Satisfaction is entered in any of the usual forms.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are made in the usual form and registered in the county where the mortgagor resides; if a non-resident of the State, then registered in the county where the chattels are situated at the time of executing the mortgage.

See GENERAL FORMS, below.

TEXAS.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above.

Foreclosure is effected either through the designated trustee, or through court decree of foreclosure.

Fraudulently dealing with the mortgaged personalty so as to defeat the lien is a penal offence.

Recording. Same as DEEDS, above.

Redemption may be effected before foreclosure and sale, but not after.

See GENERAL FORMS, below.

Mortgages of Personal Property.

See GENERAL FORMS, below.

UTAH.

Mortgage of realty not a conveyance without foreclosure and sale. Forclosure must be had by action in accordance with code provisions. Redemption any time within six months. Chattel mortgages need not be acknowledged. Must be filed in office of county recorder, unless property be retained by mortgagee. Only good for one year, unless renewed. Must be executed by both husband and wife.

VERMONT.

Mortgages of Real Property.

Acknowledgments. Same as DEEDS, above.

Executed same as DEEDS, above.

Foreclosure is effected by proceedings in the chancery court, or by action in ejectment on application of defendant. Title passes to mortgagee, if land is not redeemed within time fixed in decree—one year where security is sufficient, less time, when not so, at discretion of court.

Recording. Same as DEEDS, above

Redemption. See FORECLOSURE, above.

Satisfaction, release, or discharge may be made by the mortgagee, his assignee or personal representative, indorsing an acknowledgment thereof on the mortgage under his hand and seal, or by entry of satis-

faction, etc., on the margin of the record, or by separate instrument, duly acknowledged and recorded, or by a quit-claim deed of the mortgaged premises.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages must be executed and recorded as those of realty. May be satisfied as other mortgages. Foreclosure had by public sale thirty days after breach, and with ten days' notice.

See GENERAL FORMS, below.

VIRGINIA.

Mortgages and Trust Deeds of Real and Personal Property.

Mortgages are superceded in general practice by deeds of trust. See WEST VIRGINIA, below.

See DEEDS; DEEDS OF TRUST, above.

WASHINGTON.

Mortgages executed same as deeds. Foreclosed by proceedings in equity. Redemption may be had within a year from sale. Chattel mortgage must be recorded. Binding until six years after due. Mortgaged property may be taken into possession by mortgagee when debt is due.

WEST VIRGINIA.

Mortgages and Deeds of Trust of Real and Personal Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, but contain a clause of defeasance.

Foreclosed or enforced by a decree of a court of equity. No time is specified for such foreclosure or enforcement.

Married women should be joined in the conveyance in order to bar their dower and homestead exemption, except when the conveyance is given to secure purchase-money.

Recording. Same as DEEDS, above,

Release or satisfaction is effected by a short deed of release.

Mortgages or trust-deeds of personal property are the same as those in real estate, where possession is not transferred.

WISCONSIN.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, except the addition of conditions, etc. Any conveyance intended as a security is deemed a mortgage.

Foreclosure is by action or advertisement under power.

Married women need not join in a purchase-money mortgage in order to bar dower. No mortgage of a homestead is valid unless the wife joins in its execution.

Recording. Same as DEEDS, above.

Redemption may be effected within one year after sale, if the foreclosure is by advertisement.

Satisfaction, release, or discharge of the mortgage may be by cancellation, by receipt indorsed thereon, by an entry on the margin of the record, signed by the mortgagee, his assignee, or personal representative, etc., in presence of the register of deeds.

On proof of payment, the circuit court may order the mortgage discharged, and order a record of such discharge to be made by the register of deeds.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are executed in the ordinary form, and will be void as against third parties unless accompanied by the immediate delivery and continued charge of possession of the mortgaged property, or unless the mortgage or a true copy thereof be filed with the clerk of the town where the mortgagor resides; if the mortgagor is a non-resident, then such mortgage or copy must be filed in the town where the property was when it was executed. Chattel mortgage of exempt property must be signed by the wife, in presence of two witnesses.

WYOMING.

Mortgages executed same as deeds. Foreclosure by decree of court, or advertisement under power in mortgage. Mortgagee may redeem within six months; after that, any creditor within nine. Chattel mortgages foreclosed by advertisement under power of sale. Must be filed. Expire within sixty days after due, unless foreclosed or renewed.

MORTGAGES OF REAL PROPERTY—VARIOUS DETAILS.

Introductions in Mortgages of Real Property.

See DEEDS, above.

The introduction to a conveyance, deed, lease, mortgage, etc., is called the "Testatum" clause. See the text preceding DEED FORMS, above.

A. B. (*or* A. B. and W. B. his wife [conveys, *or*] mortgages, etc.

I (*or* we, A. B., of ——, and W. B. his wife), for a consideration, etc. (convey, *or*) mortgage, etc.

This (conveyance, *or* indenture, *or* mortgage, bipartite, tripartite, quadripartite, etc.), **witnesseth:**
That, etc.

This (conveyance, *or* indenture, *or* mortgage, etc.), **made this —— day of ——, witnesseth:**
That, etc.

This (conveyance, *or* mortgage, etc.), **made this —— day of ——, by A. B., of ——, to C. D., of ——, witnesseth:**
That, etc.

This (conveyance, *or* indenture, *or* mortgage, etc.), **made this —— day of ——, in ——, by A. B., of —— county, in the State (*or* Commonwealth) of ——, farmer, to C. D., of —— county, in the State (*or* Commonwealth) of ——, merchant, witnesseth:**
That, etc.

Know all men by these presents:
That this (conveyance, *or* indenture, *or* mortgage, etc., *as above*).

Know all men by these presents:
That A. B., of ——, for a consideration of ——, etc., the receipt of which, etc., has conveyed and mortgaged, and does by these presents convey and mortgage unto C. D., of ——, etc.

This (conveyance, *or* indenture, *or* mortgage, etc.), **made and entered into this —— day of ——, by and between A. B., of —— county, and the State of ——, party of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:**
That, etc.
Saving and excepting, etc.

To all to whom these presents may come, greeting (*or* To all whom it may concern):
Know ye:
That this (conveyance, *or* indenture, *or* mortgage, etc.), **by and between the ——, a corporation existing under the laws of the State** (*or* Commonwealth) **of ——, of the first part, and C. D., E. F., and G. H., a company doing business under the firm-name and style of the D., F., H. —— manufacturing company, of the second part, witnesseth.**
That, etc.

Premises in Mortgages of Real Property.

See other Conveyances.

1. STATEMENT OF PARTIES.
See DEEDS, ante, p. 299, above.

2. RECITALS FOR EXPLANATION.
See DEEDS, ante, p. 299, above.

3. DESCRIPTIONS OF PROPERTY MORTGAGED, ETC., WITH EXCEPTIONS, ETC.
See DEEDS, ante, p. 300, above.

Habendum in Mortgages of Real Property.

See DEEDS, above.

The habendum limits and defines what estate the grantee is to have in the premises conveyed, as, an estate for lives, years, or a less period; an absolute or conditional, joint or several, restricted, or limited estate, etc., etc. In mortgages the estate of the mortgagee depends upon some condition or default, etc.

See CONDITIONS, etc., below.

HABENDUM—IN FEE SIMPLE, ETC.

To have and to hold the same forever.

Provided always, etc.

ANOTHER.

To have and to hold the same, together with the appurtenances and every part thereof, forever.

Upon the following conditions, etc.

ANOTHER.

To have and to hold the same, with the appurtenances, unto the said C. D., his heirs and assigns, in fee simple, forever.

Provided, however, That, etc.

ANOTHER.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever.

Now if said —— (*or* party of the —— part) shall, etc.

ANOTHER.

To have and to hold the said messuage or tenement and tract of —— acres of land, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances and every part thereof, unto the said C. D., his heirs and assigns, to the only proper use and behoof of the said C. D., his heirs and assigns forever.

Provided always, and these presents are upon these express conditions, that, etc.

Reddendum or Reservation in Mortgages of Real Property.

See other Conveyances.

The reddendum (or reservation) is that clause in a conveyance, deed, lease, mortgage, etc., by which the grantor reserves something new to himself out of that which he granted before. It usually follows the habendum.

See REDDENDUM IN DEEDS, p. 300, above, and REDDENDUM IN LEASES, p. 314, above.

Conditions and Provisos in Mortgages of Real Property.

See DEEDS, above.

The condition in a conveyance or deed, deed of trust, lease, mortgage, etc., is a qualification or restriction annexed to the conveyance, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. "Subject to," or "Subject, nevertheless, to," or "On condition," "Provided," "Provided always," "Provided nevertheless," etc. Thus the property conveyed may be subject to the payment of an annuity, an easement, an incumbrance, a mortgage, or other condition, qualification, restriction, etc.

See DESCRIPTION, ETC., WITH EXCEPTIONS, and HABENDUM and REDDENDUM, above; MORTGAGES, TRUST DEEDS, below; and CONDITIONS AND PROVISOS IN LEASES, ante.

Covenants in Mortgages of Real Property.

See DEEDS, above.

COVENANT—ASSIGNMENT.

See ASSIGNMENT—POWER TO ASSIGN, below.

COVENANT—ASSURANCE, ETC.

That after default shall be made in payment of said sum and interest, or any part thereof, said A. B., his heirs, and every other person having or claiming any right, title, or interest in said premises, or any part thereof, shall, at the costs and charges of said A. B., make, execute, and deliver unto said C. D., his heirs, executors, administrators, or assigns, upon lawful demand therefor, all and every further conveyance, deed, and assurance whatsoever for the better and more perfect assuring and confirming said premises unto him, them, or any of them (freed and discharged from any and all conditions and provisos hereinbefore contained for the redemption of said premises, and all other equity of redemption whatsoever.)

COVENANT—DEFAULT.

See ENTRY, SALE, ETC., below.

COVENANT—RECEIPT, GOOD, ETC.

See COVENANT—RECEIPT, ETC., below.

COVENANT—ENJOYMENT OF PREMISES UNTIL DEFAULT.

That until default shall be made in the payment of said sum of —— dollars, and interest for the same, as aforesaid, or some part thereof, contrary to the true intent and meaning of these presents, it shall and may be lawful for said A. B., his heirs and assigns, peaceably and quietly to hold and enjoy said premises, with their appurtenances, and receive the rents and profits thereof, to his (and their) own use and benefit, without any interruption or hindrance whatever by said C. D., his heirs or assigns, or any other person or persons whomsoever, lawfully claiming from or under him or them.

ANOTHER.

That said A. B., his heirs, etc., shall peaceably and quietly hold and enjoy said premises, with the appurtenances, and collect and receive the rents, issues, and profits thereof, to his and their own proper use and behoof, without any account to be made or given touching or concerning the same, and without disturbance or hindrance of or by said C. D., his heirs, executors, administrators, or assigns, or either or any of them, until default shall be made in payment of said sum of —— dollars, and interest, or some part thereof.

ANOTHER.

That until default in the payment of said sum or interest, or other default herein provided, said mortgagee shall have no right to enter and take possession of said premises.

COVENANT—ENTRY ON DEFAULT.

That in case default shall be made in the payment of said sum of —— dollars or interest, or any part thereof, contrary to the conditions, covenants, or provisions herein, for the payment thereof, then and from thenceforth it shall and may be lawful to and for said C. D., his heirs and assigns, to enter said premises, and the same thenceforth quietly to hold and enjoy, and to receive and take all the rents, issues, and profits thereof, to his and their own use and benefit, without any disturbance or interruption whatever by or from said A. B., his heirs, or assigns, or any other person or persons whomsoever; and that freely acquitted and discharged from and against all incumbrances whatsoever.

ANOTHER—(MORTGAGE OF LEASED PREMISES).

That it shall and may be lawful for said C. D., his heirs, executors, etc., or any of them, immediately from and after any breach or default made in the conditions or provisos aforesaid, to enter into and upon said premises, and every part thereof, with the appurtenances, and the same from thenceforth (under the rents, covenants, conditions and agreements in said lease reserved and contained), to have, hold, and enjoy, and the rents, issues and profits thereof, and every part and parcel thereof, to have, receive, and take (for and during all the residue and remainder of said term of —— by said lease granted, and then to come and unexpired), without any disturbance, hindrance, molestation, or obstruction whatsoever, by said A. B., his heirs, executors, administrators or assigns, or any of them, or any other person or persons whomsoever.

COVENANT—FIRE CLAUSE.

That said party of the first part shall keep the buildings erected and to be erected on the premises above conveyed insured against loss by fire, and assign the policy and certificates thereof to said party of the second part, his executors, administrators, or assigns.

That in default thereof said party of the second part, his executors, administrators, or assigns, shall effect such insurance, and the premium and premiums, etc., paid for effecting the same, shall be a lien on said mortgaged premises, added to the amount of said bond or obligation, and secured by these presents.

COVENANT—INCUMBRANCES FREE FROM.

That said premises, and all and singular the appurtenances hereinbefore mentioned and conveyed, are free from all incumbrances of what nature or kind soever.

ANOTHER—WHEN LEASED PREMISES ARE MORTGAGED.

That said premises, and all and singular the appurtenances hereinbefore mentioned and assigned, now are, and from henceforth during the residue of said term of ——, by said lease granted, shall remain and continue unto said C. D., his executors, etc., discharged and free from all charges and incumbrances of all and every kind and nature whatsoever.

That the rents and covenants in said lease reserved and contained, which from any such breach or default in the payment of the money according to the condition or proviso aforesaid, shall grow due on the tenant's and lessee's part and behalf, to be paid and performed, and also the lease bearing date the —— day of ——, made by said ——, of the hereby mortgaged premises, which rent, from and after any such breach or default shall happen as aforesaid, shall become due and payable (and be forfeited) unto said C. D., his executors, administrators, and assigns.

COVENANT—LEASE MORTGAGED IS VALID.

That said lease at the time of the (execution, *or*) sealing and delivering of these presents is a good, sufficient, valid and effectual lease in law: that it is unforfeited and unsurrendered, and that said C. D. shall hold and enjoy said premises for and during the remainder of said term herein granted.

COVENANT—PAYMENT OF MONEY.

That said A. B, for himself, his heirs, executors, and administrators, does covenant, promise, and agree, to and with said C. D., his executors, administrators, and assigns, that he shall and will well and truly pay or cause to be paid said sum of —— dollars, with interest for the same, after the rate, and at the time and in the manner above limited for the payment thereof, and according to the true intent and meaning of the above-written condition and proviso.

COVENANT—PAYMENT OF TAXES, ETC.

That said A. B., his heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter, and until the sum of —— dollars, and interest thereon, shall be fully paid unto said C. D. as aforesaid, pay and discharge all and all manner of taxes and assessments which shall be laid or assessed thereupon, or upon any part thereof, or upon said C. D., his executors, administrators, or assigns, for or in respect thereof, or any part of the same, by authority of the (Congress of the United States, general assembly, *or* legislature, *or* court, *or* council, etc., etc., of the commonwealth, *or* State, *or* municipality, etc.)

That he will save harmless and keep indemnified said C. D., his executors, etc., of and from all actions, charges, and damages which shall or may happen in anywise howsoever, by reason of the non-payment of said taxes or assessments.

COVENANT—POWER TO ASSIGN.

Power to Assign the Lease Mortgaged.

That said A. B. now has in himself full power and good right to assign, grant, and mortgage said lease and the premises therein demised unto said C. D., his executors, etc., in the manner and form aforesaid.

COVENANT—REASSIGNMENT UPON PAYMENT, ETC.

That upon full payment and discharge of said sum of —— dollars (and all taxes and assessments that shall be set upon said C. D., his executors, etc., in respect thereof, according to the condition or proviso aforesaid, and the true intent of these presents), he, the said C. D., his executors, etc, shall and will at any time after, upon the lawful request and at the proper costs and charges of said A. B., his executors, etc., deliver up this present conveyance (*or* mortgage) to be cancelled and made void, or otherwise reassign or reconvey all the right, title and interest in or to said premises therein conveyed unto said A. B., his executors, etc., or such other persons as he or they shall, by writing, under his or their hands (and seals), appoint or direct, by writing, under his or their hand and seal (and likewise to deliver up to him or them the said lease, made by ——, to said A. B.), freed and discharged of and from all incumbrances of whatever nature or kind soever.

COVENANT—RECEIPT TO BE A GOOD DISCHARGE.

For Purchase-Money.

That the receipt or receipts of said C. D., or his executors, administrators or assigns, shall be a good and sufficient discharge to the purchasers of said premises, or any part thereof, for their purchase-money, and that such purchasers, their heirs, executors, or administrators, shall not after payment thereof, and having such receipt, be liable to see to its being applied upon or for the trusts or purposes of ——, in these presents expressed, or by the same intended, or in any manner howsoever unsuitable, or liable for any loss, misapplication, or non-application of such purchase-money, or any part thereof (or be in any manner obliged to inquire into the necessity, expediency, or authority of or for any such sale or sales).

COVENANT—RIGHT TO CONVEY.

That he, the said A. B., now has in himself good right and full power to give, grant, sell and convey the premises above (*or* hereinbefore) granted unto and to the use of said C. D., his heirs and assigns, in the manner aforesaid and according to the intent of these presents.

COVENANT—SALE ON DEFAULT, ETC.

That if default shall be made in the payment of said sum of money above mentioned, or any part thereof, or of the interest that may grow due thereon, or of any part thereof, and remain due and unpaid at the expiration of —— days after the same shall become due and payable according to the condition of said bond, then, and from thenceforth it shall be lawful for said party of the second part, his executors, administrators and assigns, to consider the whole of said principal sum and sums as aforesaid, as immediately due and payable, and to enter into and upon all and singular said premises hereby granted, and to sell and dispose of the same (and all benefit and equity of redemption of said party of the first part, his heirs, executors, administrators, or assigns therein) at public auction according to law.

That the attorney of said party of the first part is by these presents duly authorized, constituted, and appointed for that purpose to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in law for the same, in fee simple; and out of the moneys arising from such sale to retain the principal and interest which shall then be due and owing on said bond or obligation, together with the costs and charges of the sale of said premises, returning the overplus of said purchase-money, if any there shall be, unto said party of the first part, his heirs, executors, administrators or assigns.

That said sale so made shall forever be a perpetual bar, both in law and equity, against said party of the first part, his heirs and assigns, and all other persons claiming or to claim said premises, or any part thereof, by, from, or under him, them, or either of them.

COVENANT—SALE, ETC.—ON DEFAULT, ETC.

Provided always, and it is hereby expressly agreed between the parties hereto:

That if default shall be made in the payment of said sum of —— dollars, and interest, or any part thereof, then and in such case it shall and may be lawful for the said C. D., his heirs or assigns, immediately on or at any time thereafter, without further authority from said A. B., his heirs or assigns, for that purpose than is herein contained, either to foreclose the equity of redemption of said A. B., or without hindrance, molestation, or opposition, to make sale absolutely, or otherwise dispose of all and every the said mortgaged premises, or any or either of them, or any part thereof, with their appurtenances; either together or in separate parcels, at one or at separate times, at his or their discretion, and at or for such sum or sums of money as he or they shall judge sufficient at any such sale or sales to buy the same or any part thereof, and re-sell the same without being answerable for any loss hereby to be sustained, and to convey

and assume all and singular the premises which shall be sold, to the purchasers thereof, his or their heirs, executors, administrators, appointees or assigns, or otherwise, as he or they shall direct or require, freed and absolutely discharged of and from all equity and right of redemption whatsoever.

ANOTHER.

That said C. D., his heirs, etc., may, at the expiration of —— from this date, or at any time thereafter, at his or their option, sell and dispose of said premises at public auction, giving due notice thereof, and shall apply the proceeds of such sale to pay said sum of —— dollars, and interest thereon, and to defray the necessary expenses of such sale; and if, after paying said sum and interest and expenses, there should remain any balance or surplus of said proceeds, then to pay the same to said A. B., or his legal representative.

COVENANT—SALE—NOTICE OF, ETC.

Provided always, nevertheless:

That no sale, or public notice or advertisement of or for any sale of said premises, or any part thereof, shall be made or given by said C. D., his heirs, etc. (nor any means by him or them taken for obtaining possession of, or receiving of the rents of said premises, or any part thereof), until the expiration of —— calendar months after notice in writing of his or their intention to sell (obtain possession, *or* receive the rents of) said premises shall have been given, said A. B., his heirs or assigns, or left at his or their last or usual place of abode.

For other COVENANTS, see MORTGAGE FORMS, below.

Conclusions in Mortgages of Real Property.

See DEEDS, above.

Signed (and sealed); *or*,

Signed, sealed, and acknowledged; *or*,

Witness our hands (and seals); *or*,

Given under our hands (and seals); *or*,

In witness whereof, we hereunto set our hands, etc.; *or*

In witness whereof, the parties to these presents have hereunto set their hands, etc.; *or*,

In witness whereof, we have hereunto set our hands (and affixed our seals) (at ——), this —— day of ——; *or*,

In witness whereof, we have hereunto set our hands (*or* subscribed our names), the day and year first (*or* last) above written; *or*,

In witness whereof, A. B., the party of the first part, and C. D., the party of the second part, in their own proper persons have hereunto respectively and severally set their hands and seals, this —— day of —— (*or* the day and year first, *or* last) above written.

Signature (and Seals).

See DEEDS, above.

Attestation or Witness Clauses.

See DEEDS, above.

Acknowledgment of Mortgages of Real Property.

All instruments for the conveyance, or incumbrance, or in anywise affecting real estate or any interest therein, must be recorded in the proper office for the recording of deeds, etc., in order to affect judgment creditors, subsequent purchasers, mortgagees, etc. See GENERAL STATUTES.

SHORT FORM MORTGAGES OF REAL PROPERTY.

MORTGAGE—SIMILAR TO CHANCELLOR KENT'S DEED.

See SHORT FORM DEEDS, p. 303, ante.

I, A. B., in consideration of ——, to me paid by C. D., do mortgage unto C. D. (and his heirs) the lot of land (bounded *or* described), etc.

To secure the repayment (*or* performance) of (*state what, amounts, places, times, etc., etc.*)

Witness my hand and seal, this —— day of ——.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

MORTGAGE—SIMILAR TO CALIFORNIA DEED.

I. A. B., grant and mortgage to C. D. all that real property, situated in —— county, of the State of California, bounded (*or* described) as follows, etc.

To secure the repayment (*or* performance), etc.

Witness my hand, this —— day of ——.

A. B.

For form of ACKNOWLEDGMENT, see that title.

MORTGAGE—INDIANA FORM.

See INDIANA, above.

A. B. mortgages and warrants to C. D. (*describing premises*).

To secure the repayment of (*state what, the amounts, modes, places, time or times of payment, etc., etc.*)

Dated, signed, and sealed, this —— day of ——.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

MORTGAGE—AFTER VIRGINIA AND TEXAS DEED.

A. B. doth bargain, sell, and mortgage unto C. D. (*here follows a description of the real estate mortgaged.*)

To secure the repayment (*or* performance) of, etc.

Witness the following signature and seal.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Covenant to Pay, and Power to Sell on Default.

This (conveyance, *or* indenture, *or* mortgage), made this —— day of ——, by (*or* between) A. B., of ——, of the first part, to (*or* and) C. D., of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, all (*here follows the description of the premises mortgaged*); together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended as a mortgage, to secure the payment of the sum of —— dollars, in —— from the day of the date of these presents, with —— interest, according to the condition of a certain bond, dated this day, executed by the said A. B., to the said party of the second part; and these presents shall be void if such payment be made.

But in case default shall be made in the payment of the principal, or interest, as above provided, then the party of the second part, his executors, administrators and assigns, are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns, etc.

In witness whereof, said party of the first part has hereunto set his hand (and seal) the day and year first above written.

[*Signature (and seal.)*]

Executed in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

To all people to whom these presents shall come, greeting: Know ye:

That I, A. B., of ——, for the consideration of —— dollars, received to my full satisfaction, do give, grant, bargain, sell and confirm unto the said C. D. (*here follows the description of the premises mortgaged*):

To have and to hold the above-granted and bargained premises, with the appurtenances thereof, unto the said grantee, his heirs and assigns, to his and their proper use and behoof, forever.

And also I, the said grantor, do, for myself, my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that at and until the ensealing of these presents, I am well seized of the premises in a good, indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written; and that the same are free from all incumbrances whatsoever.

And I, the said grantor, do, by these presents, bind myself and my heirs forever, to warrant and defend the above-granted and bargained premises to him, the said grantee, and his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, I have hereunto set my hand (and seal) this —— day of ——.

The condition of this deed is such, that whereas the said A. B. is justly indebted to the said C. D. in the sum of —— dollars, as evidenced by his promissory note for said sum, of even date herewith, payable to the said grantee or order —— after date, with interest:

Now, therefore, if said note shall be well and truly paid, according to its tenor, then this deed shall be void; otherwise, to remain in full force and effect. [*Signature (and seal.)*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Covenants against Incumbrances: to Insure; to Pay; and Warrant and Defend, etc.

Know all men by these presents:

That I, A. B., of ——, in consideration of the sum of —— dollars, to me paid by C. D., of ——, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said C. D., his heirs and assigns, forever, a certain piece or parcel of land, situate (*here follows the description*), together with all the privileges and appurtenances to the same in anywise appertaining and belonging:

To have and to hold the same to the said C. D., his heirs and assigns, to his and their use and behoof forever:

And I, the said A. B., for myself, my heirs, executors, and administrators, do covenant with the said C. D., his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C. D., as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons.

Provided nevertheless, that if the said A. B., his heirs, executors, or administrators, shall pay unto the said C. D., his executors, administrators or assigns, the said sum of ——, with lawful interest, on or before the —— day of ——, and shall keep the premises insured against fire in a sum not less than —— dollars, for the benefit of the said C. D., his executors, etc., in such insurance office in ——, as the said C. D. shall approve, then this deed, as also (a certain promissory note bearing even date with these presents, signed by the said A. B., whereby for value received he promises to pay to the said C. D the said sum and interest at the times aforesaid, shall be absolutely void to all intents and purposes), *or* (a certain obligation or bond, bearing even date with these presents, given by the said A. B. to the said C. D. in the penalty of —— dollars, conditioned to pay the first mentioned sum and interest at the time aforesaid, shall both be void).

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, forever.

Provided always, and these presents are upon this express condition, that whereas, said A. B. has this day executed and delivered his certain promissory note in writing to said party of the second part, of which the following is (*or* are) copies (*setting out a copy or abstract*).

Now, if said party of the first part shall pay or cause to be paid to said party of the second part, his heirs or assigns, said sum of money in the above-described note mentioned, together with the interest thereon, according to the terms and tenor of the same; then these presents shall be wholly discharged and void; and otherwise shall remain in full force and effect.

But if said sum or sums of money, or any part thereof, or any interest thereon, is not paid when the same is due; and if the taxes and assessments of every nature which are or may be assessed and levied against said premises or any part thereof are not paid when the same are by law made due and payable, then the whole of said sum and sums, and interest thereon, shall, by these presents, become due and payable, and said party of the second part shall be entitled to the possession of said premises.

In witness whereof, the said party of the first part has hereunto set his hand, the day and year first above written. A. B.

Executed in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Waiver, Attorney's Fees, etc.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, etc. (*this paragraph is the same as in the form above*).

To have and to hold the same, together, etc. (*this paragraph is the same as in the form above*).

Provided always, and these presents, etc. (*this paragraph is the same as in the form above*).

Now, if said party of the first part shall pay or cause to be paid to said party of the second part, his heirs or assigns, said sum of money in the above-described note mentioned, together with the interest thereon, according to the terms and tenor of the same; then these presents shall be wholly discharged and void; and otherwise shall remain in full force and effect.

But if said sum or sums of money, or any part thereof, or any interest thereon, is not paid when the same is due; and if the taxes and assessments of every nature, which are or may be assessed and levied against said premises, or any part thereof, are not paid when the same are by law made due and payable, then the whole of said sum and sums, and interest thereon, shall and by these presents become due and payable, and said party of the second part shall be entitled to the possession of said premises.

And said party of the first part further agree, upon default of the above covenants and conditions, or any or either of them, to pay the sum of —— dollars, for mortgagee or his assigns' attorney's fees for foreclosure of this mortgage, which sum shall be a lien upon said premises, added to the amount of said obligation, and secured by these presents, and shall be included in and operate as a part of the judgment upon foreclosure of this mortgage.

Appraisement, exemption, and valuation are waived.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Interest, Tax, Insurance, Attorney's Fees, Waiver of Appraisement, Exemption and Valuation, with Power of Assignment, Sale Clauses, etc.

This indenture, made this —— day of ——, between A. B., of —— county, in the State of ——, party of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, etc. (*this paragraph is the same as in the form above*).

To have and to hold the same, together, etc. (*this paragraph is the same as in the form above*).

Provided always, and these presents are upon this express condition,

That whereas, said A. B. has this day executed and delivered his certain promissory note in writing to said party of the second part, of which the following is (*or* are) copy (*here copy the note or notes*).

Now, if said party of the first part shall pay or cause to be paid to said party of the second part, his heirs or assigns, said sum of money in the above-described note mentioned, together with the interest thereon, according to the terms and tenor of the same; and keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in at least the sum of —— dollars, and by insurers, and at some insurance office to be approved by said party of the second part, and assign the policy and certificates thereof to the said party of the second part (and in default of said insurance it shall be lawful for said party of the second part to effect such insurance, and the premium or premiums paid for effecting the same, together with the costs and charges incident thereto, with interest thereon at the rate of —— per cent. per annum, from the date of payment thereof until paid, shall be a lien upon said mortgaged premises, added to the amount of said obligation, and secured by these presents, and shall be included in and operate as a part of the judgment upon foreclosure of this mortgage), then these presents shall be wholly discharged and void; and otherwise shall remain in full force and effect.

But if said sum or sums of money, or any part thereof, or any interest thereon, is not paid when the same is due; and if the taxes and assessments of every nature which are or may be assessed or levied against said premises or any part thereof are not paid when the same are by law made due and payable; and if said insurance is not effected, and the policy and certificates are not assigned, as aforesaid, then, and upon default of these provisions and covenants, or any or either of them, the whole of said sum and sums, and interest thereon, shall and by these presents become due and payable, and said party of the second part shall be entitled to the possession of said premises.

And the said party of the first part further agree, upon default of the above covenants and conditions, or any or either of them, to pay the sum of —— dollars, for the mortgagee or his assigns' attorney's fees for foreclosure of this mortgage, which sum shall be a lien upon said premises, added to the amount of said obligation, and secured by these presents, and shall be included in and operate as a part of the judgment upon foreclosure of this mortgage.

Appraisement, exemption, and valuation are waived.

In witness whereof, the said party, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

In which the mortgagor waives his right under the act of assembly or legislature, so that on his default, for thirty days, to pay any interest falling due, the whole debt (principal and interest) shall become due and collectable immediately, and the mortgagee shall have the right to issue a writ of scire facias, and at once proceed to collect the whole sum due.

This (conveyance, *or* indenture, *or*) mortgage, made the —— day of ——, in the year of our Lord ——, between A. B., of (the city of ——), in —— county, and State (*or* Commonwealth) of ——, of the first part, and C. D., of said city, county, and State (*or* Commonwealth), aforesaid, of the other part, witnesseth:

That whereas the said A. B., in and by a certain obligation or writing obligatory, under his hand and seal duly executed, bearing even date herewith, stands bound unto the said C. D. in the sum of (five thousand) dollars, lawful money of the United States of America, conditioned for the payment of the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in (five) years from the date thereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date thereof, and thereafter (half-yearly) from that day, without any fraud or further delay:

Provided, however, and it is thereby expressly agreed:

That if at any time default shall be made in the payment of interest on said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., or his executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding, as in and by the said in part recited obligation and the condition thereof, relation being thereunto had, may more fully and at large appear:

That the said A. B., as well for and in consideration of the aforesaid debt or sum of (two thousand and five hundred) dollars, and for the better securing the payment of the same, with interest, unto the said C. D., his heirs, executors, administrators, and assigns, as well in discharge of the said in part recited obligation, as for and in consideration of the further sum of one dollar, unto the said A. B. in hand well and truly paid by the said C. D., at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said C. D., and his heirs and assigns, all that messuage, piece or parcel of land, etc. (*here give the description of the land conveyed*); together with all and singular the rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever, thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold the said messuage, piece or parcel of land above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said C. D., his heirs and assigns, to and for the only proper use and behoof of the said C. D., his heirs and assigns, forever.

Provided always, nevertheless, that if the said A. B., his heirs, executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, the aforesaid debt or sum of (two thousand five hundred) dollars on the day and time hereinbefore mentioned and appointed for payment of the same, together with lawful interest as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth, as well this present indenture and the estate hereby granted, as the said in part recited obligation, shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Provided further, in case of default in the payment of the interest at any time falling due, for the space of thirty days as aforesaid, or any part thereof, that thereupon it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out forthwith a writ of scire facias

upon this present indenture of mortgage, and to proceed at once thereon to recover the principal moneys hereby secured, and all interest thereon, according to law, without further stay, any law or usage to the contrary notwithstanding.

And further, the said mortgagor doth hereby, for himself, his heirs, executors, administrators, and assigns, expressly waive, relinquish, and dispense unto C. D., the said mortgagee, his heirs, executors, administrators, and assigns, all and every provision and provisions in the act of assembly (*or* legislature) of the State (*or* Commonwealth) of —— (Approved *or*) passed on the —— day of ——, entitled "An act," etc., so far as the same may exempt the said hereby mortgaged lot of land and appurtenances, and any part thereof, from levy and sale, by virtue of any writ of execution that may be issued upon any judgment that may be obtained or entered in any action for the recovery of the mortgage-money herein mentioned to be paid, and any interest due thereon, and of the costs of such action and execution; so that it shall be lawful for C. D., the said mortgagee, his heirs, executors, administrators, or assigns, to proceed by execution to levy upon and sell the said hereby mortgaged lot of ground, and every part thereof, with the appurtenances as aforesaid, in the same manner, and to the same extent, and to the same effect, to all intents and purposes, as if the said act of assembly (*or* legislature) had not been (approved *or*) passed.

In witness whereof, the said parties to these presents have interchangeably set their hands and seals hereunto. Dated the day and year first above written.

[*Witnesses.*] (*Signatures and Seals.*)

BOND TO ACCOMPANY THE ABOVE MORTGAGE.

Know all men by these presents:

That I, A. B., of (the city of) ——, in —— county, and the State (*or* Commonwealth) of ——, am held and firmly bound unto C. D., of the same city and State aforesaid, in the sum of (five thousand) dollars, lawful money of the United States of America, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with my seal, and dated the —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that if the above-bounden A. B., or his heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above-named C. D., or his certain attorney, executors, administrators, or assigns, the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in (five) years from the date hereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date hereof, and thereafter (half-yearly) from that day, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue:

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest on the said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., or his administrators or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding. A. B. [*Seal.*]

Signed, sealed, and delivered in presence of }

WARRANT OF ATTORNEY TO ACCOMPANY THE ABOVE BOND, WHERE IT IS DESIGNED TO AUTHORIZE THE ENTERING OF JUDGMENT.

To A. A., Esq., attorney of the —— court, at ——, in the county of ——, in the State (*or* Commonwealth) of ——, or to any other attorney of the said court, or of any other court, there or elsewhere:

Whereas A. B., in and by a certain obligation bearing even date herewith, does stand bound unto C. D. in the sum of (five thousand) dollars, lawful money of the United States of America, conditioned for the payment of the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in five years from the date thereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date thereof, and thereafter (half-yearly) from that day; provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest on the said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., his executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding:

These are to desire and authorize you, or any of you, to appear for me, my heirs, executors, or administrators, in the said court or elsewhere, in an action of debt there or elsewhere brought or to be brought against me, the said A. B., my heirs, executors or administrators, at the suit of the said C. D., his executors, administrators or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and to confess judgment thereupon against me, the said A. B., my heirs, executors, or administrators, for the sum of (five thousand) dollars, lawful money of the United States of America, debt, besides costs of suit, by *non sum informatus, nihil dicit*, or otherwise, as to you shall seem meet: and for your or any of your so doing, this shall be your sufficient warrant.

And I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever quit-claim unto the said C. D., his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, in the year of our Lord ——. A. B. [*Seal.*]

Signed, sealed, and delivered in presence of }

Mortgage of Real Property—Assignment.

Know all men by these presents:

That I, C. D., of ——, in —— county, State of ——, the mortgagee named in a certain mortgage given by A. B., of ——, in —— county, State of ——, to said C. D., to secure the payment of —— dollars and interest, dated the —— day of ——, recorded in the volume ——, on page ——, of the registry of deeds for the county of ——, in consideration of the sum of —— dollars to me paid by E. F., of ——, in —— county, State of ——, the receipt of which is hereby acknowledged, do hereby sell, assign, transfer, set over and convey unto said E. F., his heirs and assigns, said mortgage and the real estate thereby conveyed, together with the promissory note, debt and claim thereby secured, and the covenants therein contained.

To have and to hold the same to him, the said E. F., and his heirs and assigns, to his and their use and behoof forever: subject, nevertheless, to the conditions therein contained (and to redemption according to law).

In witness whereof, I have hereunto set my hand (and seal), this —— day of ——.

[*Signature.*] [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title

Mortgage of Real Property—Assignment.

With Power of Attorney.

Know all men by these presents:

That I, C. D., of —— county, and State of ——, party of the first part, in consideration of the

sum of —— dollars, to me in hand paid by E. F., of —— county, and State of ——, of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators, and assigns, a certain mortgage, bearing date the —— day of ——, made by A. B., of —— county, and State of —— (*here describe the mortgage, and state the volume and page where it is registered*), to which reference may be made, together with all the right, title, interest, and estate of said party of the first part, in and to the premises described and conveyed in and by said mortgage.

Together with the bond (*or* note) therein described and the money due and to grow due thereon, with the interest accruing or accrued.

To have and to hold the same, unto the said party of the second part, his executors, administrators, and assigns, for his and their use, subject only to the proviso in the said mortgage mentioned:

And I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorney, irrevocably in my name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Assignment.

By a Corporation.

Know all men by these presents:

That the —— (*give legal name of the corporation assigning*), existing as a corporate body, by and under the laws of the State or of ——, of the first part, for and in consideration of the sum of ——, lawful money of the United States, to the said corporation paid by E. F., of ——, etc., of the second part, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain mortgage, bearing date the —— day of ——, made by A. B., of ——, etc. (*here briefly describe the mortgage*), the same being duly registered in the office of the recorder (*or* register) of deeds for the county of ——, and State of ——, to which mortgage reference may be had.

Together with the (note *or*) bond or obligation therein described, and the moneys due, and to grow due thereon, with the interest:

To have and to hold the same unto the said party of the second part, his heirs and assigns, for his and their own use, subject only to the proviso in the said indenture of mortgage mentioned.

And the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their true and lawful attorney, irrevocable, in the name of the said parties of the first part, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as the said parties of the first part might or could do if these presents were not made.

In witness whereof, the said parties of the first part have caused their common seal to be affixed to these presents, and the same to be signed by their president and secretary (*or other officer*), this —— day of ——. (*Signature of officers.*)

[*Seal of corporation.*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage, Etc.—Bond.

Secured by a Mortgage.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, am held and firmly bound unto C. D., of of ——, in —— county, and State of ——, in the sum of (*insert the amount of the penalty, usually twice as much as the actual debt*), to be paid to the said C. D., his heirs, executors, administrators or assigns, and to this payment I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, this —— day of ——.

The condition of the above obligation is:

That if I, the said A. B., or my heirs, executors, or administrators, shall pay or cause to be paid unto the said C. D., the sum of —— (*here insert the actual amount of the debt or sum to be secured*), on the —— day of ——, with interest at the rate of —— per cent. per annum, payable six months from the date hereof, and every —— months afterwards, until the said sum is paid, then the above obligation shall be void and of no effect; and otherwise it shall remain in full force.

And I further agree and covenant, that if any payment of interest be withheld or delayed for —— days after such payment shall fall due, the said principal sum and all arrearage of interest thereon, shall be and become due immediately on the expiration of —— days, at the option of said C. D., his executors, administrators, or assigns.

A. B. [*Seal.*]

Executed and delivered in presence of }

Mortgage of Real Property—Dower and Homestead Exemption Released.

Without Power of Sale and without Warranty.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, State of ——, and W., wife of said A. B., parties of the first part, and C. D., of —— county, State of ——, party of the second part, witnesseth.

That whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of ——, secured to be paid by a certain promissory note (*or* bond, *describing it*)

That the said parties of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said note (*or* bond) above mentioned; and also in consideration of the further sum of one dollar, to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all that (*here describe the premises conveyed*).

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining. And also all the estate, interest and claim whatsoever in law as well as in equity, which the parties of the first part have in and to the premises hereby conveyed unto the said party of the second part, and his heirs and assigns, and to their only proper use, benefit and behoof.

And the said parties of the first part hereby expressly waive, release, relinquish and convey unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State relating to the exemption of homesteads.

Provided always and these presents are upon this express condition:

That if the said party of the first part, or his heirs, executors, or administrators shall well and truly pay or cause to be paid to the said party of the second part, or his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned note (*or* bond) according to the true intent and meaning thereof, then in that case these presents and everything herein expressed shall be absolutely void and of no effect.

In witness whereof, the said parties of the first part hereunto set their hands (and seals) the day and year first above written.

A. B. [*Seal*]
W. B. [*Seal*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

upon this present indenture of mortgage, and to proceed at once thereon to recover the principal moneys hereby secured, and all interest thereon, according to law, without further stay, any law or usage to the contrary notwithstanding.

And further, the said mortgagor doth hereby, for himself, his heirs, executors, administrators, and assigns, expressly waive, relinquish, and dispense unto C. D., the said mortgagee, his heirs, executors, administrators, and assigns, all and every provision and provisions in the act of assembly (*or* legislature) of the State (*or* Commonwealth) of —— (Approved *or*) passed on the —— day of ——, entitled "An act," etc., so far as the same may exempt the said hereby mortgaged lot of land and appurtenances, and any part thereof, from levy and sale, by virtue of any writ of execution that may be issued upon any judgment that may be obtained or entered in any action for the recovery of the mortgage-money herein mentioned to be paid, and any interest due thereon, and of the costs of such action and execution; so that it shall be lawful for C. D., the said mortgagee, his heirs, executors, administrators, or assigns, to proceed by execution to levy upon and sell the said hereby mortgaged lot of ground, and every part thereof, with the appurtenances as aforesaid, in the same manner, and to the same extent, and to the same effect, to all intents and purposes, as if the said act of assembly (*or* legislature) had not been (approved *or*) passed.

In witness whereof, the said parties to these presents have interchangeably set their hands and seals hereunto. Dated the day and year first above written.

[*Witnesses.*] (*Signatures and Seals.*)

BOND TO ACCOMPANY THE ABOVE MORTGAGE.

Know all men by these presents:

That I, A. B., of (the city of) ——, in —— county, and the State (*or* Commonwealth) of ——, am held and firmly bound unto C. D., of the same city and State aforesaid, in the sum of (five thousand) dollars, lawful money of the United States of America, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with my seal, and dated the —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that if the above-bounden A. B., or his heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above-named C. D., or his certain attorney, executors, administrators, or assigns, the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in (five) years from the date hereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date hereof, and thereafter (half-yearly) from that day, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue:

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest on the said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., or his administrators or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding. A. B. [*Seal.*]

Signed, sealed, and delivered in presence of }

WARRANT OF ATTORNEY TO ACCOMPANY THE ABOVE BOND, WHERE IT IS DESIGNED TO AUTHORIZE THE ENTERING OF JUDGMENT.

To A. A., Esq., attorney of the —— court, at ——, in the county of ——, in the State (*or* Commonwealth) of ——, or to any other attorney of the said court, or of any other court, there or elsewhere:

Whereas A. B., in and by a certain obligation bearing even date herewith, does stand bound unto C. D. in the sum of (five thousand) dollars, lawful money of the United States of America, conditioned for the payment of the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in five years from the date thereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date thereof, and thereafter (half-yearly) from that day; provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest on the said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., his executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding:

These are to desire and authorize you, or any of you, to appear for me, my heirs, executors, or administrators, in the said court or elsewhere, in an action of debt there or elsewhere brought or to be brought against me, the said A. B., my heirs, executors or administrators, at the suit of the said C. D., his executors, administrators or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and to confess judgment thereupon against me, the said A. B., my heirs, executors, or administrators, for the sum of (five thousand) dollars, lawful money of the United States of America, debt, besides costs of suit, by *non sum informatus, nihil dicit*, or otherwise, as to you shall seem meet: and for your or any of your so doing, this shall be your sufficient warrant.

And I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever quit-claim unto the said C. D., his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, in the year of our Lord ——. A. B. [*Seal.*]

Signed, sealed, and delivered in presence of }

Mortgage of Real Property—Assignment.

Know all men by these presents:

That I, C. D., of ——, in —— county, State of ——, the mortgagee named in a certain mortgage given by A. B.. of ——, in —— county, State of ——, to said C. D., to secure the payment of —— dollars and interest, dated the —— day of ——, recorded in the volume ——, on page ——, of the registry of deeds for the county of ——, in consideration of the sum of —— dollars to me paid by E. F., of ——, in —— county, State of ——, the receipt of which is hereby acknowledged, do hereby sell, assign, transfer, set over and convey unto said E. F., his heirs and assigns. said mortgage and the real estate thereby conveyed, together with the promissory note, debt and claim thereby secured, and the covenants therein contained.

To have and to hold the same to him, the said E F., and his heirs and assigns, to his and their use and behoof forever: subject, nevertheless, to the conditions therein contained (and to redemption according to law).

In witness whereof, I have hereunto set my hand (and seal), this —— day of ——.

[*Signature.*] [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title

Mortgage of Real Property—Assignment.

With Power of Attorney.

Know all men by these presents:

That I, C D., of —— county, and State of ——, party of the first part, in consideration of the

sum of —— dollars, to me in hand paid by E. F., of —— county, and State of ——, of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators, and assigns, a certain mortgage, bearing date the —— day of ——, made by A. B., of —— county, and State of —— (*here describe the mortgage, and state the volume and page where it is registered*), to which reference may be made, together with all the right, title, interest, and estate of said party of the first part, in and to the premises described and conveyed in and by said mortgage.

Together with the bond (*or* note) therein described and the money due and to grow due thereon, with the interest accruing or accrued.

To have and to hold the same, unto the said party of the second part, his executors, administrators, and assigns, for his and their use, subject only to the proviso in the said mortgage mentioned:

And I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorney, irrevocably in my name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Assignment.

By a Corporation.

Know all men by these presents:

That the —— (*give legal name of the corporation assigning*), existing as a corporate body, by and under the laws of the State or of ——, of the first part, for and in consideration of the sum of ——, lawful money of the United States, to the said corporation paid by E. F., of ——, etc., of the second part, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain mortgage, bearing date the —— day of ——, made by A. B., of ——, etc. (*here briefly describe the mortgage*), the same being duly registered in the office of the recorder (*or* register) of deeds for the county of ——, and State of ——, to which mortgage reference may be had.

Together with the (note *or*) bond or obligation therein described, and the moneys due, and to grow due thereon, with the interest:

To have and to hold the same unto the said party of the second part, his heirs and assigns, for his and their own use, subject only to the proviso in the said indenture of mortgage mentioned.

And the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their true and lawful attorney, irrevocable, in the name of the said parties of the first part, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as the said parties of the first part might or could do if these presents were not made.

In witness whereof, the said parties of the first part have caused their common seal to be affixed to these presents, and the same to be signed by their president and secretary (*or other officer*), this —— day of ——. (*Signature of officers.*)

[*Seal of corporation.*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage, Etc.—Bond.

Secured by a Mortgage.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, am held and firmly bound unto C. D., of of ——, in —— county, and State of ——, in the sum of (*insert the amount of the penalty, usually twice as much as the actual debt*), to be paid to the said C. D., his heirs, executors, administrators or assigns, and to this payment I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, this —— day of ——.

The condition of the above obligation is:

That if I, the said A. B., or my heirs, executors, or administrators, shall pay or cause to be paid unto the said C. D., the sum of —— (*here insert the actual amount of the debt or sum to be secured*), on the —— day of ——, with interest at the rate of —— per cent. per annum, payable six months from the date hereof, and every —— months afterwards, until the said sum is paid, then the above obligation shall be void and of no effect; and otherwise it shall remain in full force.

And I further agree and covenant, that if any payment of interest be withheld or delayed for —— days after such payment shall fall due, the said principal sum and all arrearage of interest thereon, shall be and become due immediately on the expiration of —— days, at the option of said C. D., his executors, administrators, or assigns.

A. B. [*Seal.*]

Executed and delivered in presence of }

Mortgage of Real Property—Dower and Homestead Exemption Released.

Without Power of Sale and without Warranty.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, State of ——, and W., wife of said A. B., parties of the first part, and C. D., of —— county, State of ——, party of the second part, witnesseth.

That whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of ——, secured to be paid by a certain promissory note (*or* bond, *describing it*)

That the said parties of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said note (*or* bond) above mentioned; and also in consideration of the further sum of one dollar, to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all that (*here describe the premises conveyed*).

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining. And also all the estate, interest and claim whatsoever in law as well as in equity, which the parties of the first part have in and to the premises hereby conveyed unto the said party of the second part, and his heirs and assigns, and to their only proper use, benefit and behoof.

And the said parties of the first part hereby expressly waive, release, relinquish and convey unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State relating to the exemption of homesteads.

Provided always and these presents are upon this express condition.

That if the said party of the first part, or his heirs, executors, or administrators shall well and truly pay or cause to be paid to the said party of the second part, or his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned note (*or* bond) according to the true intent and meaning thereof, then in that case these presents and everything herein expressed shall be absolutely void and of no effect.

In witness whereof, the said parties of the first part hereunto set their hands (and seals) the day and year first above written. A. B. [*Seal*] W. B. [*Seal*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Dower not Released.

With Power of Sale to Secure a Bond.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., party of the first part, and C. D., of ——, etc., party of the second part, witnesseth:

Whereas, the said A. B. is justly indebted to the said party of the second part, in the sum of —— dollars, secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of —— dollars, conditioned for the payment of the said first-mentioned sum of —— dollars, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises*). Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

Provided always, and these presents are upon this express condition:

That if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

And the said A. B., for himself and his heirs, executors, and administrators, does covenant and agree, to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond;

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, or assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction;

And out of the money arising from such sale, to retain the principal and interest, which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be) unto the said A. B., party of the first part, or his heirs, executors, administrators, or assigns, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

In witness whereof, the parties to these presents have hereunto set their hands (and seals), the day and year first above written.

A. B. [*Seal.*]
Sealed and delivered in the presence of } C. D. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—By Corporation.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., E. F., L. M., etc., the trustees of the —— society of the —— church in the town of, etc., of the first part, and C. D., of ——, etc., of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, does grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns, all (*here follows the description*): together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in —— from the day of the date of these presents, with —— annual interest; according to the condition of a certain bond bearing even date herewith, executed by the said party of the first part to the said party of the second part; and the said trustees of —— the society of the —— church in, etc., for themselves and their successors, do covenant and agree to pay unto the said party of the second part, his executors and administrators, or assigns, the said sum of money, and interest, as above mentioned, and as expressed in the condition of the said bond:

And if default shall be made in the payment of the said sum of money as above mentioned, or the interest that may grow due thereon, or of any part of either the said principal or interest, that then, and from thenceforth, it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, their successors, or assigns therein, at public auction, according to the act in such case made and provided:

And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of the sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, their successors or assigns; which sales, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, their successors and assigns, and against all other persons claiming, or to claim, the premises, or any part thereof, by, from, or under them, or any of them.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their corporate seal, the day and year first above written.

A. B.
E. F.
L. M. } TRUSTEES OF, ETC. [*Seal.*]
etc.

Sealed and delivered in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—To Corporation.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and the mayor (*or* aldermen,

and council of the city of ——, etc.), of the second part, witnesseth.

That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, their successors and assigns, forever, all (*here follows the description of the premises conveyed*); together with the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of the said party of the first part, of, in and to the same; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold the hereinbefore granted and described premises, with the appurtenances, unto the said party of the second part, their successors and assigns, to their only proper use, benefit, and behoof, forever.

This conveyance is intended as a mortgage to secure the payment of the sum of —— dollars, in manner following, to wit: etc.; according to the condition of a certain bond bearing even date herewith, executed by the said party of the first part to the party of the second part, and these presents shall be void if such payment be made.

But in case default shall be made in the payment of the principal or interest aforesaid, as above provided, then the party of the second part, their successors and assigns are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns.

And the said party of the first part does covenant, promise, and agree, to and with the said party of the second part, their successors and assigns, that he, the said party of the first part, shall and will, well and truly pay to the said party of the second part, their successors and assigns, the said sum of money, with the interest thereon, at the time, and in the manner hereinbefore mentioned, according to the condition of the said bond.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge or Release.

See RELEASE, ETC., SATISFACTION, ETC., below.

The debt secured by the mortgage dated the —— day of ——, and recorded with —— deeds, book ——, page ——, has been paid to me by A. B., and in consideration thereof I do discharge the mortgage and release the mortgaged premises to said A. B., and his heirs.

Witness my hand (and seal), this —— day of ——.

C. D. [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge or Release.

See RELEASE, ETC., SATISFACTION, ETC., below.

State of ——, county of ——, ss.

I, C. D., of ——, in —— county, State of ——, do hereby certify that a certain mortgage, bearing date the —— day of ——, made and executed by A. B., of ——, in —— county, State of ——, of and upon the following described premises, to wit: (*describing them*), and recorded in the office of ——, in —— county, State of ——, in book —— of mortgages, page ——, on the —— day of ——, at —— o'clock, in the — M., is paid. And I do hereby consent that the same be discharged of record.

Dated the —— day of ——.

Executed in presence of } C. D. [*Seal.*]
W. S. }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge and Satisfaction.

By a Corporation.

See RELEASE, ETC., SATISFACTION, ETC., below.

We, —— (*give the legal name of the corporation*), a corporate body existing under and by virtue of the laws of the State (*or* Commonwealth) of ——, do hereby certify:

That a certain mortgage, bearing date the —— day of ——, in the year ——, made and executed by A. B., of and upon the following described premises, to wit: (*describing them*), and recorded in the office of the register (*or* recorder) of, in, and for the county of ——, in book —— of mortgages, page ——, on the —— day of ——, is paid.

In witness whereof, the said corporation has caused its corporate seal to be hereunto affixed, this —— day of ——. (*Officer's signature.*)

[*Corporate seal.*]

Executed in presence of }
W. S. }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—To Executors.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and E. X. and T. R., both of ——, etc., executors of the last will and testament of D. D., deceased, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and the survivors and survivor, and his and their assigns, forever, all (*here follows a description of the premises mortgaged*); together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, the survivors and survivor, and his and their assigns, to their only proper use, benefit, and behoof, forever.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in manner following, to wit: (*give amounts, places, times, etc., etc., of payment*), according to the condition of a certain bond, bearing even date herewith, executed by the said party of the first part to the party of the second part; and these presents shall be void if such payment be made.

And the said party of the first part, for himself and his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, and the survivors and survivor, or his or their assigns, the said sum of money, and interest, as above mentioned, and as expressed in the condition of the said bond;

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then, and from thenceforth, it shall be lawful for the said party of the second part, the survivors or survivor, and his or their assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators or assigns therein, at public auction, according to the act in such case made and provided.

And as the attorney, or attorneys, of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or

Mortgage of Real Property—Dower not Released.

With Power of Sale to Secure a Bond.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., party of the first part, and C. D., of ——, etc., party of the second part, witnesseth:

Whereas, the said A. B. is justly indebted to the said party of the second part, in the sum of —— dollars, secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of —— dollars, conditioned for the payment of the said first-mentioned sum of —— dollars, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises*). Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

Provided always, and these presents are upon this express condition:

That if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

And the said A. B., for himself and his heirs, executors, and administrators, does covenant and agree, to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond;

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, or assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction;

And out of the money arising from such sale, to retain the principal and interest, which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be) unto the said A. B., party of the first part, or his heirs, executors, administrators, or assigns, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

In witness whereof, the parties to these presents have hereunto set their hands (and seals), the day and year first above written.

A. B. [*Seal.*]
C. D. [*Seal.*]

Sealed and delivered in the presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—By Corporation.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., E. F., L. M., etc., the trustees of the —— society of the —— church in the town of, etc., of the first part, and C. D., of ——, etc., of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, does grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns, all (*here follows the description*); together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in —— from the day of the date of these presents, with —— annual interest; according to the condition of a certain bond bearing even date herewith, executed by the said party of the first part to the said party of the second part; and the said trustees of —— the society of the —— church in, etc., for themselves and their successors, do covenant and agree to pay unto the said party of the second part, his executors and administrators, or assigns, the said sum of money, and interest, as above mentioned, and as expressed in the condition of the said bond:

And if default shall be made in the payment of the said sum of money as above mentioned, or the interest that may grow due thereon, or of any part of either the said principal or interest, that then, and from thenceforth, it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, their successors, or assigns therein, at public auction, according to the act in such case made and provided:

And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of the sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, their successors or assigns; which sales, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, their successors and assigns, and against all other persons claiming, or to claim, the premises, or any part thereof, by, from, or under them, or any of them.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their corporate seal, the day and year first above written.

A. B.
E. F.
L. M.
etc.
} TRUSTEES OF, ETC. [*Seal.*]

Sealed and delivered in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—To Corporation.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and the mayor (*or* aldermen,

and council of the city of ——, etc.), of the second part, witnesseth.

That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, their successors and assigns, forever, all (*here follows the description of the premises conveyed*); together with the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of the said party of the first part, of, in and to the same; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold the hereinbefore granted and described premises, with the appurtenances, unto the said party of the second part, their successors and assigns, to their only proper use, benefit, and behoof, forever.

This conveyance is intended as a mortgage to secure the payment of the sum of —— dollars, in manner following, to wit: etc.; according to the condition of a certain bond bearing even date herewith, executed by the said party of the first part to the party of the second part, and these presents shall be void if such payment be made.

But in case default shall be made in the payment of the principal or interest aforesaid, as above provided, then the party of the second part, their successors and assigns are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns.

And the said party of the first part does covenant, promise, and agree, to and with the said party of the second part, their successors and assigns, that he, the said party of the first part, shall and will, well and truly pay to the said party of the second part, their successors and assigns, the said sum of money, with the interest thereon, at the time, and in the manner hereinbefore mentioned, according to the condition of the said bond.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge or Release.

See RELEASE, ETC., SATISFACTION, ETC., below.

The debt secured by the mortgage dated the —— day of ——, and recorded with —— deeds, book ——, page ——, has been paid to me by A. B., and in consideration thereof I do discharge the mortgage and release the mortgaged premises to said A. B., and his heirs.

Witness my hand (and seal), this —— day of ——.

C. D. [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge or Release.

See RELEASE, ETC., SATISFACTION, ETC., below.

State of ——, county of ——, ss.

I, C. D., of ——, in —— county, State of ——, do hereby certify that a certain mortgage, bearing date the —— day of ——, made and executed by A. B., of ——, in —— county, State of ——, of and upon the following described premises, to wit: (*describing them*), and recorded in the office of ——, in —— county, State of ——, in book —— of mortgages, page ——, on the —— day of ——, at —— o'clock, in the — M., is paid. And I do hereby consent that the same be discharged of record.

Dated the —— day of ——.

Executed in presence of } C. D. [*Seal.*]
W. S. }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge and Satisfaction.

By a Corporation.

See RELEASE, ETC., SATISFACTION, ETC., below.

We, —— (*give the legal name of the corporation*), a corporate body existing under and by virtue of the laws of the State (*or* Commonwealth) of ——, do hereby certify:

That a certain mortgage, bearing date the —— day of ——, in the year ——, made and executed by A. B., of and upon the following described premises, to wit: (*describing them*), and recorded in the office of the register (*or* recorder) of, in, and for the county of ——, in book —— of mortgages, page ——, on the —— day of ——, is paid.

In witness whereof, the said corporation has caused its corporate seal to be hereunto affixed, this —— day of ——. (*Officer's signature.*)

[*Corporate seal.*]

Executed in presence of }
W. S. }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—To Executors.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and E. X. and T. R., both of ——, etc., executors of the last will and testament of D. D., deceased, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and the survivors and survivor, and his and their assigns, forever, all (*here follows a description of the premises mortgaged*); together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, the survivors and survivor, and his and their assigns, to their only proper use, benefit, and behoof, forever.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in manner following, to wit: (*give amounts, places, times, etc., etc., of payment*), according to the condition of a certain bond, bearing even date herewith, executed by the said party of the first part to the party of the second part; and these presents shall be void if such payment be made.

And the said party of the first part, for himself and his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, and the survivors and survivor, or his or their assigns, the said sum of money, and interest, as above mentioned, and as expressed in the condition of the said bond;

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then, and from thenceforth, it shall be lawful for the said party of the second part, the survivors or survivor, and his or their assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators or assigns therein, at public auction, according to the act in such case made and provided.

And as the attorney, or attorneys, of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or

faction, etc., on the margin of the record, or by separate instrument, duly acknowledged and recorded, or by a quit-claim deed of the mortgaged premises.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages must be executed and recorded as those of realty. May be satisfied as other mortgages. Foreclosure had by public sale thirty days after breach, and with ten days' notice.

See GENERAL FORMS, below.

VIRGINIA.

Mortgages and Trust Deeds of Real and Personal Property.

Mortgages are superceded in general practice by deeds of trust. See WEST VIRGINIA, below.

See DEEDS; DEEDS OF TRUST, above.

WASHINGTON.

Mortgages executed same as deeds. Foreclosed by proceedings in equity. Redemption may be had within a year from sale. Chattel mortgage must be recorded. Binding until six years after due. Mortgaged property may be taken into possession by mortgagee when debt is due.

WEST VIRGINIA.

Mortgages and Deeds of Trust of Real and Personal Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, but contain a clause of defeasance.

Foreclosed or enforced by a decree of a court of equity. No time is specified for such foreclosure or enforcement.

Married women should be joined in the conveyance in order to bar their dower and homestead exemption, except when the conveyance is given to secure purchase-money.

Recording. Same as DEEDS, above,

Release or satisfaction is effected by a short deed of release.

Mortgages or trust-deeds of personal property are the same as those in real estate, where possession is not transferred.

WISCONSIN.

Mortgages of Real Property.

Acknowledgment. Same as DEEDS, above.

Executed same as DEEDS, above, except the addition of conditions, etc. Any conveyance intended as a security is deemed a mortgage.

Foreclosure is by action or advertisement under power.

Married women need not join in a purchase-money mortgage in order to bar dower. No mortgage of a homestead is valid unless the wife joins in its execution.

Recording. Same as DEEDS, above.

Redemption may be effected within one year after sale, if the foreclosure is by advertisement.

Satisfaction, release, or discharge of the mortgage may be by cancellation, by receipt indorsed thereon, by an entry on the margin of the record, signed by the mortgagee, his assignee, or personal representative, etc., in presence of the register of deeds.

On proof of payment, the circuit court may order the mortgage discharged, and order a record of such discharge to be made by the register of deeds.

See GENERAL FORMS, below.

Mortgages of Personal Property.

Chattel mortgages are executed in the ordinary form, and will be void as against third parties unless accompanied by the immediate delivery and continued charge of possession of the mortgaged property, or unless the mortgage or a true copy thereof be filed with the clerk of the town where the mortgagor resides; if the mortgagor is a non-resident, then such mortgage or copy must be filed in the town where the property was when it was executed. Chattel mortgage of exempt property must be signed by the wife, in presence of two witnesses.

WYOMING.

Mortgages executed same as deeds. Foreclosure by decree of court, or advertisement under power in mortgage. Mortgagee may redeem within six months; after that, any creditor within nine. Chattel mortgages foreclosed by advertisement under power of sale. Must be filed. Expire within sixty days after due, unless foreclosed or renewed.

MORTGAGES OF REAL PROPERTY—VARIOUS DETAILS.

Introductions in Mortgages of Real Property.

See DEEDS, above.

The introduction to a conveyance, deed, lease, mortgage, etc., is called the "Testatum" clause. See the text preceding DEED FORMS, above.

A. B. (*or* A. B. and W. B. his wife [conveys, *or*] mortgages, etc.

I (*or* we, A. B., of ——, and W. B. his wife), for a consideration, etc. (convey, *or*) mortgage, etc.

This (conveyance, *or* indenture, *or* mortgage, bipartite, tripartite, quadripartite, etc.), witnesseth:

That, etc.

This (conveyance, *or* indenture, *or* mortgage, etc.), made this —— day of ——, witnesseth:

That, etc.

This (conveyance, *or* mortgage, etc.), made this —— day of ——, by A. B., of ——, to C. D., of ——, witnesseth:

That, etc.

This (conveyance, *or* indenture, *or* mortgage, etc.), made this —— day of ——, in ——, by A. B., of —— county, in the State (*or* Commonwealth) of ——, farmer, to C. D., of —— county, in the State (*or* Commonwealth) of ——, merchant, witnesseth:

That, etc.

Know all men by these presents:

That this (conveyance, *or* indenture, *or* mortgage, etc., *as above*).

Know all men by these presents:

That A. B., of ——, for a consideration of ——, etc., the receipt of which, etc., has conveyed and mortgaged, and does by these presents convey and mortgage unto C. D., of ——, etc.

This (conveyance, *or* indenture, *or* mortgage, etc.), made and entered into this —— day of ——, by and between A. B., of —— county, and the State of ——, party of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That, etc.

Saving and excepting, etc.

To all to whom these presents may come, greeting (*or* To all whom it may concern):

Know ye:

That this (conveyance, *or* indenture, *or* mortgage, etc.), by and between the ——, a corporation existing under the laws of the State (*or* Commonwealth) of ——, of the first part, and C. D., E. F., and G. H., a company doing business under the firm-name and style of the D., F., H. —— manufacturing company, of the second part, witnesseth.

That, etc.

Premises in Mortgages of Real Property.

See other Conveyances.

1. STATEMENT OF PARTIES.
See DEEDS, ante, p. 299, above.

2. RECITALS FOR EXPLANATION.
See DEEDS, ante, p. 299, above.

3. DESCRIPTIONS OF PROPERTY MORTGAGED, ETC., WITH EXCEPTIONS, ETC.
See DEEDS, ante, p. 300, above.

Habendum in Mortgages of Real Property.

See DEEDS, above.

The habendum limits and defines what estate the grantee is to have in the premises conveyed, as, an estate for lives, years, or a less period; an absolute or conditional, joint or several, restricted, or limited estate, etc., etc. In mortgages the estate of the mortgagee depends upon some condition or default, etc.

See CONDITIONS, etc., below.

HABENDUM—IN FEE SIMPLE, ETC.

To have and to hold the same forever.

Provided always, etc.

ANOTHER.

To have and to hold the same, together with the appurtenances and every part thereof, forever.

Upon the following conditions, etc.

ANOTHER.

To have and to hold the same, with the appurtenances, unto the said C. D., his heirs and assigns, in fee simple, forever.

Provided, however, That, etc.

ANOTHER.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns, forever.

Now if said —— (*or* party of the —— part) shall, etc.

ANOTHER.

To have and to hold the said messuage or tenement and tract of —— acres of land, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances and every part thereof, unto the said C. D., his heirs and assigns, to the only proper use and behoof of the said C. D., his heirs and assigns forever.

Provided always, and these presents are upon these express conditions, that, etc.

Reddendum or Reservation in Mortgages of Real Property.

See other Conveyances.

The reddendum (or reservation) is that clause in a conveyance, deed, lease, mortgage, etc., by which the grantor reserves something new to himself out of that which he granted before. It usually follows the habendum.

See REDDENDUM IN DEEDS, p. 300, above, and REDDENDUM IN LEASES, p. 314, above.

Conditions and Provisos in Mortgages of Real Property.

See DEEDS, above.

The condition in a conveyance or deed, deed of trust, lease, mortgage, etc., is a qualification or restriction annexed to the conveyance, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. "Subject to," or "Subject, nevertheless, to," or "On condition," "Provided," "Provided always," "Provided nevertheless," etc. Thus the property conveyed may be subject to the payment of an annuity, an easement, an incumbrance, a mortgage, or other condition, qualification, restriction, etc.

See DESCRIPTION, ETC., WITH EXCEPTIONS, and HABENDUM and REDDENDUM, above; MORTGAGES, TRUST DEEDS, below; and CONDITIONS AND PROVISOS IN LEASES, ante.

Covenants in Mortgages of Real Property.

See DEEDS, above.

COVENANT—ASSIGNMENT.

See ASSIGNMENT—POWER TO ASSIGN, below.

COVENANT—ASSURANCE, ETC.

That after default shall be made in payment of said sum and interest, or any part thereof, said A. B., his heirs, and every other person having or claiming any right, title, or interest in said premises, or any part thereof, shall, at the costs and charges of said A. B., make, execute, and deliver unto said C. D., his heirs, executors, administrators, or assigns, upon lawful demand therefor, all and every further conveyance, deed, and assurance whatsoever for the better and more perfect assuring and confirming said premises unto him, them, or any of them (freed and discharged from any and all conditions and provisos hereinbefore contained for the redemption of said premises, and all other equity of redemption whatsoever.)

COVENANT—DEFAULT.

See ENTRY, SALE, ETC., below.

COVENANT—RECEIPT, GOOD, ETC.

See COVENANT—RECEIPT, ETC., below.

COVENANT—ENJOYMENT OF PREMISES UNTIL DEFAULT.

That until default shall be made in the payment of said sum of —— dollars, and interest for the same, as aforesaid, or some part thereof, contrary to the true intent and meaning of these presents, it shall and may be lawful for said A. B., his heirs and assigns, peaceably and quietly to hold and enjoy said premises, with their appurtenances, and receive the rents and profits thereof, to his (and their) own use and benefit, without any interruption or hindrance whatever by said C. D., his heirs or assigns, or any other person or persons whomsoever, lawfully claiming from or under him or them.

ANOTHER.

That said A. B., his heirs, etc., shall peaceably and quietly hold and enjoy said premises, with the appurtenances, and collect and receive the rents, issues, and profits thereof, to his and their own proper use and behoof, without any account to be made or given touching or concerning the same, and without disturbance or hindrance of or by said C. D., his heirs, executors, administrators, or assigns, or either or any of them, until default shall be made in payment of said sum of —— dollars, and interest, or some part thereof.

ANOTHER.

That until default in the payment of said sum or interest, or other default herein provided, said mortgagee shall have no right to enter and take possession of said premises.

COVENANT—ENTRY ON DEFAULT.

That in case default shall be made in the payment of said sum of —— dollars or interest, or any part thereof, contrary to the conditions, covenants, or provisions herein, for the payment thereof, then and from thenceforth it shall and may be lawful to and for said C. D., his heirs and assigns, to enter said premises, and the same thenceforth quietly to hold and enjoy, and to receive and take all the rents, issues, and profits thereof, to his and their own use and benefit, without any disturbance or interruption whatever by or from said A. B., his heirs, or assigns, or any other person or persons whomsoever; and that freely acquitted and discharged from and against all incumbrances whatsoever.

ANOTHER—(MORTGAGE OF LEASED PREMISES).

That it shall and may be lawful for said C. D., his heirs, executors, etc., or any of them, immediately from and after any breach or default made in the conditions or provisos aforesaid, to enter into and upon said premises, and every part thereof, with the appurtenances, and the same from thenceforth (under the rents, covenants, conditions and agreements in said lease reserved and contained), to have, hold, and enjoy, and the rents, issues and profits thereof, and every part and parcel thereof, to have, receive, and take (for and during all the residue and remainder of said term of —— by said lease granted, and then to come and unexpired), without any disturbance, hindrance, molestation, or obstruction whatsoever, by said A. B., his heirs, executors, administrators or assigns, or any of them, or any other person or persons whomsoever.

COVENANT—FIRE CLAUSE.

That said party of the first part shall keep the buildings erected and to be erected on the premises above conveyed insured against loss by fire, and assign the policy and certificates thereof to said party of the second part, his executors, administrators, or assigns.

That in default thereof said party of the second part, his executors, administrators, or assigns, shall effect such insurance, and the premium and premiums, etc., paid for effecting the same, shall be a lien on said mortgaged premises, added to the amount of said bond or obligation, and secured by these presents.

COVENANT—INCUMBRANCES FREE FROM.

That said premises, and all and singular the appurtenances hereinbefore mentioned and conveyed, are free from all incumbrances of what nature or kind soever.

ANOTHER—WHEN LEASED PREMISES ARE MORTGAGED.

That said premises, and all and singular the appurtenances hereinbefore mentioned and assigned, now are, and from henceforth during the residue of said term of ——, by said lease granted, shall remain and continue unto said C. D., his executors, etc., discharged and free from all charges and incumbrances of all and every kind and nature whatsoever.

That the rents and covenants in said lease reserved and contained, which from any such breach or default in the payment of the money according to the condition or proviso aforesaid, shall grow due on the tenant's and lessee's part and behalf, to be paid and performed, and also the lease bearing date the —— day of ——, made by said ——, of the hereby mortgaged premises, which rent, from and after any such breach or default shall happen as aforesaid, shall become due and payable (and be forfeited) unto said C. D., his executors, administrators, and assigns.

COVENANT—LEASE MORTGAGED IS VALID.

That said lease at the time of the (execution, *or*) sealing and delivering of these presents is a good, sufficient, valid and effectual lease in law: that it is unforfeited and unsurrendered, and that said C. D. shall hold and enjoy said premises for and during the remainder of said term herein granted.

COVENANT—PAYMENT OF MONEY.

That said A. B, for himself, his heirs, executors, and administrators, does covenant, promise, and agree, to and with said C. D., his executors, administrators, and assigns, that he shall and will well and truly pay or cause to be paid said sum of —— dollars, with interest for the same, after the rate, and at the time and in the manner above limited for the payment thereof, and according to the true intent and meaning of the above-written condition and proviso.

COVENANT—PAYMENT OF TAXES, ETC.

That said A. B., his heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter, and until the sum of —— dollars, and interest thereon, shall be fully paid unto said C. D. as aforesaid, pay and discharge all and all manner of taxes and assessments which shall be laid or assessed thereupon, or upon any part thereof, or upon said C. D., his executors, administrators, or assigns, for or in respect thereof, or any part of the same, by authority of the (Congress of the United States, general assembly, *or* legislature, *or* court, *or* council, etc., etc., of the commonwealth, *or* State, *or* municipality, etc.)

That he will save harmless and keep indemnified said C D., his executors, etc., of and from all actions, charges, and damages which shall or may happen in anywise howsoever, by reason of the non-payment of said taxes or assessments.

COVENANT—POWER TO ASSIGN.

Power to Assign the Lease Mortgaged.

That said A. B. now has in himself full power and good right to assign, grant, and mortgage said lease and the premises therein demised unto said C. D., his executors, etc., in the manner and form aforesaid.

COVENANT—REASSIGNMENT UPON PAYMENT, ETC.

That upon full payment and discharge of said sum of —— dollars (and all taxes and assessments that shall be set upon said C. D., his executors, etc., in respect thereof, according to the condition or proviso aforesaid, and the true intent of these presents), he, the said C. D., his executors, etc, shall and will at any time after, upon the lawful request and at the proper costs and charges of said A. B., his executors, etc., deliver up this present conveyance (*or* mortgage) to be cancelled and made void, or otherwise reassign or reconvey all the right, title and interest in or to said premises therein conveyed unto said A. B., his executors, etc., or such other persons as he or they shall, by writing, under his or their hands (and seals), appoint or direct, by writing, under his or their hand and seal (and likewise to deliver up to him or them the said lease, made by ——, to said A. B.), freed and discharged of and from all incumbrances of whatever nature or kind soever.

COVENANT—RECEIPT TO BE A GOOD DISCHARGE.

For Purchase-Money.

That the receipt or receipts of said C. D., or his executors, administrators or assigns, shall be a good and sufficient discharge to the purchasers of said premises, or any part thereof, for their purchase-money, and that such purchasers, their heirs, executors, or administrators, shall not after payment thereof, and having such receipt, be liable to see to its being applied upon or for the trusts or purposes of ——, in these presents expressed, or by the same intended, or in any manner howsoever unsuitable, or liable for any loss, misapplication, or non-application of such purchase-money, or any part thereof (or be in any manner obliged to inquire into the necessity, expediency, or authority of or for any such sale or sales).

COVENANT—RIGHT TO CONVEY.

That he, the said A. B., now has in himself good right and full power to give, grant, sell and convey the premises above (*or* hereinbefore) granted unto and to the use of said C. D., his heirs and assigns, in the manner aforesaid and according to the intent of these presents.

COVENANT—SALE ON DEFAULT, ETC.

That if default shall be made in the payment of said sum of money above mentioned, or any part thereof, or of the interest that may grow due thereon, or of any part thereof, and remain due and unpaid at the expiration of —— days after the same shall become due and payable according to the condition of said bond, then, and from thenceforth it shall be lawful for said party of the second part, his executors, administrators and assigns, to consider the whole of said principal sum and sums as aforesaid, as immediately due and payable, and to enter into and upon all and singular said premises hereby granted, and to sell and dispose of the same (and all benefit and equity of redemption of said party of the first part, his heirs, executors, administrators, or assigns therein) at public auction according to law.

That the attorney of said party of the first part is by these presents duly authorized, constituted, and appointed for that purpose to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in law for the same, in fee simple; and out of the moneys arising from such sale to retain the principal and interest which shall then be due and owing on said bond or obligation, together with the costs and charges of the sale of said premises, returning the overplus of said purchase-money, if any there shall be, unto said party of the first part, his heirs, executors, administrators or assigns.

That said sale so made shall forever be a perpetual bar, both in law and equity, against said party of the first part, his heirs and assigns, and all other persons claiming or to claim said premises, or any part thereof, by, from, or under him, them, or either of them.

COVENANT—SALE, ETC.—ON DEFAULT, ETC.

Provided always, and it is hereby expressly agreed between the parties hereto:

That if default shall be made in the payment of said sum of —— dollars, and interest, or any part thereof, then and in such case it shall and may be lawful for the said C. D., his heirs or assigns, immediately on or at any time thereafter, without further authority from said A. B., his heirs or assigns, for that purpose than is herein contained, either to foreclose the equity of redemption of said A. B., or without hindrance, molestation, or opposition, to make sale absolutely, or otherwise dispose of all and every the said mortgaged premises, or any or either of them, or any part thereof, with their appurtenances; either together or in separate parcels, at one or at separate times, at his or their discretion, and at or for such sum or sums of money as he or they shall judge sufficient at any such sale or sales to buy the same or any part thereof, and re-sell the same without being answerable for any loss hereby to be sustained, and to convey

and assume all and singular the premises which shall be sold, to the purchasers thereof, his or their heirs, executors, administrators, appointees or assigns, or otherwise, as he or they shall direct or require, freed and absolutely discharged of and from all equity and right of redemption whatsoever.

ANOTHER.

That said C. D., his heirs, etc., may, at the expiration of —— from this date, or at any time thereafter, at his or their option, sell and dispose of said premises at public auction, giving due notice thereof, and shall apply the proceeds of such sale to pay said sum of —— dollars, and interest thereon, and to defray the necessary expenses of such sale; and if, after paying said sum and interest and expenses, there should remain any balance or surplus of said proceeds, then to pay the same to said A. B., or his legal representative.

COVENANT—SALE—NOTICE OF, ETC.

Provided always, nevertheless:

That no sale, or public notice or advertisement of or for any sale of said premises, or any part thereof, shall be made or given by said C. D., his heirs, etc. (nor any means by him or them taken for obtaining possession of, or receiving of the rents of said premises, or any part thereof), until the expiration of —— calendar months after notice in writing of his or their intention to sell (obtain possession, *or* receive the rents of) said premises shall have been given, said A. B., his heirs or assigns, or left at his or their last or usual place of abode.

For other COVENANTS, see MORTGAGE FORMS, below.

Conclusions in Mortgages of Real Property.

See DEEDS, above.

Signed (and sealed); *or*,

Signed, sealed, and acknowledged; *or*,

Witness our hands (and seals); *or*,

Given under our hands (and seals); *or*,

In witness whereof, we hereunto set our hands, etc.; *or*

In witness whereof, the parties to these presents have hereunto set their hands, etc.; *or*,

In witness whereof, we have hereunto set our hands (and affixed our seals) (at ——), this —— day of ——; *or*,

In witness whereof, we have hereunto set our hands (*or* subscribed our names), the day and year first (*or* last) above written; *or*,

In witness whereof, A. B., the party of the first part, and C. D., the party of the second part, in their own proper persons have hereunto respectively and severally set their hands and seals, this —— day of —— (*or* the day and year first, *or* last) above written.

Signature (and Seals).

See DEEDS, above.

Attestation or Witness Clauses.

See DEEDS, above.

Acknowledgment of Mortgages of Real Property.

All instruments for the conveyance, or incumbrance, or in anywise affecting real estate or any interest therein, must be recorded in the proper office for the recording of deeds, etc., in order to affect judgment creditors, subsequent purchasers, mortgagees, etc. See GENERAL STATUTES.

SHORT FORM MORTGAGES OF REAL PROPERTY.

MORTGAGE—SIMILAR TO CHANCELLOR KENT'S DEED.

See SHORT FORM DEEDS, p. 303, ante.

I, A. B., in consideration of ——, to me paid by C. D., do mortgage unto C. D. (and his heirs) the lot of land (bounded *or* described), etc.

To secure the repayment (*or* performance) of (*state what, amounts, places, times, etc., etc.*)

Witness my hand and seal, this —— day of ——.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

MORTGAGE—SIMILAR TO CALIFORNIA DEED.

I, A. B., grant and mortgage to C. D. all that real property, situated in —— county, of the State of California, bounded (*or* described) as follows, etc.

To secure the repayment (*or* performance), etc.

Witness my hand, this —— day of ——.

A. B.

For form of ACKNOWLEDGMENT, see that title.

MORTGAGE—INDIANA FORM.

See INDIANA, above.

A. B. mortgages and warrants to C. D. (*describing premises*).

To secure the repayment of (*state what, the amounts, modes, places, time or times of payment, etc., etc.*)

Dated, signed, and sealed, this —— day of ——.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

MORTGAGE—AFTER VIRGINIA AND TEXAS DEED.

A. B. doth bargain, sell, and mortgage unto C. D. (*here follows a description of the real estate mortgaged.*)

To secure the repayment (*or* performance) of, etc.

Witness the following signature and seal.

A. B. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Covenant to Pay, and Power to Sell on Default.

This (conveyance, *or* indenture, *or* mortgage), made this —— day of ——, by (*or* between) A. B., of ——, of the first part, to (*or* and) C. D., of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, all (*here follows the description of the premises mortgaged*); together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended as a mortgage, to secure the payment of the sum of —— dollars, in —— from the day of the date of these presents, with —— interest, according to the condition of a certain bond, dated this day, executed by the said A. B., to the said party of the second part; and these presents shall be void if such payment be made.

But in case default shall be made in the payment of the principal, or interest, as above provided, then the party of the second part, his executors, administrators and assigns, are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns, etc.

In witness whereof, said party of the first part has hereunto set his hand (and seal) the day and year first above written.

[*Signature (and seal.)*]

Executed in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

To all people to whom these presents shall come, greeting: Know ye:

That I, A. B., of ——, for the consideration of —— dollars, received to my full satisfaction, do give, grant, bargain, sell and confirm unto the said C. D. (*here follows the description of the premises mortgaged*):

To have and to hold the above-granted and bargained premises, with the appurtenances thereof, unto the said grantee, his heirs and assigns, to his and their proper use and behoof, forever.

And also I, the said grantor, do, for myself, my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that at and until the ensealing of these presents, I am well seized of the premises in a good, indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written; and that the same are free from all incumbrances whatsoever.

And I, the said grantor, do, by these presents, bind myself and my heirs forever, to warrant and defend the above-granted and bargained premises to him, the said grantee, and his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, I have hereunto set my hand (and seal) this —— day of ——.

The condition of this deed is such, that whereas the said A. B. is justly indebted to the said C. D. in the sum of —— dollars, as evidenced by his promissory note for said sum, of even date herewith, payable to the said grantee or order —— after date, with interest:

Now, therefore, if said note shall be well and truly paid, according to its tenor, then this deed shall be void; otherwise, to remain in full force and effect. [*Signature (and seal.)*]

Signed, sealed, and delivered }
in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Covenants against Incumbrances: to Insure; to Pay; and Warrant and Defend, etc.

Know all men by these presents:

That I, A. B., of ——, in consideration of the sum of —— dollars, to me paid by C. D., of ——, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said C. D., his heirs and assigns, forever, a certain piece or parcel of land, situate (*here follows the description*), together with all the privileges and appurtenances to the same in anywise appertaining and belonging:

To have and to hold the same to the said C. D., his heirs and assigns, to his and their use and behoof forever:

And I, the said A. B., for myself, my heirs, executors, and administrators, do covenant with the said C. D., his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C. D., as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said C. D., his heirs and assigns forever, against the lawful claims and demands of all persons.

Provided nevertheless, that if the said A. B., his heirs, executors, or administrators, shall pay unto the said C. D., his executors, administrators or assigns, the said sum of ——, with lawful interest, on or before the —— day of ——, and shall keep the premises insured against fire in a sum not less than —— dollars, for the benefit of the said C. D., his executors, etc., in such insurance office in ——, as the said C. D. shall approve, then this deed, as also (a certain promissory note bearing even date with these presents, signed by the said A. B., whereby for value received he promises to pay to the said C. D the said sum and interest at the times aforepaid, shall be absolutely void to all intents and purposes), *or* (a certain obligation or bond, bearing even date with these presents, given by the said A. B. to the said C. D. in the penalty of —— dollars, conditioned to pay the first mentioned sum and interest at the time aforesaid, shall both be void).

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, all the following described real estate, situated in the county of ——, and State of ——, to wit: (*describing it*).

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, forever.

Provided always, and these presents are upon this express condition, that whereas, said A. B. has this day executed and delivered his certain promissory note in writing to said party of the second part, of which the following is (*or* are) copies (*setting out a copy or abstract*).

Now, if said party of the first part shall pay or cause to be paid to said party of the second part, his heirs or assigns, said sum of money in the above-described note mentioned, together with the interest thereon, according to the terms and tenor of the same; then these presents shall be wholly discharged and void; and otherwise shall remain in full force and effect.

But if said sum or sums of money, or any part thereof, or any interest thereon, is not paid when the same is due; and if the taxes and assessments of every nature which are or may be assessed and levied against said premises or any part thereof are not paid when the same are by law made due and payable, then the whole of said sum and sums, and interest thereon, shall, by these presents, become due and payable, and said party of the second part shall be entitled to the possession of said premises.

In witness whereof, the said party of the first part has hereunto set his hand, the day and year first above written. A. B.

Executed in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Waiver, Attorney's Fees, etc.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, in the State of ——, of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, etc. (*this paragraph is the same as in the form above*).

To have and to hold the same, together, etc. (*this paragraph is the same as in the form above*).

Provided always, and these presents, etc. (*this paragraph is the same as in the form above*).

Now, if said party of the first part shall pay or cause to be paid to said party of the second part, his heirs or assigns, said sum of money in the above-described note mentioned, together with the interest thereon, according to the terms and tenor of the same; then these presents shall be wholly discharged and void; and otherwise shall remain in full force and effect.

But if said sum or sums of money, or any part thereof, or any interest thereon, is not paid when the same is due; and if the taxes and assessments of every nature, which are or may be assessed and levied against said premises, or any part thereof, are not paid when the same are by law made due and payable, then the whole of said sum and sums, and interest thereon, shall and by these presents become due and payable, and said party of the second part shall be entitled to the possession of said premises.

And said party of the first part further agree, upon default of the above covenants and conditions, or any or either of them, to pay the sum of —— dollars, for mortgagee or his assigns' attorney's fees for foreclosure of this mortgage, which sum shall be a lien upon said premises, added to the amount of said obligation, and secured by these presents, and shall be included in and operate as a part of the judgment upon foreclosure of this mortgage.

Appraisement, exemption, and valuation are waived.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

With Interest, Tax, Insurance, Attorney's Fees, Waiver of Appraisement, Exemption and Valuation, with Power of Assignment, Sale Clauses, etc.

This indenture, made this —— day of ——, between A. B., of —— county, in the State of ——, party of the first part, and C. D., of —— county, in the State of ——, of the second part, witnesseth:

That said party of the first part, in consideration of the sum of —— dollars, etc. (*this paragraph is the same as in the form above*).

To have and to hold the same, together, etc. (*this paragraph is the same as in the form above*).

Provided always, and these presents are upon this express condition,

That whereas, said A. B. has this day executed and delivered his certain promissory note in writing to said party of the second part, of which the following is (*or* are) copy (*here copy the note or notes*).

Now, if said party of the first part shall pay or cause to be paid to said party of the second part, his heirs or assigns, said sum of money in the above-described note mentioned, together with the interest thereon, according to the terms and tenor of the same; and keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in at least the sum of —— dollars, and by insurers, and at some insurance office to be approved by said party of the second part, and assign the policy and certificates thereof to the said party of the second part (and in default of said insurance it shall be lawful for said party of the second part to effect such insurance, and the premium or premiums paid for effecting the same, together with the costs and charges incident thereto, with interest thereon at the rate of —— per cent. per annum, from the date of payment thereof until paid, shall be a lien upon said mortgaged premises, added to the amount of said obligation, and secured by these presents, and shall be included in and operate as a part of the judgment upon foreclosure of this mortgage), then these presents shall be wholly discharged and void; and otherwise shall remain in full force and effect.

But if said sum or sums of money, or any part thereof, or any interest thereon, is not paid when the same is due; and if the taxes and assessments of every nature which are or may be assessed or levied against said premises or any part thereof are not paid when the same are by law made due and payable; and if said insurance is not effected, and the policy and certificates are not assigned, as aforesaid, then, and upon default of these provisions and covenants, or any or either of them, the whole of said sum and sums, and interest thereon, shall and by these presents become due and payable, and said party of the second part shall be entitled to the possession of said premises.

And the said party of the first part further agree, upon default of the above covenants and conditions, or any or either of them, to pay the sum of —— dollars, for the mortgagee or his assigns' attorney's fees for foreclosure of this mortgage, which sum shall be a lien upon said premises, added to the amount of said obligation, and secured by these presents, and shall be included in and operate as a part of the judgment upon foreclosure of this mortgage.

Appraisement, exemption, and valuation are waived.

In witness whereof, the said party, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—General Form.

In which the mortgagor waives his right under the act of assembly or legislature, so that on his default, for thirty days, to pay any interest falling due, the whole debt (principal and interest) shall become due and collectable immediately, and the mortgagee shall have the right to issue a writ of scire facias, and at once proceed to collect the whole sum due.

This (conveyance, *or* indenture, *or*) mortgage, made the —— day of ——, in the year of our Lord ——, between A. B., of (the city of ——), in —— county, and State (*or* Commonwealth) of ——, of the first part, and C. D., of said city, county, and State (*or* Commonwealth), aforesaid, of the other part, witnesseth:

That whereas the said A. B., in and by a certain obligation or writing obligatory, under his hand and seal duly executed, bearing even date herewith, stands bound unto the said C. D. in the sum of (five thousand) dollars, lawful money of the United States of America, conditioned for the payment of the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in (five) years from the date thereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date thereof, and thereafter (half-yearly) from that day, without any fraud or further delay:

Provided, however, and it is thereby expressly agreed:

That if at any time default shall be made in the payment of interest on said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., or his executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding, as in and by the said in part recited obligation and the condition thereof, relation being thereunto had, may more fully and at large appear:

That the said A. B., as well for and in consideration of the aforesaid debt or sum of (two thousand and five hundred) dollars, and for the better securing the payment of the same, with interest, unto the said C. D., his heirs, executors, administrators, and assigns, as well in discharge of the said in part recited obligation, as for and in consideration of the further sum of one dollar, unto the said A. B. in hand well and truly paid by the said C. D., at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said C. D., and his heirs and assigns, all that messuage, piece or parcel of land, etc. (*here give the description of the land conveyed*); together with all and singular the rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever, thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

To have and to hold the said messuage, piece or parcel of land above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said C. D., his heirs and assigns, to and for the only proper use and behoof of the said C. D., his heirs and assigns, forever.

Provided always, nevertheless, that if the said A. B., his heirs, executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, the aforesaid debt or sum of (two thousand five hundred) dollars on the day and time hereinbefore mentioned and appointed for payment of the same, together with lawful interest as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth, as well this present indenture and the estate hereby granted, as the said in part recited obligation, shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Provided further, in case of default in the payment of the interest at any time falling due, for the space of thirty days as aforesaid, or any part thereof, that thereupon it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out forthwith a writ of scire facias

upon this present indenture of mortgage, and to proceed at once thereon to recover the principal moneys hereby secured, and all interest thereon, according to law, without further stay, any law or usage to the contrary notwithstanding.

And further, the said mortgagor doth hereby, for himself, his heirs, executors, administrators, and assigns, expressly waive, relinquish, and dispense unto C. D., the said mortgagee, his heirs, executors, administrators, and assigns, all and every provision and provisions in the act of assembly (*or* legislature) of the State (*or* Commonwealth) of —— (Approved *or*) passed on the —— day of ——, entitled "An act," etc., so far as the same may exempt the said hereby mortgaged lot of land and appurtenances, and any part thereof, from levy and sale, by virtue of any writ of execution that may be issued upon any judgment that may be obtained or entered in any action for the recovery of the mortgage-money herein mentioned to be paid, and any interest due thereon, and of the costs of such action and execution; so that it shall be lawful for C. D., the said mortgagee, his heirs, executors, administrators, or assigns, to proceed by execution to levy upon and sell the said hereby mortgaged lot of ground, and every part thereof, with the appurtenances as aforesaid, in the same manner, and to the same extent, and to the same effect, to all intents and purposes, as if the said act of assembly (*or* legislature) had not been (approved *or*) passed.

In witness whereof, the said parties to these presents have interchangeably set their hands and seals hereunto. Dated the day and year first above written.

[*Witnesses.*] (*Signatures and Seals.*)

BOND TO ACCOMPANY THE ABOVE MORTGAGE.

Know all men by these presents:

That I, A. B., of (the city of) ——, in —— county, and the State (*or* Commonwealth) of ——, am held and firmly bound unto C. D., of the same city and State aforesaid, in the sum of (five thousand) dollars, lawful money of the United States of America, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with my seal, and dated the —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that if the above-bounden A. B., or his heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above-named C. D., or his certain attorney, executors, administrators, or assigns, the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in (five) years from the date hereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date hereof, and thereafter (half-yearly) from that day, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue:

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest on the said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., or his administrators or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding. A. B. [*Seal.*]

Signed, sealed, and delivered in presence of }

WARRANT OF ATTORNEY TO ACCOMPANY THE ABOVE BOND, WHERE IT IS DESIGNED TO AUTHORIZE THE ENTERING OF JUDGMENT.

To A. A., Esq., attorney of the —— court, at ——, in the county of ——, in the State (*or* Commonwealth) of ——, or to any other attorney of the said court, or of any other court, there or elsewhere:

Whereas A. B., in and by a certain obligation bearing even date herewith, does stand bound unto C. D. in the sum of (five thousand) dollars, lawful money of the United States of America, conditioned for the payment of the just sum of (two thousand and five hundred) dollars, like lawful money as aforesaid, in five years from the date thereof, together with lawful interest for the same, the first payment of interest to be made on the —— day of —— next ensuing the date thereof, and thereafter (half-yearly) from that day; provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest on the said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., his executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding:

These are to desire and authorize you, or any of you, to appear for me, my heirs, executors, or administrators, in the said court or elsewhere, in an action of debt there or elsewhere brought or to be brought against me, the said A. B., my heirs, executors or administrators, at the suit of the said C. D., his executors, administrators or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and to confess judgment thereupon against me, the said A. B., my heirs, executors, or administrators, for the sum of (five thousand) dollars, lawful money of the United States of America, debt, besides costs of suit, by *non sum informatus*, *nihil dicit*, or otherwise, as to you shall seem meet; and for your or any of your so doing, this shall be your sufficient warrant.

And I do hereby, for myself, my heirs, executors, and administrators, remise, release, and forever quit-claim unto the said C. D., his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, in the year of our Lord ——. A. B. [*Seal.*]

Signed, sealed, and delivered in presence of }

Mortgage of Real Property—Assignment.

Know all men by these presents:

That I, C. D., of ——, in —— county, State of ——, the mortgagee named in a certain mortgage given by A. B.. of ——, in —— county, State of ——, to said C. D., to secure the payment of —— dollars and interest, dated the —— day of ——, recorded in the volume ——, on page ——, of the registry of deeds for the county of ——, in consideration of the sum of —— dollars to me paid by E. F., of ——, in —— county, State of ——, the receipt of which is hereby acknowledged, do hereby sell, assign, transfer, set over and convey unto said E. F., his heirs and assigns, said mortgage and the real estate thereby conveyed, together with the promissory note, debt and claim thereby secured, and the covenants therein contained.

To have and to hold the same to him, the said E F., and his heirs and assigns, to his and their use and behoof forever: subject, nevertheless, to the conditions therein contained (and to redemption according to law).

In witness whereof, I have hereunto set my hand (and seal), this —— day of ——.

[*Signature.*] [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title

Mortgage of Real Property—Assignment.

With Power of Attorney.

Know all men by these presents:

That I, C D., of —— county, and State of ——, party of the first part, in consideration of the

sum of —— dollars, to me in hand paid by E. F., of —— county, and State of ——, of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators, and assigns, a certain mortgage, bearing date the —— day of ——, made by A. B., of —— county, and State of —— (*here describe the mortgage, and state the volume and page where it is registered*), to which reference may be made, together with all the right, title, interest, and estate of said party of the first part, in and to the premises described and conveyed in and by said mortgage.

Together with the bond (*or* note) therein described and the money due and to grow due thereon, with the interest accruing or accrued.

To have and to hold the same, unto the said party of the second part, his executors, administrators, and assigns, for his and their use, subject only to the proviso in the said mortgage mentioned:

And I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorney, irrevocably in my name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Assignment.

By a Corporation.

Know all men by these presents:

That the —— (*give legal name of the corporation assigning*), existing as a corporate body, by and under the laws of the State or of ——, of the first part, for and in consideration of the sum of ——, lawful money of the United States, to the said corporation paid by E. F., of ——, etc., of the second part, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain mortgage, bearing date the —— day of ——, made by A. B., of ——, etc. (*here briefly describe the mortgage*), the same being duly registered in the office of the recorder (*or* register) of deeds for the county of ——, and State of ——, to which mortgage reference may be had.

Together with the (note *or*) bond or obligation therein described, and the moneys due, and to grow due thereon, with the interest:

To have and to hold the same unto the said party of the second part, his heirs and assigns, for his and their own use, subject only to the proviso in the said indenture of mortgage mentioned.

And the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their true and lawful attorney, irrevocable, in the name of the said parties of the first part, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as the said parties of the first part might or could do if these presents were not made.

In witness whereof, the said parties of the first part have caused their common seal to be affixed to these presents, and the same to be signed by their president and secretary (*or other officer*), this —— day of ——. (*Signature of officers.*)

[*Seal of corporation.*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage, Etc.—Bond.

Secured by a Mortgage.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, am held and firmly bound unto C. D., of of ——, in —— county, and State of ——, in the sum of (*insert the amount of the penalty, usually twice as much as the actual debt*), to be paid to the said C. D., his heirs, executors, administrators or assigns, and to this payment I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, this —— day of ——.

The condition of the above obligation is:

That if I, the said A. B., or my heirs, executors, or administrators, shall pay or cause to be paid unto the said C. D., the sum of —— (*here insert the actual amount of the debt or sum to be secured*), on the —— day of ——, with interest at the rate of —— per cent. per annum, payable six months from the date hereof, and every —— months afterwards, until the said sum is paid, then the above obligation shall be void and of no effect; and otherwise it shall remain in full force.

And I further agree and covenant, that if any payment of interest be withheld or delayed for —— days after such payment shall fall due, the said principal sum and all arrearage of interest thereon, shall be and become due immediately on the expiration of —— days, at the option of said C. D., his executors, administrators, or assigns. A. B. [*Seal.*]

Executed and delivered in presence of }

Mortgage of Real Property—Dower and Homestead Exemption Released.

Without Power of Sale and without Warranty.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of —— county, State of ——, and W., wife of said A. B., parties of the first part, and C. D., of —— county, State of ——, party of the second part, witnesseth.

That whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of ——, secured to be paid by a certain promissory note (*or* bond, *describing it*)

That the said parties of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said note (*or* bond) above mentioned; and also in consideration of the further sum of one dollar, to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all that (*here describe the premises conveyed*).

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining. And also all the estate, interest and claim whatsoever in law as well as in equity, which the parties of the first part have in and to the premises hereby conveyed unto the said party of the second part, and his heirs and assigns, and to their only proper use, benefit and behoof.

And the said parties of the first part hereby expressly waive, release, relinquish and convey unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State relating to the exemption of homesteads.

Provided always and these presents are upon this express condition:

That if the said party of the first part, or his heirs, executors, or administrators shall well and truly pay or cause to be paid to the said party of the second part, or his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned note (*or* bond) according to the true intent and meaning thereof, then in that case these presents and everything herein expressed shall be absolutely void and of no effect.

In witness whereof, the said parties of the first part hereunto set their hands (and seals) the day and year first above written. A. B. [*Seal*] W. B. [*Seal*]

Signed, sealed, and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Dower not Released.

With Power of Sale to Secure a Bond.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., party of the first part, and C. D., of ——, etc., party of the second part, witnesseth:

Whereas, the said A. B. is justly indebted to the said party of the second part, in the sum of —— dollars, secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of —— dollars, conditioned for the payment of the said first-mentioned sum of —— dollars, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises*). Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

Provided always, and these presents are upon this express condition:

That if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

And the said A. B., for himself and his heirs, executors, and administrators, does covenant and agree, to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond;

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, or assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction;

And out of the money arising from such sale, to retain the principal and interest, which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be) unto the said A. B., party of the first part, or his heirs, executors, administrators, or assigns, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

In witness whereof, the parties to these presents have hereunto set their hands (and seals), the day and year first above written.

A. B. [*Seal.*]
Sealed and delivered in the presence of } C. D. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—By Corporation.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., E. F., L. M., etc., the trustees of the —— society of the —— church in the town of, etc., of the first part, and C. D., of ——, etc., of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, does grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns, all (*here follows the description*); together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in —— from the day of the date of these presents, with —— annual interest; according to the condition of a certain bond bearing even date herewith, executed by the said party of the first part to the said party of the second part; and the said trustees of —— the society of the —— church in, etc., for themselves and their successors, do covenant and agree to pay unto the said party of the second part, his executors and administrators, or assigns, the said sum of money, and interest, as above mentioned, and as expressed in the condition of the said bond:

And if default shall be made in the payment of the said sum of money as above mentioned, or the interest that may grow due thereon, or of any part of either the said principal or interest, that then, and from thenceforth, it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, their successors, or assigns therein, at public auction, according to the act in such case made and provided:

And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of the sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, their successors or assigns: which sales, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, their successors and assigns, and against all other persons claiming, or to claim, the premises, or any part thereof, by, from, or under them, or any of them.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their corporate seal, the day and year first above written.

A. B.
E. F.
L. M. } TRUSTEES OF, ETC. [*Seal.*]
etc.

Sealed and delivered in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—To Corporation.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and the mayor (*or* aldermen,

and council of the city of ——, etc.), of the second part, witnesseth.

That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, their successors and assigns, forever, all (*here follows the description of the premises conveyed*); together with the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of the said party of the first part, of, in and to the same; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof:

To have and to hold the hereinbefore granted and described premises, with the appurtenances, unto the said party of the second part, their successors and assigns, to their only proper use, benefit, and behoof, forever.

This conveyance is intended as a mortgage to secure the payment of the sum of —— dollars, in manner following, to wit: etc.; according to the condition of a certain bond bearing even date herewith, executed by the said party of the first part to the party of the second part, and these presents shall be void if such payment be made.

But in case default shall be made in the payment of the principal or interest aforesaid, as above provided, then the party of the second part, their successors and assigns are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns.

And the said party of the first part does covenant, promise, and agree, to and with the said party of the second part, their successors and assigns, that he, the said party of the first part, shall and will, well and truly pay to the said party of the second part, their successors and assigns, the said sum of money, with the interest thereon, at the time, and in the manner hereinbefore mentioned, according to the condition of the said bond.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge or Release.

See RELEASE, ETC., SATISFACTION, ETC., below.

The debt secured by the mortgage dated the —— day of ——, and recorded with —— deeds, book ——, page ——, has been paid to me by A. B., and in consideration thereof I do discharge the mortgage and release the mortgaged premises to said A. B., and his heirs.

Witness my hand (and seal), this —— day of ——.

C. D. [*Seal.*]

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge or Release.

See RELEASE, ETC., SATISFACTION, ETC., below.

State of ——, county of ——, ss.

I, C. D., of ——, in —— county, State of ——, do hereby certify that a certain mortgage, bearing date the —— day of ——, made and executed by A. B., of ——, in —— county, State of ——, of and upon the following described premises, to wit: (*describing them*), and recorded in the office of ——, in —— county, State of ——, in book —— of mortgages, page ——, on the —— day of ——, at —— o'clock, in the — M., is paid. And I do hereby consent that the same be discharged of record.

Dated the —— day of ——.

Executed in presence of } C. D. [*Seal.*]
W. S. }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Discharge and Satisfaction.

By a Corporation.

See RELEASE, ETC., SATISFACTION, ETC., below.

We, —— (*give the legal name of the corporation*), a corporate body existing under and by virtue of the laws of the State (*or* Commonwealth) of ——, do hereby certify:

That a certain mortgage, bearing date the —— day of ——, in the year ——, made and executed by A. B., of and upon the following described premises, to wit: (*describing them*), and recorded in the office of the register (*or* recorder) of, in, and for the county of ——, in book —— of mortgages, page ——, on the —— day of ——, is paid.

In witness whereof, the said corporation has caused its corporate seal to be hereunto affixed, this —— day of ——. (*Officer's signature.*)

[*Corporate seal.*]

Executed in presence of }
W. S. }

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—To Executors.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and E. X. and T. R., both of ——, etc., executors of the last will and testament of D. D., deceased, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and the survivors and survivor, and his and their assigns, forever, all (*here follows a description of the premises mortgaged*); together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, the survivors and survivor, and his and their assigns, to their only proper use, benefit, and behoof, forever.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in manner following, to wit: (*give amounts, places, times, etc., etc., of payment*), according to the condition of a certain bond, bearing even date herewith, executed by the said party of the first part to the party of the second part; and these presents shall be void if such payment be made.

And the said party of the first part, for himself and his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, and the survivors and survivor, or his or their assigns, the said sum of money, and interest, as above mentioned, and as expressed in the condition of the said bond;

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then, and from thenceforth, it shall be lawful for the said party of the second part, the survivors or survivor, and his or their assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators or assigns therein, at public auction, according to the act in such case made and provided.

And as the attorney, or attorneys, of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or

purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale so to be made, shall forever be a perpetual bar, both in law and in equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from or under him, them, or any of them.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Extending a Mortgage.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, by and between C. D., of ——, in —— county, State of ——, the owner and holder of a certain promissory note (*or* bond) for the principal sum of —— dollars, given by A. B., of ——, in —— county, State of ——, and secured by a mortgage of certain real estate in ——, in —— county, and State of ——, dated —— day ——, and recorded in book ——, page ——, in mortgage record No. ——, for said county of ——, party of the first part, and the said A. B., party of the second part, witnesseth:

That the said parties, for themselves and their representatives, hereby mutually agree that the time for the payment of the principal of said note and mortgage debt shall be and the same is hereby extended for the term of —— years from the —— day of ——, and that the same is to bear interest from said date at the rate of —— per cent. per annum, payable on the —— day of —— and the —— day of ——, in every year, until said principal sum shall be fully paid.

And the said party of the second part hereby covenants and agrees:

That he will not require the holders of said note and mortgage to receive payment of said mortgage debt during said extended term;

That he will punctually pay the interest now due, and to grow due thereon, at the times and at the rate aforesaid;

That he will keep the mortgaged premises in good repair, and insured against fire, and the taxes thereon duly paid, according to the provisions of said mortgage;

And that at the expiration of said extended term he will pay the said mortgage debt, with all interest then due thereon.

It is expressly understood and agreed that nothing herein contained shall be construed to impair the security of said party of the first part, or his executors, administrators, or assigns, under said mortgage, or to affect or impair the lien on the real estate therein described which he has by virtue of said mortgage, nor affect or impair any rights or powers which he may have under the said note and mortgage for the recovery of the mortgage debt, with interest, in case of non-fulfilment of this agreement, or of any of the provisions hereof, by said party of the second part.

In witness whereof, the said parties have hereunto set their hands (and seals), the day and year first above written.

C. D. [*Seal.*]
A. B. [*Seal.*]

Signed, sealed, and delivered in presence of W. T., N. S.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Further Charge on Mortgaged Premises.

By Indorsement.

To all persons to whom these presents shall come:

Whereas the within-named A. B. has advanced and lent unto the within-named C. D. the further sum of —— dollars, the receipt of which is hereby acknowledged, and thereupon the said C. D. has entered into a bond or obligation of even date with these presents, to the said A. B., in the penal sum of ——, with a condition thereunder written for making void the same, upon payment by the said C. D., his heirs, etc., unto the said A. B., his executors, etc., of the sum of ——, with interest for the same at the rate of —— per cent. per annum, on the —— day.

Now know ye:

That for better securing unto the said A. B., his executors, etc., the payment of the said further sum of ——, and the interest thereof, on the said —— day, according to the condition therein expressed, he, the said C. D., does hereby, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said A. B., his executors, etc., that all and singular the premises within mentioned to be mortgaged (*use the words of the mortgage deed*) to the said A. B. and his heirs, with their appurtenances, shall stand charged with, and be a security unto him, the said A. B., his executors, etc., as well for the payment of the sum of ——, within mentioned, and the interest thereof, as also for the payment of the said further sum of ——, now lent and advanced as aforesaid, and the interest thereof, and that the said premises shall not be redeemed or redeemable, either in law or equity, until not only the said sum of —— before lent, and the interest thereof, but also the said further sum of —— now lent, and the interest thereof, shall be fully paid and satisfied unto the said A. B., his executors, etc., according to the true intent and meaning of the said bond or obligation, and of these presents.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Indemnity to Mortgagee.

Know all men by these presents:

That I, A. B., of ——, etc., as a collateral security to C. D., for my full performance of the covenant of indemnification hereinafter expressed, and according to the condition of this conveyance, and in further consideration of the sum of —— to me paid by the said C. D., the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold, and conveyed unto the said C. D., his heirs and assigns, forever, a certain piece or parcel of land, situate (*here follows the description*), together with all the privileges and appurtenances to the same in anywise appertaining and belonging:

To have and to hold the same to the said C. D., his heirs and assigns, to his and their use and behoof forever:

And I, the said A. B., for myself, my heirs, executors, and administrators, do covenant with the said C. D., his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C. D., as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said C. D., his heirs and assigns, forever, against the lawful claims and demands of all persons.

Provided always, nevertheless:

Whereas A. R., of ——, etc., as administrator de bonis non, of the goods and estate of D. D., late of ——, etc., has recovered judgment against the said C. D., as administrator de bonis non, of the goods and estate of D. X., late of ——, etc., for the sum of —— dollars;

And whereas, pursuant to a certain bond, heretofore given by me to E. X., executrix of the last will and testament of the said D. X., I, the said A. B., among other things, am holden and obliged for the payment of all and any debts which should appear against the said D. X.'s estate.

And whereas, at my request, and for my defence against the said D. D.'s demand and judgment, he, the said C. D., has undertaken to review the said judgment, and to prosecute a writ of review of the said D. D.'s action for that purpose, at the next term of the supreme court, to be holden at ——, etc., and, to prevent execution upon the said judgment, has given bond to the said D. D., wherein he, the said C. D., is principal, and I, the said A. B., and E. X. are sureties,

These presents are on this condition

That if the said A. B., his heirs, executors, or administrators, shall indemnify and save harmless the said C. D., his heirs, executors, and administrators, against the said judgment, and against every judgment, which shall be rendered upon any writ of review, which shall be prosecuted as aforesaid, then this deed shall be void, otherwise shall remain in full force:

And further, I, the said A. B., for myself, my heirs, etc., hereby covenant with the said C. D., his heirs, etc., that I, my heirs, etc., shall and will indemnify the said C. D., his heirs, etc., against the said bond of review, and any judgment (as well the debt or damages, as the costs thereon), which has been, or which shall be recovered against him by the said D. D. as aforesaid, and will save the said C. D., his heirs, etc., harmless therefrom.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Lease.

By an Assignee.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the first part, and C. D., of ——, etc., of the second part:

Whereas, E. F. by a certain indenture of lease bearing date the —— day of ——, did demise, release, and to farm let, unto G. H., and to his executors, administrators, and assigns, all and singular the premises hereinafter mentioned and described, together with the appurtenances, unto the said G. H., and to his executors, administrators, and assigns, for and during and until the full end and term of —— years, from the —— day of ——, and fully to be complete and ended, yielding and paying therefor unto the said E. F., and to his executors, or assigns, the yearly rent or sum of —— dollars; which said indenture of lease and term of years therein mentioned and demised, have been duly assigned to the said A. B.

And whereas, the said party of the first part is justly indebted unto the said party of the second part, in the sum of —— dollars, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of —— dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum, with interest:

Now this indenture witnesseth.

That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond, or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of —— dollars, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, all (*here follows the description of the premises*), with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, term of years to come and unexpired, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said leased premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and every clause, article, and condition therein expressed and contained:

To have and to hold the said indenture of lease and other hereby granted premises, unto the said party of the second part, his executors, administrators, and assigns, to his and their only proper use, benefit and behoof, for and during all the rest, residue, and remainder of the said term of years yet to come and unexpired; subject, nevertheless, to the rents, covenants, provisions, and conditions in the said indenture of lease mentioned:

Provided always, that these presents are upon this express condition: That if the party of the first part shall well and truly pay unto the said party of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and manner mentioned in the said condition, according to the true intent and meaning thereof; that then and from thenceforth these presents, and the estate hereby granted, shall cease, determine, and be utterly null and void; anything hereinbefore contained to the contrary in anywise notwithstanding.

And the said party of the first part doth hereby covenant, grant, promise, and agree, to and with the said party of the second part, that he shall well and truly pay unto the said party of the second part the sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition thereof; and that the said premises hereby conveyed now are free and clear of all incumbrance whatsoever, and that he has good right and lawful authority to convey the same in manner and form as the same are hereby conveyed. And if default shall be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said party of the second part, and his assigns, to sell, transfer, and set over all the rest, residue, and remaining term of years, then yet to come, and all other the right, title and interest of the said party of the first part, of, in, and to the same, at public auction, according to law.

And as the attorney, or attorneys, of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale so to be made, shall forever be a perpetual bar, both in law and in equity, against the said party of the first part, his heirs and assigns, and all other persons claiming, or to claim the premises, or any part thereof, by, from, or under him, them, or any of them.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Life, Support during, etc.

To Secure a Support to the Mortgagee during Life.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., of the one part, and C. D., of ——, etc., of the other part, witnesseth

That the said A. B., in consideration of the sum of —— dollars, to him paid by the said C. D., the receipt whereof the said A. B. hereby acknowledges, does give, grant, bargain, sell, and convey unto the said C. D., and his heirs and assigns, all that, etc. (*describing the premises*), with the appurtenances, to have and to hold to the said C. D., and his heirs and assigns, to his and their sole use and benefit forever.

(a And the said A. B., for himself, his heirs, executors and administrators, doth covenant with the said C. D., his heirs and assigns, that he, the said A. B., immediately before the sealing and delivery hereof, is lawfully seized in fee of the described premises; that the same are free from all incumbrances; that the said A. B. hath full power and lawful authority to convey the same as aforesaid, and that he, the said A. B., his heirs, executors, and administrators, shall and will warrant and defend the same to the said C. D., and his assigns, free from the lawful claims and demands of all persons whatsoever.)

Provided always, that if the said C. D., his heirs, executors, administrators or assigns, shall well and sufficiently support and maintain the

a-Where the land is first conveyed from the mortgagee, the mortgagor should warrant against persons claiming under himself only.

said A. B. from the date of these presents, as long as he shall live, with sufficient and convenient boarding, lodging, clothing, washing, fuel and all other necessaries and conveniences suitable for his comfortable support, and at such place or places within this State (*or* Commonwealth) as the said A. B. shall appoint, and give reasonable notice from time to time, but the expenses of removal to be borne by the said A. B. after the first time, then the above conveyance or grant to be void, otherwise to be in full force.

And the said C. D., for himself, his heirs, etc., doth hereby covenant with the said A. B., that he, the said C. D., his heirs, etc., or some of them, shall well and sufficiently support and maintain the said A. B. from the date of these presents, as long as he shall live, with sufficient and convenient boarding, lodging, clothing, washing, fuel and other necessaries and conveniences, suitable for his comfortable support, and at such place within this commonwealth, as the said A. B. shall from time to time appoint, and give reasonable notice, etc.

And the said A. B. covenants with the said C. D., his heirs, executors, administrators, and assigns, that so long as the said C. D., his heirs, etc., or any or either of them, shall faithfully perform, keep and observe the covenant and proviso before mentioned, on the part of them, the said C. D., his heirs, etc., to be performed and kept, it shall be lawful for the said C. D., his heirs, etc., peaceably to occupy and enjoy the premises with the appurtenances, and receive the rents and profits thereof, to his and their own use, without the lawful interruption or disturbance of the said A. B., or any persons claiming under him.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage, etc.—Promissory Note.

Secured by Mortgage.

See BONDS, NOTES, and BILLS, ante, pp. 149, 150.

$——. Place ——. Date ——.

—— days (*or* months, etc.) after date (*or* on the —— day of ——), I (*or* we, etc.) promise to pay to C. D. —— dollars, at ——, with interest at the rate of —— per cent. per annum, for value received.

This note is secured by a mortgage (*or* trust deed) on (*give memorandum of premises*), of even date herewith, from A. B. to C. D.

(*Signed*) A. B.

Mortgage of Real Property—Purchase Money.

This (conveyance, *or* indenture, *or* mortgage), made this —— day of ——, by (*or* between) A. B., of ——, of the first part, to (*or* and) C. D., of ——, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, all (*here follows the description of the premises mortgaged*); being the same premises this day conveyed to the said C. D. by the said A. B. and W., his wife; and these presents are given to secure the payment of part of the consideration money of the said premises, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended (as a mortgage) to secure the payment of the sum of —— dollars, in —— from the day of the date of these presents, with —— interest, according to the condition of a certain bond, dated this day, executed by the said A. B., to the said party of the second part; and these presents shall be void if such payment be made.

But in case default shall be made in the payment of the principal, or interest, as above provided, then the party of the second part, his executors, administrators and assigns, are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns, etc.

In witness whereof, said party of the first part has hereunto set his hand (and seal) the day and year first above written. [*Signature (and seal.)*]

Executed in presence of

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Release of a Part.

See DISCHARGE, above; SATISFACTION, below.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between C. D., of ——, in —— county, State of ——, party of the first part, and A. B., of ——, in —— county, State of ——, party of the second part:

Whereas, the said party of the second part, by indenture of mortgage, bearing date the —— day of ——, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto the said party of the first part;

And whereas, the said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage:

Now this indenture witnesseth:

That the said party of the first part, in pursuance of the said agreement, and in consideration of —— dollars to him duly paid at the time of the execution and delivery of these presents, the receipt of which is hereby acknowledged, has and by these presents does grant, release, quit-claim, and set over unto the said party of the second part, all that part of the said mortgaged land (*describing all that part of the mortgaged land which it is intended to release, accurately and carefully, distinguishing it from that which is retained*). Together with the hereditaments and appurtenances thereto belonging; and all the right, title and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore.

To have and to hold the lands and premises hereby released and conveyed to the said party of the second part, and his heirs and assigns, to his and their use and benefit forever, free, clear, and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

In witness whereof, the said party of the first part has hereunto set his hand (and seal), the —— day of ——.

C. D.

Executed and delivered in presence of }

For form of ACKNOWLEDGMENT, see that title.

Mortgages of Real Property—Release and Quit-Claim.

See DISCHARGE, above; SATISFACTION, below.

Know all men by these presents:

That I, C. D., of —— county, and State of ——, for and in consideration of one dollar, to me in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quit-claim unto A. B. (*or* E. F.), of —— county, and State of ——, all the right, title, interest, claim, or demand whatsoever I may have acquired in, through or by a certain mortgage, bearing date the —— day of ——, and recorded in the recorder's (*or* register's) office, of ——, —— county, in book —— of ——, page ——, to the premises therein described, and which said mortgage was made to secure a certain promissory note (*or* bond) bearing even date with said mortgage, for the sum of —— dollars.

Witness my hand (and seal), this —— day of ——.

C. D. [*Seal.*]

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Satisfaction of Mortgage.

By Receipt Indorsed thereon.

$——. Place ——. Date ——.

Received of C. D. (*or* E. F., the assignee of C. D.), the within-named mortgagor, the sum of —— dollars, in full satisfaction of the within mortgage.

A. B.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Satisfaction of Mortgage.

Upon Real or Personal Property.

Know all men by these presents:

That the debt secured by mortgage upon the following described —— property, situated in ——, in —— county, in the State of ——, to wit: (*describing it*), wherein A. B. is grantor, and C. D. is grantee, and dated ——, a —— of which is —— in volume ——, page ——, in the office of the (register *or* recorder) of deeds of —— county, ——, has been fully satisfied, in consideration of which said mortgage is hereby released.

[*Witness*], *etc.*

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Security for Indorser.

This (conveyance, *or* indenture, *or*) mortgage, made the —— day of ——, between A. B., of ——, in the county of ——, and State of ——, of the first part, and C. D., of ——, in the said county, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of —— dollars, grants, bargains, sells, and confirms unto the said party of the second part, and to his heirs and assigns, all (*here follows the description of the premises*); together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Whereas the said party of the second part, at the request, and for the benefit of the said party of the first part, has, on the day of the date of these presents, indorsed a certain (note, *or* other security), made by the said party of the first part, for the sum of —— dollars, bearing date ——, and payable —— days after ——, to the order of ——, at ——.

This conveyance is intended to secure the party of the second part for all principal and interest money, costs, charges, and expenses which he may be compelled to pay in consequence of the failure of the said party of the first part to pay and take up the said (note, *or* other security) —— at maturity: and if the amount of the said (note *or* other security) ——, principal and interest, shall be paid by the party of the first part at maturity, then these presents shall become void, and the estate hereby granted shall cease and utterly determine;

But if default shall be made by the said party of the first part in the payment of the said sum of money, or the interest, or of any part thereof, at the time hereinbefore specified, and the same be paid by or collected of the party of the second part, the said party of the first part hereby authorizes and empowers the party of the second part, his heirs, executors, administrators and assigns, to sell the said premises hereby granted at public auction, and convey the same to the purchaser in fee simple, agreeably to the act in such case made and provided; and out of the money arising from such sale, to retain such sum, or sums of money, as may have been paid by or collected of the said party of the second part, as above mentioned, together with all costs and charges, and pay the overplus (if any) to the said party of the first part, his heirs, executors, administrators, or assigns.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Security, Sale, etc.

With Power of Sale.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, etc., party of the first part, and C. D., of ——, etc., party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of —— dollars to him duly paid before the delivery hereof, has bargained and sold, and by these presents does grant and convey to the said party of the second part, and his heirs and assigns forever, all (*here describe the premises*), with the appurtenances, and all the estate, right, title, and interest of the said party of the first part therein.

This conveyance is intended as a security for the payment of —— (*state what the amounts, places, times, etc., etc., of payment*), which payments, if duly made, will render this conveyance void.

And if default shall be made in the payment of the principal or interest above mentioned, then the said party of the second part, or his executors, administrators, or assigns, are hereby authorized to sell the premises above mortgaged, or so much thereof as will be necessary to satisfy the amount then due, with the costs and expenses allowed by law.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written. A. B. [*Seal.*]

Executed and delivered in the presence of W. S.

For form of ACKNOWLEDGMENT, see that title.

Mortgages of Real Property—Security. Sale, etc.

With Power of Sale.

This (conveyance, *or* indenture, *or*) mortgage, made this —— day of ——, between A. B., of ——, party of the first part, and C. D., of ——, party of the second part:

Whereas, the said party of the first part is justly indebted to the said party of the second part in (*here describe the amount and terms of the debt, or note, or bond*).

Now this indenture witnesseth:

That the said party of the first part, for the better securing the debt (*or* note, *or* bond) above described, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by said party of the second part, at or before the execution and delivery of these presents, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all (*here describe the premises mortgaged*). Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above-granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

Provided always, and these presents are upon this express condition:

That if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay to the said party of the second part, or his heirs, executors, administrators, or assigns, the above-described debt (*or* note, *or* bond), according to terms and tenor thereof, then this deed (and also said debt, *or* note, *or* bond) shall be wholly discharged and void; and otherwise shall remain in full force and effect.

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administra-

iors or assigns, therein, at public auction, according to the act in such case made and provided.

And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said debt (*or* note, *or* bond), together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there shall be) unto the said party of the first part, or his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, or his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or either of them.

In witness whereof, the parties to these presents have hereunto set their hands (and seals), the day and year first above written. A. B. [*Seal.*] C. D. [*Seal.*]

Signed, sealed, and acknowledged in presence of W. T., N. S.

For form of ACKNOWLEDGMENT, see that title.

Mortgage of Real Property—Security on Unliquidated Amount.

Use GENERAL FORMS, above.

To have and to hold the above-described premises, with the appurtenances, to the said party of the second part, his heirs and assigns, forever.

Provided always, and these presents are upon the express condition that if the said A. B., his heirs, executors, or administrators, shall well and truly pay, and save harmless and indemnify the said C. D. and E. F., and each of them, of and from all liabilities which they or either of them may have at any time contracted to or for said A. B., either as surety, indorser, guarantor, or otherwise, whether now due or yet to grow due, and shall save harmless the said C. D. and E. F., and each of them, of and from all damages, costs and charges, on account of the same, according to the conditions of a certain bond or writing obligatory bearing even date herewith, executed by the said A. B. to the said parties of the second part, then these presents shall cease and become of no effect;

But in case default shall be made in the payment of all or any part of the said liabilities as the same shall become due, at the time or times limited for the payment thereof, then in such case it shall be lawful, etc. (*as in other forms, above*).

Mortgage of Real Property—Term of Years.

Know all men by these presents:

That I, A. B., of ——, etc., in consideration of —— dollars, to me paid by C. D., of ——, the receipt of which is hereby acknowledged, by these presents do convey and mortgage unto the said C. D., his executors, administrators, and assigns, all those three several pastures, etc. (*describing them*).

To have and to hold the premises, with their appurtenances, unto him, the said C. D., his executors, etc., from the date hereof, during the full term of —— years, next ensuing.

Yielding and paying therefor yearly during the said term, unto the said A. B., his heirs, executors, administrators, or assigns, one pepper corn, if it be lawfully demanded on the —— day of ——.

And I, the said A. B., for myself, my heirs, etc. (*insert a covenant for quiet enjoyment during the term*), etc., etc.

Provided nevertheless, that if I, the said A. B., my heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said C. D., his executors, etc., the sum of —— on the —— day of —— next ensuing the date hereof, then this present demise and grant shall be void, etc.

In witness whereof, etc.

For form of ACKNOWLEDGMENT, see that title.

MORTGAGES OF PERSONAL PROPERTY—CHATTEL MORTGAGES.

See VARIOUS CLAUSES, post.

For forms of ACKNOWLEDGMENT, see that title.

Mortgage of Personal Property or Chattel Mortgage.

Know all men by these presents:

That I, A. B., hereby sell and assign to C. D. all the tools and materials now in my shop at ——.

This sale is intended as a security for the payment of —— dollars, with interest, on or before the expiration of —— from the date hereof; which payment, if duly made, will render this conveyance void.

Witness my hand, this —— day of ——.

[*Signature of witness.*] A. B.

Mortgage of Personal Property or Chattel Mortgage.

Know all men by these presents:

That I, A. B., of ——, acknowledge myself to be indebted to C. D., of said ——, in the sum of —— dollars, with interest from this date (*or* from the —— day of ——), and for the security of said sum I do hereby mortgage and sell and assign to the said C. D. all my property of every description, situate, lying, and being in the house, corner of —— street and —— avenue, in the city of ——;

And I hereby authorize and empower the said C. D. to take possession of said property and effects, he to sell the same, and appropriate the proceeds to the payment of said debt and interest.

Witness my hand and seal, this —— day of ——. A. B. [*Seal.*]

Mortgage of Personal Property or Chattel Mortgage.

Know all men by these presents:

That I, A. B., of ——, in consideration of the sum of —— dollars, to me paid by C. D., of ——, by these presents do grant, etc., unto the said C. D. all the goods and chattels, wares, effects, and merchandise, mentioned and specified in the schedule hereunder written:

To have and to hold all and singular the said goods, etc., unto the said C. D., his executors, administrators, and assigns, forever.

Provided, nevertheless, that if I, the said A. B., my executors, administrators, or assigns, or any of them, do and shall well and truly pay unto the said C. D., his executors, etc., the sum of ——, with legal interest for the same, on or before the —— day of ——, then these presents, and every clause, article, and thing herein contained, shall cease and be void; otherwise to be in full force.

In witness whereof, etc.

Mortgage of Personal Property or Chattel Mortgage.

Know all men by these presents:

That I, A. B., of the town of ——, county of ——, and State of ——, for and in consideration of —— dollars, to me in hand paid by C. D., of the town of ——, county of ——, and State aforesaid, do sell and convey to the said C. D. the following goods and chattels, to wit: (*giving list or schedule of the articles, specifying them with such distinctness that a stranger might distinguish them*), warranted free of incumbrance, and against any adverse claims:

Upon condition that if the said A. B. shall pay to the said C. D. —— dollars and interest, in —— from date, agreeably to a promissory note of this date, for that sum, payable to the said C. D., or order, on demand, with interest, this deed shall be void; otherwise in full force and effect.

That, until the condition of this instrument is broken, the said property may remain in possession of the said A. B., but after condition broken the said C. D. may at his pleasure take and remove the same, and may enter into any building or premises of the said A. B. for that purpose.

Witness our hands and seals, this —— day of ——. A. B. [*Seal.*] C. D. [*Seal.*]

Executed and delivered in presence of W. S.

This mortgage must be recorded.

Mortgage of Personal Property or Chattel Mortgage.

This agreement (*or* indenture, *or* mortgage), made the —— day of ——, between A. B., of the first part, and C. D., of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of —— dollars, has sold and by these presents does convey unto said party of the second part, the following described goods, chattels, and property (*describe them particularly, or refer to them in the schedule*) now in my possession at the —— of —— aforesaid; together with all accessories, and all the estate, title, and interest, of the said party of the first part therein.

This sale is intended as a security for the payment of one hundred and ten dollars, with interest, on or before the expiration of one year from the date hereof; and the additional sum of one hundred and forty dollars, with interest, on the —— day of ——; which payments, if duly made, will render this conveyance void.

And if default shall be made in the payment of the principal or interest above mentioned, or any part thereof, then the said party of the second part, and his assigns, are hereby authorized, pursuant to statute, to sell the goods, chattels, and property, above granted, or so much thereof as will be necessary to satisfy the amount then due, with the costs and expenses incurred by the said party of the second part, and his assigns, for and by reason of such default.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written. A. B. [*Seal.*]

Sealed, signed, and delivered in presence of W. S.

Mortgage of Personal Property or Chattel Mortgage.

Whereas, I, A. B., of the town of ——, in the county of ——, and State of ——, am justly indebted unto C. D., of ——, in the said county, in the sum of —— dollars, on account, to be paid on demand (*or* on the —— day of ——), with interest from this date.

Now, therefore, in consideration of such indebtedness, and in order to secure the payment of the same, as aforesaid, I do hereby sell, assign, transfer and set over unto the said C. D., his executors, administrators, and assigns (*here describe the property or refer to schedule*).

Provided, however, that if the said debt and interest be paid, as above specified, this sale and transfer shall be void; and this conveyance is also subject to the following conditions:

The property hereby sold and transferred is to remain in my possession until default be made in the payment of the debt and interest aforesaid, or some part thereof; but in case of a sale or disposal, or attempt to sell or dispose of the same, or a removal of or attempt to remove the same from ——, or an unreasonable depreciation in value (*or* if from any other cause the security shall become inadequate), the said C. D. may take the said property, or any part thereof, into his own possession.

Upon taking said property, or any part thereof, into his possession, either in case of default, or as above provided, the said C. D. shall sell the same at public or private sale; and after satisfying the aforesaid debt and the interest thereon, and all necessary and reasonable costs, charges, and expenses incurred by him, out of the proceeds of such sale, he shall return the surplus to me or my representatives.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——.

Executed in presence of W. S. A. B. [*Seal.*]

Mortgage of Personal Property or Chattel Mortgage.

Know all men by these presents:

That A. B. (of ——), of the first part, is indebted to C. D. (of ——), of the second part, in the sum of —— dollars, to be paid as follows: (*stating time, place, amount, and manner of payment*).

Now, therefore, in consideration of such indebtedness, and to secure the payment of the same, as aforesaid, said party of the first part does hereby sell, assign, transfer, and set over to said party of the second part, the property described in the following schedule, viz.: (*describing it*).

Provided, however, that if said debt and interest be paid, as above specified, this sale and transfer shall be void.

The property sold is to remain in possession of said party of the first part, until default be made in the payment of the debt and interest aforesaid, or some part thereof; but in case of a sale or disposal, or attempt to sell or dispose of the same, or a removal of or attempt to remove the same from (*name location of property or place where it is to remain*), or an unreasonable depreciation in the value; or if, from any other cause, the security shall become inadequate, the said party of the second part may take such property, or any part thereof, into his own possession.

And upon taking said property into his possession, either in case of default, or as above provided, said party of the second part shall sell the same at public or private sale; and after satisfying the aforesaid debt and interest thereon, and all necessary and reasonable costs, charges, and expenses incurred, out of the proceeds of sale, he shall return the surplus to said party of the first part, or his legal representatives.

And if, from any cause, said property shall fail to satisfy said debt and interest aforesaid, said party of the first part hereby agrees to pay the deficiency.

In witness whereof, the said party of the first part has hereunto set his hand, this —— day of ——. A. B.

Executed in presence of

Mortgage of Personal Property or Bill of Sale and Chattel Mortgage.

Know all men by these presents:

That I, A. B., in consideration of one dollar, to me in hand paid by C. D., the receipt whereof I hereby acknowledge, have, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said C. D. and his assigns forever, the following goods, chattels, and property, to wit: (*specify the articles, or refer to them in the schedule annexed*).

Whereas, I, the said A. B., am justly indebted to the said C. D. in the sum of one hundred and ten dollars on account, for money had and received, and goods sold and delivered (*or* on a promissory note, dated, etc., and due —— months from date), to be paid to the said C. D., or his assigns, on the —— day of ——, with the legal interest thereon from the day of the date hereof:

Now the condition of the above sale is such, that if the said A. B. shall well and truly pay to the said C. D., or to his agent, attorney, or assignee, the above-mentioned demand (*or* demands), at the time, and in the manner and form, above expressed, and shall keep and perform the covenants and agreements above contained, on his part to be kept and performed, according to the true intent and meaning thereof, then the above bill of sale shall be void: otherwise, on the neglect and failure of the said A. B. to pay the said demand (*or* demands), or to keep and perform the said covenants and agreements as above expressed, then, and in that case, the said C. D. and his assigns are hereby authorized and empowered to sell the above-described goods, chattels, and property (*or* the goods, etc., described in the schedule hereto annexed, as aforesaid), or any part thereof, at public or private sale, at his or their option, and to retain from the proceeds of such sale, in his or their hands, sufficient to pay and satisfy the whole amount of the above-mentioned demand (*or* demands), with the legal interest thereon which shall be due at the time of such sale, and all costs, charges, and expenses, incurred by the said C. D., or his assigns, in consequence of the neglect and failure of the said A. B., as aforesaid; rendering the overplus, if any, to the said A. B., or to his heirs, executors, administrators, or assigns, on demand.

The said C. D. and his assigns are hereby authorized, for further security, to take the said goods, chattels, and property, into his or their

possession, at any time he or they may think proper.

In witness whereof, etc.

Mortgage of Personal Property, or, Chattel Mortgage.

This agreement (*or* indenture, *or* mortgage), made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

That the said A. B., for and in consideration of ——, to him paid by the said C. D., the receipt of which is hereby acknowledged, by these presents does grant, etc., unto the said C. D., his executors, etc., all and singular the goods, furniture, and household stuff, hereinafter particularly mentioned and expressed, that is to say, one, etc., etc. (*here insert fully an account of all the goods mortgaged*).

To have and to hold all and singular the said goods, etc., hereinbefore granted, etc., unto the said C. D., his executors, etc., to the only proper use and behoof of the said C. D., his executors, etc., forever.

Provided always, and these presents are upon this condition: That if the said A. B., his executors or administrators, shall and do well and truly pay unto the said C. D., his executors, etc., the full sum of ——, with interest for the same after the date of ——, on or before the —— d of ——, then these presents shall cease, determine, and be utterly void; anything herein contained to the contrary notwithstanding.

Covenant—Mortgagor to Keep Possession of the Goods Until the Breach of the Condition.

And it is covenanted and agreed, between the said parties, that until default shall be made in payment of the said sum of ——, and interest, it shall be lawful for the said A. B., and his assigns, to hold, enjoy, and use the goods above mortgaged as aforesaid, without the hindrance or interruption of the said C. D., or his assigns.

Covenant to Redeliver the Goods Upon Receipt of the Mortgage Money.

And the said C. D., for himself, his heirs, executors and administrators, doth covenant and agree to and with the said A. B., his executors, and administrators, that he, the said C. D., his executors, administrators, or assigns, shall and will, immediately upon the receipt of the said sum of —— and interest as aforesaid, at the day and time above limited for the payment thereof, deliver, or cause to be delivered, unto the said C. D., his executors, etc., all and singular the goods, etc., above granted, and which are now, at the time of the executing of these presents, received by the said C. D., of and from the said A. B., in as good case, plight, and condition as the same and every of them now are at this present time.

Covenant to Warrant the Goods.

And the said A. B., for himself, his executors, and administrators, all and singular the said goods, etc., by these presents granted, etc., unto the said C. D., his executors, etc., against him, the said A. B., his executors and administrators, and against all and every other person and persons whatsoever, shall and will warrant and forever defend by these presents.

Adverse Claim.

See Notice of, below.

Mortgage of Personal Property, or, Chattel Mortgage.

Covenants, Descriptions, Possession Warranty, etc.

Know all men by these presents:

That I, A. B., of ——, in the county of ——, and State of ——, party of the first part, for securing the payment of the sum of money hereinafter mentioned, and in consideration of the sum of one dollar, to me paid by C. D., of ——, aforesaid, party of the second part, the receipt whereof I do hereby acknowledge, have and by these presents do bargain, sell, grant, and convey unto the said party of the second part, his executors, administrators, and assigns, as follows:

All the ashes now being in the ashery in the possession of the said A. B., at ——;[a]

(*Or thus*, all the stock of books, magazines, periodicals, and stationery in the store of the said A. B. at ——):[a]

(*Or thus*, all the household goods and furniture, and other articles mentioned in a schedule annexed hereto, and contained in the house of the said A. B., at ——.)

(*Or thus*, all and singular the goods and stock of goods and merchandise, consisting of whips, lashes, and materials therefor, now in the store of the party of the first part, at No. —, —— street, in the city of ——, and in the factory of the said party of the first part, at ——, in the State of ——.

(Excepting and reserving therefrom all goods sold, or agreed to be sold and packed, to be delivered to purchasers.)

All the furniture and movable fixtures in said store belonging to the party of the first part (a schedule of said goods and chattels to be made by the party of the first part, and annexed hereto, with all convenient speed);

To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, forever.

(*If the mortgage is a second mortgage, being subject to a prior one, insert here:* subject, however, to a prior mortgage to E. F., dated the —— day of ——, to secure (*state what*).

And I, for myself, my heirs, executors, and administrators, do covenant and agree, to and with the said party of the second part, to warrant and defend the said described goods hereby sold, unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whatsoever (subject as aforesaid).

Upon condition, that if the said party of the first part shall and do well and truly pay, or cause to be paid unto the said party of the second part, his executors, administrators, or assigns, the sum of —— dollars and interest thereon, on the —— day of —— next (*or otherwise*), then this conveyance shall be void; otherwise to remain in full force.

And the said party of the first part, for himself, his executors, administrators, and assigns, does covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, to make punctual payment of the money hereby secured.

And in case default shall be made in payment of the said sum above mentioned, or any part thereof, or of the interest thereon, on any day when the same ought to be paid (then the whole sum shall at the election of the party of the second part become immediately due and payable; and), it shall be lawful for and the said party of the first part does hereby authorize and empower the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter and come into and upon the dwelling-house and premises of the said party of the first part, and such other place or places as the said goods and chattels are or may be held or placed, and take and carry away the said goods and chattels, to sell and dispose of the same, or so much as shall be necessary, for the best price they can obtain, and out of the money to retain and pay the said sum above mentioned, with the interest and all expenses thereon, rendering the overplus (if any) unto the said party of the first part, his executors, administrators, and assigns.

And until default be made in the payment of the aforesaid sum of money (or some part thereof, or interest thereon), the said party of the first part is to remain and continue in quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same, unless the said party of the second part, his executors, administrators, or assigns, shall sooner choose to demand the same; and until such demand be made, the possession of the said party of the first part shall be deemed the possession of an agent or servant, for the sole benefit and advantage of his principal, the said party of the second part.

[a]-This is a sufficient description; 9 Barb. 630; Gardner *vs.* McEwen, 10 N. Y. (5 Smith) 123.

In witness whereof, I have hereunto set my hand (and seal), this —— day of ——. A. B.
Executed and delivered in presence of W. S.

Mortgage of Personal Property, or, Chattel Mortgage.[a]

Goods and Chattels, etc., in and about the Mortgagor's Dwelling-House.

This (agreement, *or* indenture, *or* mortgage), made this —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth:

Whereas there is due and owing from the said A. B. to the said C. D. the sum of $200:

Now, in consideration of the covenant hereinafter contained on the part of the said C. D., and for better securing to him the payment of the said sum of $200 and interest thereon, as hereinafter mentioned, he, the said A. B., by these presents, does bargain and sell and assign unto the said C. D., his executors, administrators, and assigns, all and every the goods, utensils and implements which are now belonging to the dwelling-house, outhouses and estate of the said A. B., situate and being in —— street, in said B., now in the occupation of the said A. B., and which are particularly enumerated and described in the schedule to these presents, hereunder written; and all the right, title and interest of the said A. B. in and to the said goods and chattels and every part and parcel thereof.

To have and to hold the bargained premises unto the said C. D., his executors, administrators and assigns, as his and their own proper goods and chattels.

Provided, nevertheless, that, in case the said A. B., his executors, etc., shall pay to the said C. D., his executors, etc., the sum of $200, on the —— day of ——, or at such earlier day or time as the said C. D., his executors, etc., shall appoint for the payment thereof, in and by a notice in writing, to be given to the said mortgagor, his executors or administrators, or left at his or their last and usual place of abode, at least —— months before the day or time so to be appointed for payment as aforesaid; and do and shall, in the meantime until the repayment of the said principal sum, well and truly pay to the said C. D., his executors, etc., interest thereon, at the rate of —— per cent. per annum, by equal half yearly payments on ——, and on ——, in every year, and also a proportional part of such interest, for the fractional period of a half year, if any, which shall elapse between the last half yearly day of payment, and the expiration of the notice so to be given by said C. D., his, etc., such proportional part to be paid immediately on the expiration of such notice, and such several payments aforesaid to be made without any deduction or abatement whatsoever: Then these presents and everything herein contained shall cease and be absolutely void; anything hereinbefore contained to the contrary notwithstanding.

And it is hereby also declared and agreed, by and between the said parties to these presents:

That, after default shall be made by the said A. B., his executors, or administrators, in payment of the sum of $200, and interest, then, and in such case, it shall be lawful for the said C. D., his, etc., peaceably and quietly to take possession of and thenceforth to hold and enjoy all and every the goods and chattels, and premises hereby assigned:

And also to sell and dispose of the same, and every part thereof, for such price or prices as can be reasonably had or gotten for the same;

And to receive and take the moneys to arise by such sale thereof, and therewith retain to and reimburse himself and themselves, the said C. D., his executors, administrators, or assigns, all costs, charges, and expenses, which he or they may incur in and about making any such sale or sales, and also in and about the receipt and recovery of the said sum of $200, and interest, respectively;

And, in the next place, to retain and reimburse himself and themselves, the said C. D., his executors, etc., the said sum of $200, and the interest thereof, or so much thereof as shall then remain unsatisfied, and after having reimbursed himself and themselves respectively, such costs, charges, and expenses, sum and sums of money, as aforesaid, to render to, and account for the surplus of the money arising from such sale as aforesaid (if any) unto the said A. B., his executors, administrators, or assigns.

POSSESSION UNTIL DEFAULT, ETC., MORTGAGOR TO RETAIN.

And it is hereby also declared and agreed by and between the said parties to these presents:

That until default shall happen to be made in payment of the said principal sum of $200, at the day or time hereinbefore appointed for the payment thereof, contrary to the tenor and effect of the proviso hereinbefore contained; or until default shall be made in payment of the interest of the said principal sum or some part thereof, on some or one of the days or times hereinbefore appointed for payment thereof, contrary to the same proviso; and until, in respect of the said interest, notice shall be given by the said C D., his executors, administrators or assigns, unto the said A. B., his executors or administrators, or left for him or them, at his or their usual place or places of abode, requiring the payment of such interest, it shall be lawful for the said A. B., his executors or administrators, to hold, make use of, and possess the said goods and chattels, hereby assigned, without any manner of hindrance or disturbance of or by him, the said C. D., his executors, administrators, or assigns.

NOT TO SUE UNTIL DEFAULT.

That he, the said C. D., his executors or administrators, shall not, nor will, until default shall be made in payment of the said sum of $200 and interest, or some part thereof, on some or one of the days or times limited for payment thereof in and by the proviso for redemption hereinbefore contained, commence or institute any action, suit or process against the said A. B., his executors or administrators, for recovery of the said debt or any part thereof.

In witness whereof, etc.

Mortgage of Personal Property, Chattel Mortgage, or Bill of Sale.

Maintenance for Life.

This (agreement, *or* indenture, *or*) mortgage, made on the —— day of ——, between A. B., of ——, etc., of the first part, and C. B., of the same place, of the second part, witnesseth:

That the party of the first part, in consideration of the sum of —— dollars, to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, and for other good and lawful considerations him thereunto moving, has bargained and sold, and by these presents does grant and convey; etc.

And in consideration of the premises, the party of the second part does hereby covenant and agree, to and with the party of the first part, his executors and administrators, that he will support and maintain, and comfortably and sufficiently clothe the party of the first part, and in all respects care and provide for him, for and during the rest, residue, and remainder of his natural life; and that he, the said party of the second part, shall and will pay unto the said party of the first part the sum of —— dollars on the first day of January in each and every year hereafter:

Provided, however, that the said party of the second part shall be forever released and discharged from the covenants above contained, on his part to be kept and performed, if the said party of the first part shall refuse to reside in the county of —— aforesaid, except such refusal be occasioned by inability to obtain comfortable and sufficient board, lodging, and maintenance in the said county.

In witness whereof, the said parties have here-

[a] A vessel at sea may be mortgaged, but possession must be taken as soon as possible to render the mortgage complete. Portland Bank *vs.* Stubbs *et al.*, 6 Mass. 422.

unto set their hands and seals the day and year first above written. A. B. [*Seal.*]
Executed and delivered in presence of W. S. } C. D. [*Seal.*]

Memorandum.

See SALE, below.

Mortgage of Personal Property, or, Chattel Mortgage.

This notice should be posted with or near the notice given of the sale, as well as notice of adverse claim read at the sale in order to warn purchasers.

To whom it may concern:

I, C. D., have a mortgage, duly filed, on the property of A. B. now offered for sale, which is of prior date to the mortgage under which this sale takes place, and —— dollars, with interest thereon, is unpaid, and is now due and collectable. Whosoever buys this property buys it subject thereto. C. D.

Notice.

See SECURITY, below.

Mortgage, etc.—Sale—Memorandum.

(*Schedule of articles purchased, with terms of purchaser.*)

I have purchased the above property for the sum of —— dollars, subject to the terms above.

(*Signed*) P. R.

Renewal—Affidavit for Renewing and Continuing Chattel Mortgages.[a]

State of ——, —— county, ss.

I do solemnly swear that I am one of the within-named mortgagees, and that the property described in the within mortgage was, on the —— day of ——, conveyed to —— to secure the payment of —— dollars, of which sum there is yet due and unpaid the sum of ——. So help me God.

C. D.

Sworn to before me, this —— day of ——, A. D.

J. P., *Justice of the Peace.*

ANOTHER.

State of ——, —— county, ss.

I do solemnly swear that I am one of the within-named mortgagees, and that the property described in the within mortgage was, on the —— day of ——, conveyed to —— to indemnify —— against liability as surety for the within-named mortgagor, on a certain ——, on which —— I am surety; and that the within mortgage was taken in good faith to indemnify —— against any loss that may result thereof. So help me God.

C. D.

Sworn to before me, this —— day of ——.

J. P., *Justice of the Peace.*

Renewal—Annual Statement of Mortgagee's Interest, etc.[b]

I, C. D., the mortgagee mentioned in the mortgage of which the annexed (*or* within) is a true copy, do hereby certify that the sum of —— dollars and interest thereon from the —— day of ——, is still due on said mortgage. C. D.

Dated ——, the —— day of ——.

ANOTHER

I, C. D., the mortgagee named in the mortgage of which the annexed (*or* within) is a true copy, do hereby certify that the following notes, mentioned in said mortgage, all dated the —— day of ——, are wholly unpaid, to wit: (*enumerating them*).

And I further claim the said mortgaged property as security to me against any liability for or on account of my having indorsed the note of E. F. therein mentioned, which note is still unpaid. C. D.

Dated ——, the —— day of ——.

Mortgage of Personal Property, or, Chattel Mortgage, with Power of Sale.

Know all men by these presents:

That I, A. B., of ——, in —— county, and State of ——, in consideration of —— dollars to me paid by C. D., of ——, in —— county, and State of ——, do hereby grant, bargain, and sell unto the said C. D., and his assigns, forever, the following goods and chattels, to wit: (*here give list or schedule*).

To have and to hold all and singular said goods and chattels unto the mortgagee herein, and his assigns, forever.

And the mortgagor herein, for himself and for his heirs, executors, and administrators, does hereby covenant to and with the said mortgagee and his assigns, that said mortgagor is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrances, and that he will warrant and defend the same to him, the said mortgagee and his assigns, against the lawful claims and demands of all persons.

Provided, nevertheless:

That if the said mortgagor shall pay to the mortgagee the sum of —— dollars, on the —— day of ——, at ——, then this mortgage is to be void, otherwise to remain in full force and effect.

And provided further:

That until default be made by the said mortgagor in the performance of the condition aforesaid, it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same; but if the same or any part thereof shall be attached or claimed by any other person or persons at any time before payment, or the said mortgagor or any person or persons whatever, upon any pretence, shall attempt to carry off, conceal, make way with, sell, or in any manner dispose of the same or any part thereof, without the authority and permission of the said mortgagee or his executors, administrators or assigns, in writing expressed, then it shall and may be lawful for the said mortgagee, with or without assistance, or his agent or attorney, or his executors, administrators, or assigns, to take possession of said goods and chattels, by entering upon any premises wherever the same may be, whether in this county or State, or elsewhere, to and for the use of said mortgagee or his assigns.

And if the moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done or performed at the time and according to the conditions above set forth, then the said mortgagee or his attorney, or agent, or his executors, administrators, or assigns, may, by virtue hereof, and without any suit or process, immediately enter and take possession of said goods and chattels, and sell and dispose of the same at public or private sale, and after satisfying the amount due, and all expenses, the surplus, if any remain, shall be paid over to said mortgagor or his assigns.

That the exhibition of this mortgage shall be sufficient proof that any person claiming to act for the mortgagee is duly made, constituted, and appointed agent and attorney to do whatever is above authorized.

In witness whereof, the said mortgagor has hereunto set his hand (and seal), this —— day of ——. A. B. [*Seal.*]

Executed and delivered in presence of }

Mortgage of Personal Property, or, Chattel Mortgage, with Power of Sale.

Another.

Know all men by these presents:

That I, A. B., of ——, etc., in consideration of the sum of —— dollars, to me paid by C. D., of ——, etc., the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said C. D. the following named and described articles of personal property; that is to say (*here follows the list or schedule, with a description of the articles mortgaged*).

[a] This affidavit must be made within thirty days next preceding the expiration of one year from the filing of this mortgage, and each year thereafter, or after the expiration of one year from such filing, will be void as against subsequent purchasers, and mortgagees in good faith. See various States, above. [b] It is not a sufficient statement to indorse on the mortgage already on file, that it is refiled and renewed, with the date. There must be a statement exhibiting the interest of the mortgagee. Fitch *vs.* Humphrey, 1 Den. 163.

To have and to hold all and singular the said goods and chattels unto the said C. D., and his executors, administrators, and assigns, to his and their sole use forever.

And I, the said mortgagor, for myself and my executors and administrators, do covenant to and with the said mortgagee and his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property: that the same are free from all incumbrances; and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee and his executors, administrators, and assigns, against the lawful claims and demands of all persons.

Provided, nevertheless:

That if the said mortgagor, or his executors or administrators, shall well and truly pay unto the said mortgagee or his executors, administrators, or assigns, the sum of —— dollars, then this conveyance, as also a certain promissory note bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void; and otherwise they shall remain in full force and virtue.

And provided further:

That until default by the said mortgagor, or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, his executors or administrators, shall attempt to sell the same or any part thereof without notice to the said mortgagee or his executors, administrators, or assigns, and without his or their assent to such sale, in writing expressed; or shall remove the same, or any part thereof, from the place where they now are, without such notice and assent, then it shall be lawful for the said mortgagee, his executors, administrators, or assigns, to take immediate possession of the whole of said granted property to his or their own use, and to sell and dispose of the whole, or of so much of said granted property at public auction as shall produce a sum of money sufficient to pay and discharge the above-mentioned debt or liability, with interest, and all costs and charges of keeping and selling the same, and all just and equitable liens then existing thereon, without further notice or demand, except giving —— days' notice of the time and place of said sale to said mortgagor or his legal representatives; and after the said debt or liability, with interest, costs, charges, and liens, shall be so discharged and satisfied, the surplus of the money arising from said sale, and the residue of said granted property, shall be paid and restored to said mortgagor or his legal representatives, discharged from all claim under this mortgage.

In witness whereof, the said A. B. has hereunto set his hand (and seal), this —— day of ——.

Executed and delivered in presence of } A. B. [*Seal.*]

Mortgage of Personal Property—Sale—Notice of.

On the —— day of ——, A. D. ——, at — o'clock — M., I will expose for sale, at public auction, at —— (*designating the place of sale*), the property mortgaged by A. B. to C. D., consisting of —— horses, —— cattle, —— sheep, —— hogs, —— tons of hay, —— bushels of corn, —— bushels of wheat, etc., etc.

Terms of sale to be made known on day of sale.

A. R., *Auctioneer.*

Dated ——, this —— day of ——.

Mortgage of Personal Property—Schedule "A."

If the property conveyed consists of a great number of articles, it is as well to refer to them as "all the goods, wares, and merchandise, chattels and effects, mentioned and described in the schedule hereunto annexed, marked 'Schedule A,'" and they should then be particularly enumerated in the schedule. The delivery is essential in order to make a bill of sale valid, and the subscribing witness should be able to testify positively, as well in relation to that as to the consideration of the sale.

SCHEDULE "A."

Schedule of all the furniture and household goods mentioned in (*or other property*), and conveyed by, the annexed chattel mortgage.

One parlor set, Value ——.
" library table, "
" book-case, "
Etc., etc.

Annexed and signed, this —— day of ——.

[*Witness*] W. S. A. B.

Mortgage of Personal Property, or, Chattel Mortgage.

To Secure Payment of Notes, etc.

See GENERAL FORMS, and continuing thus:

Upon condition, however:

That the said parties of the first part shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of —— dollars and —— cents, with interest, being the amount of —— promissory notes made by them, and described as follows, each bearing date the —— day of ——, payable as follows:

One note for —— dollars, payable at —— months from date; at ——, etc., etc.

And one for —— dollars, payable at —— months from date, to ——, at ——, etc., etc.

Etc., etc.

And upon the further condition, that if the said parties of the first part will well and truly indemnify and save harmless the said party of the second part of, from and against all of the notes remaining unpaid, which were given by said party of the second part to E. F. & Co. on the purchase of (*state what*), which notes are particularly enumerated in schedule B. hereto annexed;

And also against all of the notes and debts, obligations or liabilities mentioned in schedules C. and D. hereto annexed, being debts of the party of the second part, which have been assumed by said party of the first part, then this conveyance shall be void; otherwise, to remain in full force.

And the said parties of the first part, for themselves, their executors, administrators, and assigns, do covenant, promise, and agree, to and with the said party of the second part, his executors, administrators, and assigns:

That in case default shall be made in the payment of either of said notes hereinbefore mentioned, given by said parties of the first part to the said party of the second part, and the same shall remain due and unpaid for the space of —— days thereafter, then the sum remaining unpaid upon all of said notes may, at the option of the said party of the second part, his executors, administrators, and assigns, be considered due and payable immediately;

And in case either of said notes shall so remain unpaid for the space of —— days, or in case any recovery shall be had against said party of the second part, for or by reason of any note or notes, or debts mentioned in schedules B, C, and D; then in that case it shall immediately thereupon be lawful for, and the said parties of the first part hereby authorize and empower the said party of the second part, his executors, administrators, or assigns, with the aid or assistance of any person or persons, to enter the store, stable, dwelling-house and other premises, and such other place or places as the said goods, chattels and property are or may be placed, and take and carry away the said goods, chattels and property, and to sell and dispose of the same for the best price or prices he can obtain for the same, and out of the money arising therefrom to retain, take up and pay the amount then remaining unpaid on said notes, whether the said notes shall have matured or not, and all charges touching the same, and also all moneys which may be recovered against him, the said party of the second part, for or on account of any of the notes or debts mentioned in either of the schedules to this mortgage, or any liability or charges he may incur on

account of the same, or any part thereof, and also the expenses of such sale, and then, after retaining sufficient in his hands to pay off and discharge any of the said debts or notes mentioned in either of the schedules which may remain unpaid, and applying the said moneys thereto, rendering the overplus (if any) unto the said parties of the first part, or to their executors, administrators or assigns; and in case of such sale and disposition of said goods, chattels and property, it shall and may be lawful for the said party of the second part to sell and dispose of the said property, goods and chattels, together or separately, as he may prefer.

And until default be made in the payment of either of the said notes, and the same shall remain unpaid for ten days, or in any of the stipulations hereinbefore set forth on the part of the parties of the first part, the said parties of the first part shall remain and continue in the quiet and peaceable possession of the said goods and chattels and property, and the full and free enjoyment of the same.

In witness whereof, the parties of the first part have hereunto set their hands (and seals), this —— day of ——.

Executed in presence of } A. B. [*Seal.*] W. B. [*Seal.*]
W. S., etc. }

Mortgage of Personal Property, or, Chattel Mortgage—Stock.

This (conveyance, *or* indenture, *or*) mortgage, made, etc., between A. B., of the one part, and C. D., of the other part, witnesseth:

That said A. B. has by deed, under his hand and seal, bearing even date with these presents, assigned and transferred unto the said C. D. the said —— shares of (*describe the stock*), in the —— company (in the mode pointed out in the act of incorporation thereof), upon trust for securing to the said C. D., his executors, administrators, or assigns, the repayment of the sum of —— dollars on —— next ensuing, with interest for the same after the rate of —— per cent. per annum, to be computed from the day of these presents, clear of all deductions for taxes, or on any other account whatsoever;

That in case the said principal sum and interest, or any part of the same respectively, shall remain unpaid to the said C. D., his executors, administrators, or assigns, after the day or time aforesaid, upon trust at any time or times thereafter, in the discretion of the said C. D., his executors, administrators, or assigns (without the necessity of any consent or concurrence on the part of the said A. B., his executors, etc.), to make sale and absolutely dispose of the said —— shares in the said company so assigned to the said C. D., as aforesaid, or any of them, either together or separately, and either by public auction or by private contract; and to transfer or assure the same when sold unto the purchaser or purchasers thereof or as he, she, or they shall order or direct;

And upon further trust out of the money which shall arise as well from the sale or sales aforesaid, as from any of the dividends and profits of the said shares accruing in the meantime, which shall be received by the said C. D., his executors, etc., to pay or retain the said principal sum of —— dollars, with interest for the same, after the rate and from the time aforesaid, or so much of the said sum and interest as shall then remain unpaid, clear of all deductions as aforesaid, together with such costs and expenses as shall be incurred by the said C. D., his executors, etc., in the execution of these trusts, or as incidental thereto.

And in case after paying or retaining the sum or sums of money and interest, costs and expenses aforesaid, any surplus shall remain in the hands of the said C. D., his executors, etc., unapplied to any of the purposes aforesaid; then upon trust to pay such surplus unto the said A. B., his, etc., for his or their absolute use and benefit; and also in case after such payment of the sum or sums of money and interest, costs and expenses aforesaid, or after the receipt of the same from the said A. B., his executors, etc., the said —— shares in the said company, or any of them, shall remain unsold, then upon trust, on the request and at the costs of the said A. B., his, etc., to transfer the same unto the said A. B., his executors, etc., or as he or they shall direct, free from all incumbrances, created or occasioned by the said C. D., his, etc., in the meantime.

In witness whereof, etc.

VARIOUS CLAUSES.

Default—Possession Until.

That until default shall be made, in payment of the said sum of —— dollars and interest, the said A. B., and his assigns, may hold, enjoy, and use the goods above mortgaged, as aforesaid, without the hindrance or interruption of the said C. D., or his assigns.

Default—Mortgagee Shall Not Sell Until.

That until default shall be made, in payment of the said sum of —— dollars and interest, or some part thereof, the said C. D., his executors, or administrators, will not sell or dispose of the said —— goods, chattels and property (*or* shares of stock in the said company so transferred to him as aforesaid, and will, from time to time, pay over unto the said A. B., his executors, or administrators or assigns, any dividend or dividends, which he, the said C. D., his executors, or administrators, shall, in the meantime, have received on account thereof.)

Payment—Future Day, With Interest, etc.

Upon condition that said party of the first part shall pay or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the sum of —— dollars (*the principal sum secured*), on the —— day of ——, with interest thereon from the date hereof (*or* from the —— day of ——), at the rate of —— per cent. per annum (*or* with legal interest thereon), payable semi-annually (*or* quarterly), on the —— day of ——, and the —— day of ——, etc. (*designating the times of payment*), in each year, until the whole of said principal sum be paid.

Payment—Annual Instalments, With Interest, etc.

Upon condition that said party of the first part shall pay or cause to be paid unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of —— dollars (*stating the principal sum secured*), in —— equal annual instalments, from the date hereof (*or* commencing on the —— day of ——), with interest thereon at the rate of —— per cent. per annum (*or* with legal interest thereon), payable annually with such instalments (*or* semi-annually, *or* quarterly, on the —— days of —— [*naming the times for payment of interest*] in each year).

Payment—Unequal Instalments, With Interest, etc.

Upon condition that said party of the first part shall pay or cause to be paid unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of —— dollars (*stating the principal sum secured*), in manner following, viz.: the sum of —— dollars on the —— day of —— next; the sum of —— dollars on the —— day of ——; and the remaining sum of —— dollars in —— from the said last-mentioned date, together with the interest at the rate of —— per cent. per annum (*or* with legal interest on the whole sum remaining unpaid at the time of each payment).

Possession.

See Default, etc., above.

Sale.

See Default, above.

Security—On a Note.

Upon condition, however, that if the said party of the first part shall well and truly pay to the said party of the second part, his executors, administrators, and assigns, a certain promissory note, made by ——, for —— dollars, bearing date the —— day of ——, and payable —— after date to the order of E. F. (*or* his promissory note, of which the following is a copy, *setting it forth*), according to the tenor thereof, then this conveyance shall be void; otherwise, to remain in full force. And is

case default shall be made in payment of said note, etc. (*as in other cases*).

SURETY—IN A LEASE.

Upon condition, however, that if the said party of the first part, his executors, administrators and assigns, shall well and truly pay the rent to accrue on a lease made by L. R. to the said party of the first part, bearing date the —— day of —— (and shall perform all the covenants on his part therein contained), and indemnify and save harmless the said party of the second part from and against all damage, costs and expenses by reason of his having become a surety thereon, then this conveyance shall be void; otherwise to remain in full force.

And in case default shall be made in such payment (and performance), etc. (*as in other cases*).

See LEASES, ante.

COVENANT TO WARRANT THE GOODS.

And the said A. B., for himself, his executors, and administrators, all and singular the said goods, etc., by these presents granted, etc., unto the said C. D., his executors, etc., against him, the said A. B., his executors and administrators, and against all and every other person and persons whatsoever, shall and will warrant and forever defend by these presents.

WARRANTY.

And I, the said mortgagor, for myself and for my executors and administrators, do covenant to and with the said mortgagee, and with his executors, administrators and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property; that the same are free from all incumbrances (except, *stating what*), and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee, his executors, administrators, and assigns, against the lawful claims and demands of all persons.

POWERS OF ATTORNEY. See title AGENCY, subject ATTORNEYS IN FACT, ante, p. 72, *et seq.*

WILLS are either absolute or conditional conveyances of property.

A WILL (last will and testament) is the disposition of one's property, to take effect after death.[d]

The word will includes codicils.

Wills are unwritten (or nuncupative) and written. The former are called nuncupative from *nuncupare*, to name, declare, or make a solemn declaration; because this class of wills were required to be made in solemn form before witnesses, and afterwards reduced to writing,[e] and by the appointment and naming of an executor.[f]

The practice of allowing the owner of property to direct its destination after his death is of very ancient date, coeval with civilization itself,[g] and with rare exceptions has existed always and everywhere.

BEQUEATHING is the giving of personal property, by will, to another.[h] The word may be construed "devise."[i] A gift, by will, of personal property, is called a "bequest."

BLINDNESS. See TESTATOR — CAPACITY, below.

CANCELLATION of a will, with an intention to revoke, is a revocation, and the destruction or obliteration need not be complete,[j] but must be by the testator or in his presence, and by his direction and consent.[k] It must be done with an intention to revoke; and evidence is admissible to show with what intention the act is done.[l]

CHARITIES are gifts to general public uses, which may be extended to the rich as well as the poor.[m] They embrace gifts to the poor of every class, including gifts to poor relations, where the intention is manifest;[n] for every description of college and school, and their instructors and pupils, where nothing contrary to the fundamental doctrine of Christianity is taught; to all institutions for the advancement of the Christian religion;[o] to all churches,[p] chapels, hospitals, orphan asylums,[q] dispensaries,[r] and the like;[s] to general public purposes,[t] as supplying water or light to towns, building roads and bridges, keeping them in repair, etc.,[u] and to other charitable purposes general in their character.[v]

A CODICIL is an addition to, or qualification of, a last will and testament.

All codicils are a part of the will, and are to be so construed.[w] A codicil duly executed, and attached or referring to a paper defectively executed as a will, has the effect to give operation to the whole as one instrument.[x] There may be numerous codicils to the same will; in such cases the later ones operate to revive and republish the earlier ones.[y] But in order to set up an informally executed paper by means of one subsequently executed in due form, referring to such informal paper, the reference must be such as clearly to identify the paper.[z]

It is not competent to provide by will for the disposition of property to such persons as shall be named in a subsequent codicil, not executed according to the prescribed formalities in regard to wills; since all papers of that character, in whatever form, if intended to operate only in the disposition of one's property after death, are of a testamentary character, and must be so treated.[a]

CY PRES (as near as) is the rule of construction applied to a will (but not to a deed) by

[d]-Swineburne Wills, pt. 1, § 2; Godol. pt. 1, c. 1, § 2. [e]-4 Kent. Comm. 576; 2 Sharsw. Bl. Comm. 500; 1 Jarman Wills, Perk. Ed. 130-136, and GENERAL STATUTES. [f]-Swineburne Wills, pt. 1, § 12, pl. 1; Godolphin, pt. 1, c. 4, § 6. [g]-Genesis xlviii. 22; Gal. iii. 15; Plutarch's Life of Solon; Roman Laws of the Twelve Tables. [h]-13 Barb. 106. [i]-Wigram Wills, 11. [j]-3 B. & Ald. 489; 2 W. Bl. 1043; 4 Mass. 462; 2 Nott & M'C. 472; 5 Conn. 168; 4 S. & R. 567. [k]-1 Greenl. Ev. 273; 1 Jarman Wills, Perk. Ed. Ch. 7, § 2 n. [l]-7 Johns. 394; 4 Wend. 474, 485; 9 Mass. 307; 4 Conn. 550; 5 Id. 262; 8 Vt. 373; 1 N. H. 1; 4 Id. 191; 2 Dall. 266; 4 S. & R. 297; 3 H. & M. 502; 1 Harr. & M. H. 162; 4 Kent. Comm. 531. [m]-Ambl. 651; 2 Sneed, 305. [n]-33 Penn. St. 9; 2 Sneed, 305; 4 Wheat. 518; 1 Sumn. C. C. 276; 10 Penn. St. 23; 35 N. H. 445; 28 Penn. St. 23. [o]-7 B. Mon. 351, 481; 4 Ired. Eq. 19; 30 Penn. St. 425. [p]-10 Cush. 129; 7 S. & R. 559; 4 Iowa, 180. [q]-33 Penn. St. 9; 12 La. An. 301; 8 Rich. 190. [r]-27 Barb. 260. [s]-2 Sandf. 46. [t]-30 Penn. St. 437. [u]-24 Conn. 350. [v]-4 R. I. 414; 12 La. An. 301; 5 Ohio St. 237; 33 Penn. St. 415; 5 Ind. 465. [w]-4 Brown Ch. 55; 17 Sim. 108; 16 Beav. Rolls. 510; 2 Ves. Sr. 242; 3 Ves. 107, 110; 4 Id. 610; 7 Younge & C. 160; 2 Russ. & M. 117; 8 Cow. 56; 3 Sandf. Ch. 11; 4 Kent. Comm. 531. [x]-3 B. Mon. 390; 6 Johns. Ch. 374, 375; 14 Pick. 543; 16 Ves. 167; 7 Id. 98; 1 Ad. & E. 423. See also the numerous cases cited in 7 Ves. Ch. (Sumner Ed.) 98; 1 Cr. & M. 42. [y]-3 Bingh. 614; 12 J. B. Moore, 2. [z]-4 N. Y. 140. [a]-2 Ves. 204, 12 Id. 29; 2 Mylne & K. 765, 1 Ves. & B. 422, 445.

which, where the testator evinces a particular and a general intention, and the particular intention cannot take effect, the words shall be so construed as to give effect to the general intention.[b] The principle is applied to sustain wills in which perpetuities are created, so that, if it can possibly be done, the devise is not regarded as utterly void, but is expounded in such a manner as to carry the testator's intention into effect, as far as the law respecting perpetuities will allow. This is called a *cy pres* construction. Its rules are vague and depend chiefly upon judicial discretion applied to the particular case.[c] It is also applied to sustain devises and bequests for charity.

DESIGNATION is the expression used by the testator to denote a person or thing instead of the name itself; thus, a bequest of the farm which the testator bought of a person named, or of a picture which he owns, painted by a certain artist, would be a designation of the thing. So a legacy "to the eldest son" of A. would be a designation of the person.[d]

DEVISE is a gift of real property by a person's last will and testament.

A person to whom a devise is made is called the "devisee." A person to whom the residue of a testator's real estate is devised, after satisfying the debts and bequests and devises, is called the "residuary devisee." All persons having an existence, and even embryos, may be devisees, unless excepted by some positive law. But the devisee must be in existence, except in cases of devises to charitable uses.[e] In general, whosoever can acquire property by his labor and industry may receive a devise.[f] So, aliens, married women, minors, and persons of non-sane memory, may be devisees.[g]

A testator, being one who devises real estate, is called also a devisor. Any person who can sell an estate may, in general, devise it; and there are some disabilities to a sale which are not such to a devise.[h]

The term devise properly and technically applies only to real estate. The object of the devise must therefore be that kind of property.[i] But it is also sometimes improperly applied to a bequest or legacy.[j]

Devises are contingent or vested; that is, after the death of the testator. When the vesting of any estate in the devisee is made to depend upon some future event, it is contingent; if the event never occurs, or until the event does occur, no estate vests under the devise. But where the future event is referred to merely to determine the time at which the devisee shall come into the use of the estate, this does not hinder the vesting of the estate at the death of the testator.[k] The law favors the construction of the will that shall vest the estate;[l] but this construction must not be carried to such an extent as to defeat the manifest intent of the testator.[m] Where the estate is given absolutely, but only the time of the possession is deferred, the devisee or legatee acquires a transmissible interest, although he never arrive at the age to take possession.[n]

Where the devisee dies during the life of the testator, and the devise has lapsed, the estate so devised will go to the heirs, notwithstanding a residuary devise. But if the devise be void, as where the devisee is dead at the date of the will, or is made upon a condition precedent which never happens, the estate will go to the residuary devisee if the words are sufficiently comprehensive.[o]

EFFECTS denotes "property," and this in a more extensive sense than "goods."[p] In a will "effects" will carry the whole personal estate,[q] but not real estate unless the word "real" be added.[r] When preceded or followed in a will by words of narrower import, if the bequest is not residuary, it will be confined to species of property of the same kind with those previously described.[s]

FARM. In a will the word "farm" may pass a freehold, if it appears that such was the intention of the testator.[t]

GOODS. In wills "goods" is a most comprehensive and general term, and, if there is nothing to limit it, it will comprehend all the personal estate of the testator, as bonds, furniture, money, notes, stocks, etc., etc.;[u] but in general it will be limited to the context of the will.[v]

GOODS AND CHATTELS. In wills the term "goods and chattels," if unrestrained, will pass all personal property.[w]

HOUSEHOLD FURNITURE. By this expression, in wills, all personal chattels will pass that may contribute to the use or convenience of the household, or the ornament of the house: as, china, linen, pictures, and plate. But goods or plate in the hands of the testator in the way of his trade will not pass; nor will books nor wines.[x]

—— GOODS. This expression, in wills, will pass everything of a permanent nature (that is,

b-3 Hare Ch. 12; 2 T. R. 254; 2 Bligh. 49; Sugd. Pow. 60; 1 Spence Eq. Jur. 532. c-Sedgw. Const. L. 265; Story Eq. Jur. §§ 1169, *et seq.* d-See Roper Leg. Ch. 2. e-Story Eq. Jur. §§ 1146, 1160; 2 Washb. R. Prop. 688; 2 How. 127; 4 Wheat, 33, 49. f-Cam. & N. 353. g-4 Kent Comm 506; 1 Harring. 524. As to corporations see 2 Washb. R. Prop. 687. h-See 2 Washb. R. Prop 685, 686. i-1 Hill Abr. C. 36, nn. 62-74. j-4 Kent. Comm. 489; 8 Vin. Abr. 41; Com. Dig. *Estates by Dev.* k-1 Jarman Wills, Ch. 26, and numerous cases cited. l-21 Pick. 311; 1 W. & S. 205. m-21 Pick. 311; 7 Met. Mass. 171. n-1 Ves. Sr. 44, 59, 118; 4 Pick. 198; 7 Met. Mass. 173. See Redf. Wills. o-2 Vern. Ch. 394; 15 Ves. Ch. 589; 3 Whart. 477; 4 Kent Comm. 541, 542, and cases cited in notes.

p-2 Sharsw. Bl. Comm. 284. q-5 Madd. Ch. 72; 6 Id. 119; Cowp. 299; 15 Ves. Ch. 507. r-2 Powell Dev. Jarm Ed. 167; 15 M. & W. 450. s-13 Ves. Ch. 39; 15 Id. 326; Roper. Leg. 210. See 2 Sharsw. Bl. Comm. 384, n. When "the effects" passes realty, see 1 Jarman Wills, Perk. Ed. 585, 590, 591, n. t-6 T. R. 345; 9 East. 448. u-1 Atk. Ch. 180-182; 2 Id. 62; 1 P. Wms. 267; 1 Brown Ch. 128; 4 Russ. Ch. 370; Wms. Ex. 1014; 1 Roper. Leg. 250. v-See 2 Belt. Supp. Ves. Ch. 287; 1 Chitty Pr. 89, 90; 1 Ves. Ch. 63; 3 Id. 212; Hamm. Parties, 182; 1 Yeates, 101; 2 Dall. 142; Ayliffe Pand. 296; West. Ins. 260; Sugd. Vend. 493, 497. w-See Addis. Contr. 31, 201, 912, 914. x-1 Jarman Wills, Perk. Ed. 591, 596, nn.; 1 Ves. Sr. Ch. 97; 2 Wms Ex. Am. Ed. 1017; 1 Johns. Ch. 329.

articles of household which are not consumed in their enjoyment) that were used or purchased, or otherwise acquired by the testator, for his house; but not goods in the way of his trade. Plate will pass by this term, but not articles of consumption found in the house, as malt, hops, or victuals; nor guns or pistols, if used in hunting or sport, and not for defence of the house. A clock in the house, if not fixed to it, will pass.[y]

—— STUFF. These words are sometimes used in a will. Plate will pass under this term,[z] but not apparel, books, cattle, victuals, nor choses in action which do not fall within the natural meaning of the word, unless there be an intention manifest that they should pass.[a] Goods, as seven hundred beds in possession of testator for purposes of trade, do not pass under "household stuff."[b] In general, "household stuff" will pass all articles which may be used for the convenience of the house.[c]

IN TERRORUM. When a legacy is given to a person upon condition not to dispute the validity or the dispositions in wills and testaments, the conditions are not, in general, obligatory, but only *in terrorum*; that is, by way of terror, threat, or warning; if, therefore, there exists a reasonable or sufficient cause for litigation, the non-observance of the conditions will not be a forfeiture.[d] But when the acquiescence of the legatee appears to be a material ingredient in the gift, the bequest is only such while the legatee shall refrain from disturbing the will.[e]

INCEPTION. In the making of a will the writing is the inception.[f]

INTENTION. In last wills and testaments the intention of the testator governs unless the thing to be done is opposed to some inflexible rule of law.[g] This intention is to be gathered from the instrument, and from every part of it.[h]

INTESTATE. An intestate is one who, having lawful power to make a will, has made none, or has made one which is defective. In such case the deceased is said to die intestate, and his estate and effects descend to his heirs in the manner prescribed by law. See General Statutes. One who cannot lawfully make a last will and testament is called intestable. An infant, an insane person, or one civilly dead cannot make a will for want of capacity or understanding; and in the absence of a statute to the contrary a married woman cannot make a will without the concurrence of her husband, because she is under his authority.

ISSUE. Descendants, all persons who have descended from a common ancestor.[i] In a will the word "issue" may be held to have a more restricted meaning in order to carry out the testator's intention.[j]

LAST WILL is a disposition of real estate to take effect after death. It is strictly distinguishable from "testament," which is applied to personal estate;[k] but the words are generally used together, "last will and testament," in a will, whether real or personal estate is to be disposed of.

LEGACIES are gifts by last will. The term is more commonly applied to money or personal property, although sometimes used with reference to a charge upon real estate.[l] An absolute legacy is one without condition, to vest immediately.[m] An additional legacy is one given to a legatee to whom a legacy has already been given; it may be either by an increase in a codicil of a prior legacy given in the will, or to another legacy added to that already given by the will.[n] An alternative legacy gives two or more things without designating which. A conditional legacy is a bequest whose existence depends upon the happening or not of some uncertain event, by which it is to take place or be defeated.[o] A general legacy is one so given as not to amount to a bequest of a particular thing or money of the testator, distinguished from all others of the same kind.[p] An indefinite legacy is a bequest of things which are not enumerated or ascertained as to numbers or quantities; for instance, a bequest by a testator of all his goods, all his stocks in the funds.[q] A lapsed legacy is one which, in consequence of the death of the legatee before the testator, or before the period for vesting, has never vested; one which, on account of the death of the legatee before the period arrives for the payment of the legacy, lapses or deviates from the course prescribed by the testator and falls into residuum.[r] A distinction exists between a lapsed devise and a lapsed legacy: a legacy which lapses does not fall into the residue of the estate, unless so provided by the will, but descends to the heir-at-law; on the contrary personal property passes by the residuary clause where it is not otherwise disposed of.[s] A legacy for life is one in which the legatee is to enjoy and use the legacy during life. A pecuniary legacy is one of money; these are usually general legacies, but there may be a specific pecuniary legacy, as, of the money in a certain bag.[t] A residuary legacy is a bequest of all the testator's personal estate not otherwise effectually disposed of by his will.[u] A specific legacy is a bequest of a particular thing, or a bequest of a specified part of a testator's personal estate, distinguished from all others of the same kind.[v] A specific

y-1 Jarman Wills, Perk. Ed. 589; 1 Rop. Leg. 253. z-2 Freem. Ch. 64. a-15 Ves. Ch. 319. b-2 P. Wms. Ch. 302. c-Swinburne Wills, Pt. 7, p. 484, § 10. d-2 Vern. Ch. 90; 1 Hill Abr. 253; 3 P. Wms. Ch. 344; 1 Atk. Ch. 404. e-2 P. Wms. Ch. 52; 2 Ventr. Ch. 352. f-3 Co. 31, *b*; Plowd. 343. g-6 Cruise Dig. 295; Jarman Wills, Index; 6 Pet. 68. h-3 Ves. Ch. 105; 4 Id. 610. i-3 Ves. Ch. 257; 17 Id 481; 19 Id. 547; 1 Rop. Leg. 90. j-7 Ves. Ch. 522; 19 Id. 73; 1 Rop. Leg. 90. See Bacon Abr. Curtesy (D) Legatee. k-1 Wms. Ex. Am. Ed. 6, n. *b*. l-2 Wms. Ex. 947; 5 T. R. 716: 1 Burr. 768; 7 Ves. Ch. 391, 522. m-1 Vern. Ch. 213; 2 Id. 181; 5 Ves. Ch. 461; 19 Id. 86; Com. Dig. Chancery (I. 4). n-6 Mod. 31; 2 Ves. Ch. 449; 3 Mer. Ch. 154. o-1 Roper Leg. 3d Ed. 645. p-Id. 170. q-Lowndes Leg. 84; Swinburne Wills, 485; Ambl. Ch. 641; 1 P. Wms. Ch. 697. r-1 Wms. Ex. 1036. s-2 Bouv. Inst. 2154-2156. t-1 Roper Leg. 150, n. u-Lowndes Leg; 10 Bac. Abr: *Legacies* (I). v-3 Beav. Rolls, 349.

legacy may be of animals or inanimate things, provided they are specified and separated from all other things; a specific legacy may, therefore, be of money in a bag, or of money marked and so described, as, "I give two eagles to A. B. on which are engraved the initials of my name." A specific legacy may also be given out of a general fund.[w] If the specific article given be not found among the assets of the testator, the legatee loses his legacy; but, on the other hand, if there be a deficiency of assets, the specific legacy will not be liable to abate with the general legacies.[x]

Most persons are capable of becoming legatees, unless alien enemies, or prohibited by statute. Legacies to subscribing witnesses to a will are frequently declared void by statute.[y] Bequests to further or carry into effect any illegal purpose which the law regards as subversive to sound policy or good morals, would be held void, and the executor justified in not paying them.[z] But bequests to charitable uses are favored,[a] and decisions have been liberal in upholding bequests for the most diverse objects, and expressed in the most general terms.[b]

Abatement is a reduction of a legacy, general or specific, on account of the insufficiency of the estate of the testator to pay his debts and legacies. When the estate of a testator is insufficient to pay both debts and legacies, it is the rule that the general legacies must abate proportionately to an amount sufficient to pay the debts. If the general legacies are exhausted before the debts are paid, then the specific legacies abate, and proportionately.[c]

Ademption is the extinction or withholding of a legacy in consequence of some act of the testator, which, though not directly a revocation of the bequest, is considered in law as equivalent thereto, or indicative of an intention to revoke. Republication of a will may prevent the effect of what would otherwise cause an ademption.[d]

The question of ademption of a specific legacy depends entirely upon the intention of the testator, as inferred from his acts under the rules established in law. Where the relations of the parties are such that the legacy is, in law, considered as a portion, an advancement during the life of the testator will be presumed an ademption, at least to the extent of the amount advanced; but not where the advancement and portion are not of the same kind;[e] or where the advancement is contingent and the portion certain;[f] or where the advancement is expressed to be in lieu of, or compensation for, an interest;[g] or where the bequest is of uncertain amount;[h] or where the legacy is absolute, and the advancement for life merely;[i] or where the devise is of real estate.[j] But where the testator was not a parent of the legatee, nor standing in *loco parentes*, the legacy is not to be held a portion, and the rule as to ademption does not apply,[k] except where a bequest for a particular purpose, and money is advanced by the testator for the same purpose.[l]

The ademption of a specific legacy is effected by the extinction of the thing or fund without regard to the testator's intention;[m] but not where the extinction of the specific thing is by act of law, and a new thing takes its place;[n] or where a breach of trust has been committed, or any trick or device practised with a view to defeat the specific legacy;[o] or where the fund remains the same in substance, with some unimportant alterations;[p] or where the testator lends the fund on condition of its being replaced.[q]

Construction. 1. The technical import of words is not to prevail over the obvious intent of the testator.[r] 2. Where technical words are used by the testator, or words of art, they are to have their technical import, unless it is apparent that they were not intended to be used in that sense.[s] 3. The intent of the testator is to be determined from the whole will.[t] 4. Every word shall have effect if it can be done without defeating the general purpose of the will, which is to be carried into effect in every reasonable mode.[u] 5. Where a will of personalty is made abroad, the law of the testator's domicil (*lex domicilii*) must prevail, unless it appear that the testator had a different intent.[v]

Cumulative or repeated. Where there is internal evidence of the intention of the testator, that intention is to be carried out;[w] and evidence will be received in support of the appa-

w-Touchst. 433; Ambl. 310; 4 Ves. Ch. 565; 3 Ves. & B. Ch. Jr. 5. x-1 Vern. Ch 31; 1 P. Wms. 422; 3 Id. 365: 3 Brown Ch. 160. y See 2 Wms. Ex. 4 Am. Ed. 906, *et seq.*; 19 Ves. Ch. 2[illegible]; 10 Sun. Ch. 487; 3 Russ. Ch. 437: 1 Sharsw. Bl Comm. 442. z-2 Beav. Rolls, 151; 2 M. & K. Ch. 63[illegible] 1 Mylne & C. Ch. 11; 1 Salk. 162: 2 Vern. Ch 266 a-The cases are extensively collated in 2 Wms. Ex. 51, n. 1; 4 Kent Comm. 508; 2 How. U. S. 127: 4 Wheat. 1; 7 Johns. Ch. 292; 20 Ohio, 283; 10 Penn. St. 23; 11 Vt. 296; 5 Cush. 336; 12 Conn. 113; Saxt. Ch. 577; 3 Leigh, 450; 2 Ired. Eq. 210; 5 Humph. 170; 11 Beav. Rolls, 481; 14 Id. 357; 10 Hare, 446. b-17 S. & R. 88; 2 Ired. Eq. 210: 1 Gilm. 336, 7 Vt. 241; 2 Sandf. Ch. 46: 7 B. Mon. 617, 618-622; 2 How. U. S. 127; 9 Penn. St. 433: 7 Johns. Ch. 292. c-2 Sharsw. Bl. Comm. 513 and note: Bac. Abr. Leg. H.; Roper Leg. 253, 284; 2 Brown Ch. 19; 2 P. Wms. Ch. 283; 5 Mylne & C. Ch. 29; 3 Hare Ch. 509; 10 Ala. N. S. 72; 12 Leigh, 1. d-Roper Leg. 351. e-1 Brown Ch. 555; 1 Roper Leg. 375. f-2 Atk. Ch. 493; 3 M. & C. 374. g-1 Ves. Ch. 257. h-15 Ves. Ch. 513; 4 Brown Ch. 494. i-2 Ves. Sr. 38; 7 Ves. 516. j-3 Younge & C. Exch. 397. k-2 Hare Ch. 424: 2 Story Eq. Jur. § 1117. l-2 Brown Ch. 166; 7 Ves. Ch. 516; 1 Ball. & B Ch. 303. m-3 Brown Ch. 432, 2 Cox Ch. 182; 3 Watt's Penn. 338; 1 Rop. Leg. 329. n-Forr. Exch. 226; Ambl. Ch. 59. o-2 Vern. Ch. Rathby Ed. 748, n.; 8 Sim. Ch. 171. p-1 Cox Ch. 427; 3 Brown Ch. 416; 3 Myl. & K. Ch. 296. q-2 Brown Ch. 113. r-3 T. R. 86; 11 East. 246; 16 Id. 221; 6 Ad. & E. 167; 7 M. & W. 1, 481; 1 M. & K. 571; 2 Id. 759: 9 Russ. & M. 546; 2 Mass. 56; 11 Pick. 257, 375: 13 Id. 41, 44: 2 Met. Mass. 191, 194: 1 Root, 332; 1 Nott & M'C. 69; 12 Johns. 389. s-6 T. R. 352: 3 Brown Ch. 68; 4 Russ. Ch. 386, 387; 2 Sim. Ch. 274; 1 Younge & J. 512; 4 Ves. 329; 8 Id. 306: Dougl. 341; 5 Mass. 500; 8 Id. 3: 2 M'Cord; 5 Denio, 646. t-1 Swanst. 28, 1 Coll. Ch. 681; 8 T. R. 122; 3 Pet. 377; 4 Rand. 213; 8 Blackf. 387. u-6 Ves. 102; 2 B. & Ald. 448; 2 Bl. Comm. 381; 3 Pick. 360: 7 Ired. Eq. 267; 10 Humph. 368; 2 Md. 82; 6 Pet. 68; 1 Jarman Wills, 404-412. v-Story Confl. L. §§ 479 *a*., 479 *m*., 490, 491. w-2 Beav. Rolls, 215; 7 Id. 107; 3 Hare, 620; 2 Drur & Warr. Ch. 133; 3 Ves. Ch. 462; 5 Id. 369; 17 Id. 462; 2 Sim. & S. 145; 4 Hare Ch. 219.

rent intention, but not against it.[x] Where there is no such internal evidence the following positions of law appear established: 1. If the same specific thing is bequeathed twice to the same legatee, in the same will, or in the will and again in the codicil, in that case he can claim the benefit of only one legacy.[y] 2. Where two legacies of a quantity of equal amount are bequeathed to the same legatee in one and the same instrument, there also the second bequest is considered a mere repetition, and he shall be entitled to one legacy only.[z] 3. Where two legacies of unequal amount of quantity are given to the same person in the same instrument, the one is not merged in the other, but the latter shall be regarded as cumulative, and the legatee entitled to both.[a] 4. Where two legacies are given to the same legatee by different instruments, in that case the latter shall be cumulative, whether its amount be equal[b] or unequal to the former.[c]

Debt—Release of by legacy. If one leave a legacy to his debtor, it is not to be regarded as a release of the debt, unless that appears to have been the intention of the testator.[d] Where one appoints his debtor his executor, it is at law regarded as a release of the debt;[e] but this is in general regulated by statute. But in equity it is considered that the executor is still liable for the amount of his own debt.[f] Where one appoints his creditor executor, and he has assets, it operates to discharge the debt, but not otherwise.[g]

—— *Satisfaction of by legacy.* In equity, if a legacy equal or exceed the debt, it is presumed to have been intended to go in satisfaction;[h] but if the legacy be less than the debt, it is deemed satisfaction for that amount.[i] Courts allow very slight circumstances to rebut this presumption of payment: as where the debt was not contracted until after the making of the will;[j] where the debt is unliquidated and the amount due not known;[k] where the debt was due upon a bill or note negotiable;[l] where the legacy is made payable after the debt falls due;[m] where the legacy appears from the will to have been given with a different intention;[n] where there is express direction in the will for the payment of all debts and legacies, or the legacy is expressed to be for some other reason.[o]

Legatee. One to whom a legacy is bequeathed. A residuary legatee is one to whom the residum of the estate is bequeathed or devised by will.[p]

—— *Children.* The description of children as legatees may have reference to the time of testator's death, or that of making the will; the former is the presumed intention, unless from the connection or circumstances the latter is the apparent intent, in which case it must prevail.[q] This term will include a child unborn;[r] but it will sometimes have a more restricted application, and thus be confined to children born before the death of the testator; it will make no difference whether the bequest be to children begotten or to be begotten, or which "may be born."[s] "Heirs" may be construed children,[t] and "children," when used to designate one's heirs, may include grandchildren;[u] but if the word "children" is used, and there are persons to answer it, then grandchildren cannot be comprehended under it.[v] The general rule is, that a devise to a man and his children, he having children living at the time when the will takes effect, creates a joint estate in the father and children; but if he has no children he takes an estate tail;[w] and a similar legacy of personal estate gives the father a life-estate if he have no children at the time the will takes effect;[x] but if there are children living they take jointly with the father.[y]

The term "children" will not include illegitimate children, if there are legitimate children to answer the term;[z] otherwise it may or may not, according to circumstances.[a]

—— *Cousins.* The term "cousins" will be restricted to its primary signification when it is before used in the same will in that sense.[b] Upon a bequest "to my cousin T. S.," if I have two cousins of that name,[c] evidence may be adduced to show which of the two was intended.[d]

—— *Heirs.* A legacy to one and his heirs, although generally conveying an absolute fee in real estate, and the entire property in personalty, may by the manner of its expression and connection be held to be a designation of such persons as are the legal heirs of the person named, and thus they take as purchasers by name.[e]

—— *Interest in property bequeathed or devised.* Property given specifically to one for life, and remainder over, must be enjoyed specifically during the life of the first donee, although that may exhaust it;[f] but where the bequest is not specific, as where personal property is limited to one for life, remainder over, it is presumed that the testator intended the same property to go over, and if any portion

x-2 Brown Ch. 528; 4 Hare Ch. 216; 1 Drur. & Warr. Ch. 94, 113. y-Taller Ex. 335; 2 Hare Ch. 432. z-1 Brown Ch. 30; 4 Ves. Ch. 75; 3 M. & K. Ch. 29; 10 Johns. 156. a-Finch, 267; 2 Brown Ch. 225; 3 Hare Ch. 620. b-1 Cox Ch. 392; 17 Ves. Ch. 34; 1 Coll. Ch. 495; 4 Hare Ch. 216. c-1 Chanc. Cas. 301; 1 P. Wms. Ch. 423; 5 Sim. Ch. 431; 7 Id. 29; 1 M. & K. Ch. 589. d-4 Brown Ch. 227; 15 Sim. Ch. 554. e-Co. Litt. 264; 8 Co. 136, *a*. f-11 Ves. Ch. 90, n. n 1, 2, 3; 13 Id. 262, 264. g-2 Wms. Ex. 4th Am. Ed. 1118-1123. h-Prec. in Ch. 240; 3 P. Wms. 353: 4 Madd. 325. i-2 Salk. 508; 1 Ves. Sr. Ch. 263; 2 Ho. Lds. Cas. 153. j-2 P. Wms. Ch. 343. k-1 P. Wms. 299. l-3 Ves. Ch. 561. m-3 Atk. Ch. 96. n-2 Ves. Sr. Ch. 635. o-1 P. Wms. 410. p-Roper Leg. Index; Powell Mortg. Index; see LEGACY, above. q-4 Brown Ch. 55; Ambl. Ch. 397; 2 Cox Ch. 191, 192; 1 Sim. Ch. 42; 2 Wms. Ex. 4 Am. Ed. 934. r-2 H. Bl. 399; 1 Sim. & S. Ch. 181; 2 Cox Ch. 425; 1 Meigs, 149. s-2 Mylne & K. 46; 14 Beav. 453; 1 Wms. Ex. 982, and note. t-3 Rich. Eq. 543; 4 Pick. 198; 2 Hayw. 356. u-12 B. Mon. 115, 121; 5 Barb. 190. v-5 Ired. 421; see 4 Watts, 82; 3 Port. (Ala.) 452; 5 Harr. & J. 135. w-1 Turn. & R. Ch. 310; 12 Clark & F. Ho. Lds. Cas. 161. x-12 Sim. Ch. 88. y-5 Sim. Ch. 458. z-1 Younge Ch. 354; 2 Russ. & M. Ch. 336; see 1 Wms. Ex. 992, and note (2). a-See 5 Harr. & J. 10; 2 Paige Ch. 11; 11 Ves. & B. Ch. 422; 1 Bail. Eq. 251; 6 Ired. Eq. 130; 1 Roper Leg. 80. b-9 Sim. Ch. 457. c-1 W. Bl. 50. d-4 Dow. 93. e-1 Jac. & W. Ch. 388. f-4 My. & Cr. 299; 2 My. & K. 403.

of it be perishable, as long annuities, it shall be sold and converted into personal property, for the benefit of all concerned.[f] In personal property there cannot be a remainder in the strict sense of the word, and therefore every future bequest of personal property, whether it be preceded or not by any particular bequest, or limited on a certain or uncertain event, is an executory bequest, and falls under the rules by which that mode of limitation is regulated.[g] An executory bequest cannot be prevented or destroyed by any alteration whatsoever in the estate out of which or after which it is limited:[h] and this privilege of executory bequests, which exempts them from being barred or destroyed, is the foundation of an invariable rule, that the event on which an interest of this sort is permitted to take effect is such as must happen within a life or lives in being, and twenty-one years and a fraction of another year, allowing the period of gestation afterwards.[i] Legacies may be made conditional; in such case the condition may be either precedent or subsequent; in the former case no interest vests in the legatee until the performance of the condition, and in the latter it is liable to be defeated by the failure or non-performance of the condition.[j]

No particular form of words is requisite to constitute one a residuary legatee. It must appear to be the intention of the testator that he shall take the residue of the estate, after payment of debts and meeting all the appointments of the will.[k] The assent of the executor to a specific legacy is requisite to vest the title in this legatee.[l] This will often be presumed where the legatee was in possession of the thing at the decease of the testator and the executor acquiesces in his right.[m]

—— *Names.* Mistakes in the name or description of legatees may be corrected whenever it can be clearly shown by the will itself what was intended.[n] The only instance in which parol evidence is admissible to show the intention of the testator as to a legatee imperfectly described is that of a strict equivocation; that is, where it appears from extraneous evidence that two or more persons answer the description in the will.[o] See COUSINS, above.

—— *Nephews and nieces* are terms which, in the description of a legatee, will receive their strict import, unless there is something in the will to indicate a contrary intention.[p]

—— *Wife.* A bequest to "my beloved wife," not mentioning her by name, applies exclusively to the wife at the date of the will, and is not to be extended to an after-taken wife.[q] One not lawfully married may, nevertheless, take a legacy by the name or description of the wife of the one to whom she is reputed to be married,[r] but not if the reputed relation is the motive for the bequest.[s]

Payment. A legacy given generally, if no time of payment be named, is due at the death of the testator, although not payable until the executor has time to settle the estate in due course of law.[t] Legacies are not by common law due until one year after the decease of the testator, in order to allow the executor time to dispose of the estate and pay debts; and sometimes, by special order of the probate court, this is extended, from time to time, according to circumstances.[u] Where legatees are under disabilities, as infancy or coverture, the executor cannot discharge himself by payment, except to some party having a legal right to receive the same on the part of the legatee, which in the case of an infant is the legally appointed guardian, and in the case of a married woman is her husband; but in the latter case the executor may decline to pay the legacy until the husband make a suitable provision out of it for his wife according to the order of the proper court.[v] The proper course in such case is for the executor to deposit the money on interest, subject to the order of the court.[w]

Translation is the bestowing of a legacy which has been given to one, on another; this is a species of ademption; but it differs from it in this, that there may be an ademption without a translation, but there can be no translation without an ademption.[x]

MIND AND MEMORY. See TESTATOR, below.

MOIETY is the half of anything: as if a testator bequeath one moiety of his estate to A., and the other to B., each shall take an equal part.[y]

MOVABLES. In a will "movables" is used in its largest sense, but will not pass a growing crop, nor building materials on the ground.[z]

MYSTIC TESTAMENT is a will under seal.[a] It is a form of making a will which consists principally in enclosing it in an envelope and sealing in the presence of witnesses.

NUNCUPATIVE. See introduction to this subject, above.

OLOGRAPH is a will that is entirely written, dated, and signed by the hand of the testator himself.[b]

PENCIL is any instrument made of black lead, red chalk, or other suitable substance, for writing. Any instrument for writing without ink. A will written with a pencil cannot on this account be annulled.[c]

f-2 M. & K. 699, 701, 702; 7 Ves. 137; 4 M. & C. 298. g-See Feorne Cont. Rem. 401, n. h-8 Co. 96, *a.*; 10 Id. 476. i-Feorne Cont. Rem. 431. j-2 Wms. Ex. 1131 *et seq.* k-2 Wms. Ex. 1310 *et seq.* l-1 Wash. 308; 1 Bail. 504; 1 Harr. & J. 138; 2 Ired. Eq. 34; 12 Ala. N. S. 532; 4 Fla. 144; 11 Humphr. 559; 2 Mol. Ch. Dec. 162. m-See 4 Dev. 267; 3 Leigh, 682; 6 Pick. 126; 1 Call, 55. n-1 Phill. Ch. 270, 288; 2 Younge & C. Ch. 72; 10 Hare. Ch. 345; 12 Sim. Ch. 521; 8 Md. 496; 9 Eng. L. & Eq. 269; 15 N. H. 317; 32 Id. 268; 4 Johns. Ch. 607; 23 Vt. 336; 7 Ired. Ex. 201. o-8 Bingh. 244; 5 M. & W. 363; 2 Younge & C. Exch. 72; 12 Ad. & E. 451; Wig. Wills, 2 Ed. 78. p-14 Sim. Ch. 214; 1 Jac. Ch. 207; 4 Mylne & C. Ch. 60; 8 Beav. Rolls. 247; 2 Yeates, 196; 3 Barb. 466; 3 Halst. 462. q-1 P. Wms. 992; 1 Russ. & M. Ch. 629; 8 Hare Ch. 131. r-1 Keen Ch. 685; 9 Sim. Ch. 615. s-4 Ves. Ch. 802; 4 Brown Ch. 90; 5 Mylne & C. Ch. 145. See 1 Keen Reg. Cas. 685. t-See DEVISE, above. u-5 Binn. 475; 5 Paige, 573; 1 Des. 112; 6 Beav. Rolls, 298. v-See 1 P. Wms. 285; 1 Johns. Ch. 3; 9 Vt 41; 1 Drewe, 71. w-2 Wms. Ex. 4, Am. Ed. 1206-1220 x-Bac. Abr. *Legacies* (C). y-Litt. 125; 3 C. B. 274, 283. z-2 Wms. Ex. 1014; 3 Ak. Marsh. 123; 1 Yeates, 101; 2 Dall. 142. a-5 Mart. 182; 5 La 396; 10 Id. 328; 15 Id. 88. b-Cal. Code § 1227. c-1 Phill. Eccl. 1; 2 Id. 173.

PRECATORY WORDS. See WORDS, below.

PROBATE (or proof) of a will must always be made in the probate court, or the court having exclusive jurisdiction in all matters pertaining to the settlement of estates.[c] The probate of a will has no effect out of the jurisdiction of the court before which probate is made, either as to persons or property in a foreign jurisdiction.[d]

Any person interested in the will may compel probate of it by application to the probate court, who will summon the executor or party having the custody of it.[e] The judge of probate may cite the executor to prove the will at the instance of any one claiming an interest.[f] The attesting witnesses are indispensable, if the contestants so insist, as proof of the execution and authenticity of the will and the competency of the testator, when they can be had.[g] But if all or part of the subscribing witnesses are absent from the State, deceased, or disqualified, then their handwriting must be proved.[h] It will be presumed that the requisite formalities were complied with when the attestation is formal, unless the contrary appear.[i]

Wills over thirty years old, and appearing regular and perfect, and coming from proper custody, are said to prove themselves.[j] Wills lost, destroyed, or mislaid at the time of the testator's death may be admitted to probate upon proper proof of the loss and of the execution.[k]

RECOMMENDATORY WORDS. See WORDS, below.

REPUBLICATION is an act by a testator from which it can be concluded that he intended that an instrument which had been revoked by him should operate as his will; or it is the re-execution of a will by the testator with a view of giving it full force and effect. The republication is "express" where there has been an actual re-execution of it.[l] It is "implied" when, for example, the testator, by a codicil executed according to the statute of frauds, reciting that he had made his will, added, "I hereby ratify and confirm my said will, excepting in the alterations after mentioned;"[m] the will might be at a distance, or not in the power of the testator, and it may be thus republished.[n] The republication of a will has the effect: 1. To give it the full force of a will made at the time of the republication; if, for example, a testator by his will devise "all his lands in A," then revokes his will, and afterwards buys other lands in A, the republication made after the purchase will pass all the testator's lands in A.[o] 2. To set up a will which has been revoked.[p]

RESIDUE is that which remains of something after taking away a part of it; as, the residue of an estate, a part which has not been particularly devised by will. A will bequeathing the general residue of personal property passes to the residuary legatee everything not otherwise effectually disposed of; and it makes no difference whether a legacy falls into the estate either by lapse or as void at law, the next of kin is equally excluded.[q]

The residuary clause is that clause in a will by which the part of the property is disposed of which remains after satisfying previous bequests and devises.[r] The residuary estate is what remains of the testator's estate after deducting the debts and the bequests and devises. See DEVISEE and LEGATEE, above.

SINGULAR NUMBER. In law the singular number often includes the plural. A bequest to "my nearest relation," for example, will be considered as a bequest to all the relations in the same degree who are nearest to the testator.[s] A bequest made to "my heir" by a person who had three heirs, will be construed in the plural.[t]

TERROR. See IN TERRORUM, above.

TESTAMENT. A testament is a solemn, authentic instrument of writing, by which a person declares his will as to the disposal of his estate and effects after his death. A testament, to be valid, must be made when the testator is of sound mind; and it must be subscribed, witnessed, and published in such manner as the law prescribes.[u] Testaments are nuncupative or written. See the beginning of this article, and LAST WILL, above.

TESTATE is the having made a valid will. The condition of one who leaves a valid will at his death.

TESTATOR is a person who makes and leaves a testament or will at death. In general, all persons may be testators; but to this rule there are various exceptions: 1. Persons who are deprived of understanding cannot make wills; idiots, lunatics, and infants are among this class. 2. Persons who have understanding, but being under the power of others cannot freely exercise their will; and this the law presumes (in the absence of a statute to the contrary) to be the case with a married woman, and therefore she cannot make a will without the express consent of her husband to the particular will. When a woman makes a will under some general agreement on the part of her husband that she shall make a will, the instrument is not properly a will, but a writing

c-9 Co. 36, 38, *a*; Fonbl. Eq. b. 4, pt. 2, c. 1, § 2; 4 T. R. 260; 1 Jarman Wills, 218; 8 N. H. 124; 12 Met. (Mass.) 421; 8 Ohio, 5; 3 Gill. 198; 20 Miss. 134; 23 Conn. 1. d-8 Ves. 44; 1 Johns. Ch. 153; 12 Vt. 589; Story Conn. L. §§ 512–517. e-4 Pick. 33; 3 Bac. Abr. 34 *Ex.* f-4 Pick. 33; 1 Wms. Ex. 201; 1 Jarman Wills, 224. g-2 Greenl. Ev. §§ 691, 692; 1 Jarman Wills, 226, and note. h-9 Ves. 381; 19 Johns. 186; 1 Jarman Wills, 226, and note: and see § 17 Ga. 364; 9 Pick. 350; 6 Rand. 33. i-8 Md. 15; 11 N. Y. 220; 30 Penn St. 218; 1 Jarman Wills, 228, and notes; but see 19 Johns. 386.

j-1 Greenl. Ev. §§ 21, 570; 2 Kay & J. Ch. 112; see also 2 Nott. & M'C. 400. k-1 Phill. Eccl. 149; 1 Green. Ch. 220; 1 Jarman Wills, 231, note. l-1 Ves. Ch. 440; 2 Rand. 192; 9 Johns. 312. m-Com. 381; 3 Brown Parl. Cas. 85. n-1 Ves. Sr. Ch. 437; 3 Bingh. 614; 1 Ves. Ch. 486; 4 Brown Ch. 2. o-Cro. Eliz. 493; see 1 P. Wms. 275. p-2 Bouv. Inst. nn. 2162–2264. q-15 Ves. Ch. 416; 2 Mer. Ch. 392. r-4 Kent Comm. 541; 2 Wms. Ex. 1014, n. 2. s-1 Ves. St. Ch. 357; 1 Brown Ch. 293. t-1 Russ. Cr. Cas. 384. u-Domat. Book 1, tit. 1, § 1

in the nature of a will or testament. 3. Persons who are deprived of their free will cannot make a testament; as, a person in duress.[e]

Age. A testator must be of full age. See DEMENTIA SENILE, and law of various States, as given below.

Blindness is so far an incapacity that it requires express and satisfactory proof that the testator understood the contents of the will, in addition to what is required in other cases.[f]

Deaf and dumb persons will labor under a similar inconvenience, and especially in communicating with the witnesses, unless they have been educated so as to be able to write.[g] But the witnesses must be present with the testator, be within the possible cognizance of his remaining senses.[h]

Delirium from disease or stimulus, while the paroxysm continues to such an extent as to deprive a person of the right exercise of reason, is a sufficient impediment to the execution of a will.[i] But there is not the same presumption of the continuance of this species of mental perversion, whether it proceed from the intoxication of stimulus or the delirium of fever, as in ordinary insanity.[j]

Dementia senile. This is a defect of capacity frequently in question in courts of justice in testing the validity of wills. If the testator has sufficient memory remaining to be able to collect the elements of the transaction, viz.: the amount and kinds of property he had, and the number of his children, or other persons entitled to his bounty, and to hold them in mind sufficiently to form an understanding judgment in regard to them, he may execute a valid will.[k] Age itself is no sure test of incapacity.[l] But when one becomes a child again, he is subject to the same incapacities as in his first childhood.[m]

Idiots are wholly incapable of executing a will, whether the defect of understanding is congenital or accidental.

Lunatics are incapable of executing a last will and testament, except during such lucid interval as allows the exercise of memory and judgment. It must be an absolute, but not necessarily a perfect, restoration of reason and reflection, and not a mere temporary remission.[n]

Mind and memory. A testator must have a sound and disposing mind and memory. In other words he "ought to be capable of making his will with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, of the persons who are the object of his bounty, and the manner in which it is to be distributed between them."[o]

Monomania or partial insanity. This is a mental or moral perversion, or both, in regard to a particular subject or class of subjects, while in regard to others the person seems to have no such morbid affection.[p] It consists in the belief of facts in regard to the particular subject of the affection, which no sane person would or could believe.[q] When it appears that the will is the direct offspring of this morbid affection it should be held invalid, notwithstanding the general soundness of the testator.[r]

Persuasion. While the person is confined within those limits which leave the mind free, persuasion may be used to induce another to make his will, or even to make it in one's own favor. But if such persuasion should so far operate on the mind of the testator that he would be deprived of a perfectly free will, it would vitiate the instrument.[s]

THREATS. See IN TERRORUM, above.

TRANSLATION is the bestowing of a legacy which has been given to one, on another; it is a species of ademption, but it differs from it in this, that there may be an ademption without a translation, but there can be no translation without an ademption.[t] See ADEMPTION, above.

UNCERTAINTY. See CONTRACTS, CERTAINTY, ante.

UNINTELLIGIBLE. When a contract, a law, or a will is unintelligible, it has no force or effect whatever. See CONTRACTS, title CONSTRUCTION.

WARNING. See IN TERRORUM, above.

"WHEN," in wills, standing by itself, is a word of condition denoting the time at which the gift is to commence.[u] The context of a will may show that the word "when" is to be applied to the possession only, not to the vesting of a legacy; but to justify this construction there must be circumstances, or other expressions in the will showing such to have been the testator's intent.[v]

WORDS. It is a general rule that contracts and wills shall be construed as the parties understood them; every person, however, is presumed to understand the force of the words he uses, and therefore technical words must be taken according to their legal import even in wills, unless the testator manifests a clear intention to the contrary.[w]

Precatory words are expressions in a will praying or requesting that a thing shall be

e-2 Bl. Comm. 497; 2 Bouv. Inst. n. 2102, *et seq.* f-1 Rob. Eccl. 278; 3 Strobh. 297; 1 Jarman Wills, 49. g-Wharton & Stille, Met. Jur. § 13. h-Richardson, J.; 1 Speers, 256, 257; see 1 Wms Ex. 17, 18. i-Ray Ins. §§ 253, 254, 390; Taylor Med. Jur. 626; Wharton & Stille, §§ 36, 235; Rush. Mind. 282; 18 Ves. Ch. 12; 3 Eng. L. & Eq. 18; 17 Jur. 1045; 1 Ves. Sr. Ch. 19; see also 2 Aik. 167; 1 Bibb. 168, 406; 4 Hen. & M. 70. j-3 Hill (S. C.) 68; 4 Met. (Mass.) 545. k-Ray Ins. § 243; Taylor Med. Jur 650; 21 Vt. 168. l-2 Phill. 261, 262. m-1 Wms. Ex. 35; 3 Madd. Ch. 191; 2 Hagg. Eccl. 211; 6 Ga. 324. n-Tayl. Med Jur. 642; 3 Brown Ch. 441; Poth. Ob. (Evans' Ed.) App. 579; Wharton & Stille Med. Jur. 255; Rush Mind, 162, 163; Ray Med. Jur. § 279; Combe Ment. Der. 241; 9 Ves. Ch. 611; 11 Id. 10; 13 Id. 87. o-3 Wash. C. C. 585, 586; 4 Id. 262; 1 Green Ch. 82, 85; 2 Id. 563, 604; 26 Wend. 255, 306, 311, 312; 8 Conn. 265, 9 Id. 105. p-Tayl. Med. Jur. 626. q-1 Add. Eccl. 279; 3 Id. 79. r-6 Ga. 324; 7 Gill. 10; 8 Watts, 70; see also 6 Moore Priv. Conn. 341, 349; 12 Jur. 947; Whart. & Stille Med. Jur. 18. s-3 S. & R. 269; 5 Id. 207; 13 Id. 323. t-Bac. Abr. *Legacies* (C). u-6 Ves. Ch. 243; 2 Merriv. Ch. 286. v-7 Ves. Ch. 422; 9 Id. 230; 11 Id. 489; Coop. 145; 3 Brown Ch. 471. w-1 Brown Ch. 33; 3 Id. 234; 5 Ves. Ch. 401; 8 Id. 306.

done. Although recommendatory words used by a testator, of themselves, seem to leave the devisee to act as he may deem proper, giving him a discretion, as, when a testator gives an estate to a devisee, and adds that he hopes, recommends, has confidence, wish, or desire that the devisee shall do certain things for the benefit of another person, yet courts have construed such precatory expressions as creating a trust.[x] But this construction will not prevail where either the objects to be benefited are imperfectly described, or the amount of property to which the trust should attach is not sufficiently defined.[y]

ALABAMA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills

May be made during the last illness, of personal property not exceeding in value the sum of five hundred dollars.

Written Wills and Testaments.

Every will must be in writing, unless the person making the same is prevented by the extremity of his last sickness, when personalty only can be willed.

Age and Mind. All persons of the age of twenty-one years, and of sound mind, may devise lands and any interest therein, by their last will.

All persons of the age of eighteen years may dispose of all their personal property by their last will.

Revocation and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself with intention to revoke, or by some one in his presence, or by his direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. No will (excepting nuncupative wills, of not exceeding five hundred dollars' worth of personal property, is effectual unless the same is in writing, signed by the testator, or some person in his presence, and by his direction, and attested by at least two witnesses, who must subscribe their names thereto, in the presence of the testator.

Probate or proof. See text, above.
Repeal. See ALTERATION, ETC., above.
Signature. See EXECUTION, above.
Witnesses. See EXECUTION, above.

See GENERAL FORMS, below.

ARKANSAS.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Unwritten or nuncupative wills may be made during the last illness, and may bequeath estate not exceeding in value five hundred dollars.

Proof must be by two witnesses.

Written Wills and Testaments.

Age and mind. All persons of the age of twenty-one years, and of sound mind, may devise lands and any interest therein, by their last will.

All persons of the age of eighteen years may dispose of all their personal property by their last will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. Every will must be in writing, etc. No will (excepting nuncupative wills, of not exceeding five hundred dollars' worth of property) is effectual unless the same is in writing, signed by the testator, or some person in his presence, and by his direction, and attested by at least two witnesses, who must subscribe their names thereto, in the presence of the testator.

No informally signed and attested will can be pleaded in bar of one subscribed in due form.

Probate or proof. See text, above.
Repeal. See ALTERATION, ETC., above.
Signature. It must be subscribed by the testator at the end of the will, or by some person for him at his request. Such subscription must be made by the testator in the presence of each attesting witness, or acknowledged by the testator to each of the attesting witnesses to have been made and subscribed as aforesaid. At the time of such subscription and acknowledgment the testator must declare the instrument so subscribed to be his last will and testament. See WITNESSES, below.

Witnesses. There must be at least two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the request of the testator.

Where the entire body and signature of the will is in the handwriting of the testator, it may be established by the unimpeachable evidence of at least three disinterested witnesses to the handwriting and signature of the testator, without subscribing witnesses.

See GENERAL FORMS, below.

CALIFORNIA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

No nuncupative will shall be good where the estate bequeathed exceeds the value of one thousand dollars; nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator at the time of pronouncing the same did bid some one present to bear witness that such was his will, or to that effect; nor unless it was made at the time when the decedent was in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

A nuncupative will must be reduced to writing within thirty days, and proved within six months after the same was uttered.

Written Wills and Testaments.

Age and mind. Every person of sound mind, and over eighteen years of age, may dispose of all his or her estate, real or personal.

Alteration and repeal, as in Alabama.

Execution. No will (except such nuncupative will as is above mentioned) is valid, unless it is in writing, duly signed and attested, or proved Must be executed at least thirty days before the death of the testator for charitable purposes. Charitable bequests cannot exceed one-third of the estate of one leaving legal heirs

Probate or proof. See text, above.
Repeal. See ALTERATION, ETC., above.
Signature must be by the testator, or some person in his presence, and by his express direction. See WITNESSES, below.

Witnesses. It must be attested by two or more witnesses, subscribing their names to the will, in the presence of the testator, and in the presence of each other.

See GENERAL FORMS, below.

CANADA.

PROVINCE OF ONTARIO.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Must be of full age and sound mind.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above.
Repeal. See text, above.
Signature must be by the testator, or some other person in his presence and by his direction, in the presence of two witnesses, both being present at the same time.
Witnesses. See SIGNATURE, above.

See GENERAL FORMS, below.

PROVINCE OF QUEBEC.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. All persons twenty-one years of age, and of sound intellect, may make a last will.

Alteration and repeal may be by burning, cancel-

[x] 8 Ves. Ch. 380; 18 Id. 41; Bac. Abr. Legacies (B).
[y] 1 Brown Ch. 142; 1 Sim. Ch. 542, 546.

ling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. Wills are of three kinds:

1. The authentic (or French) will, made before two notaries, or a notary and two witnesses.

2. The English will, made in the presence of two witnesses.

3. The olographic will, which must be entirely written and signed by the testator, and requires neither notaries nor witnesses.

Probate or proof. The English and the Olographic wills must be probated.

Repeal. See ALTERATION, ETC., above.

Signature. The English will must be signed at the end thereof, with the signature or mark of the testator, made by himself, or by another person for him, in his presence, and under his express direction. See WITNESSES, below.

Witnesses. The signature must be acknowledged by the testator, as having been subscribed by him to his will then produced, in the presence of at least two competent witnesses together, who must attest and sign the will immediately, in the presence of the testator, and at his request.

Females may attest as witnesses in the English will, but not in the French.

See GENERAL FORMS, below.

COLORADO.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Males aged twenty-one years, females aged eighteen years, being of sound mind and memory, may dispose of their real and personal property by will, subject to the payment of his or her debts; except that a married man cannot deprive his wife of over one-half of his property, and *vice versa*, without the consent of the other in writing.

Personal estate may be disposed of by will or testament by any one of sound mind and memory, at the age of seventeen.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. All wills devising lands, tenements, and hereditaments, annuities, or rents, must be reduced to writing, and duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC, above.

Signature must be by the testator or testatrix, or by some one in his or her presence, and by his or her direction. See WITNESSES, below.

Witnesses. Two or more credible witnesses to the signature, etc., of the will, in the presence of the testator or testatrix, are necessary to the validity of the will.

See GENERAL FORMS, below.

CONNECTICUT.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. All persons over eighteen years of age, and of sound mind, may dispose of all their property, real and personal, by last will or testament.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. All wills must be in writing, duly signed and proved.

Probate must be effected within ten years from the testator's death.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator. See WITNESSES, below.

Witnesses. The attestation must be by three witnesses, all of them subscribing the will in the presence of the testator, and in the presence of each other.

See GENERAL FORMS, below.

DAKOTA, NORTH AND SOUTH.

Codicils.

See text above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. A will of real or personal property, or both, or a revocation thereof, by a person not domiciled here, and executed according to the place of the testator's domicile elsewhere, is as valid as though executed according to the laws of the territory.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature. It must be subscribed at the end thereof by the testator himself, or by some person in his presence, and by his direction. The subscription must be made in the presence of each of the attesting witnesses, or be acknowledged by the testator to each of them to have been made by him, or by his express authority. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will.

Witnesses. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, adding his place of residence.

A person who subscribes the testator's name, by his direction, must write his own name as a witness to the will.

See GENERAL FORMS, below.

DELAWARE.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Any person at the age of twenty-one years and upwards, of sound and disposing mind, may make a will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested.

Married women cannot deprive their husbands of the courtesy of their life-interest in their property.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person subscribing the testator's name in his presence, and by his express direction.

Witnesses. It must be attested and subscribed in his presence by two or more credible witnesses.

See GENERAL FORMS, below.

DISTRICT OF COLUMBIA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.[a]

Age and mind. Males must be of the full age of twenty-one years and upwards. Females must be of the full age of eighteen years. All persons must be of sound and disposing mind, and capable of executing a valid contract or conveyance.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution. All devises and bequests of lands or tenements devisable by law must be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the person devising or making the will, or by some other person in his presence, and by his express direction.

Witnesses. Such signature, etc., must be attested and subscribed in presence of the devisor by at least two credible witnesses.

See GENERAL FORMS, below.

FLORIDA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below

a-Maryland Act, 1798, Ch. 101, C. 1.

Unwritten or Nuncupative Wills.

A nuncupative will must be made in the time of the last sickness of the deceased. It must be proved by the oath of three witnesses at least, that were present at the making thereof; and it must be proved by said witnesses that the testator or testatrix, at the time of pronouncing the same, did desire the persons present, or some of them, to bear witness that such was his or her will, or to that effect.

Six months after the speaking of such words no testimony shall be received to prove any nuncupative will, unless said testimony, or the substance thereof, was reduced to writing within six days from the making of said will, and sworn to before some judicial officer of the State within six days.

Written Wills and Testaments.

Age and mind. Every person of the age of twenty-one years and upwards, of sound and disposing mind, may execute a last will and testament.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing, duly signed and attested.

Foreign wills must be executed according to the laws of this State in order to be of effect therein and operate as a devise of lands.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or some other person in his or her presence, and by his or her express direction.

Witnesses. Such signature must be attested and subscribed in the presence of the testator or testatrix by three or more competent witnesses.

See GENERAL FORMS, above.

GEORGIA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. All persons must be of lawful age, and of sound and disposing mind.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution. All wills (except nuncupative) disposing of real or personal property must be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person for him, in his presence and by his express directions.

Witnesses. It must be attested and subscribed in the presence of the testator by three or more competent witnesses.

IDAHO.

Persons over 18 may make wills. Wife may will separate property without consent of husband. Two witnesses required, who sign in testator's presence and at his request.

ILLINOIS.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every male person twenty-one years of age, and every female person eighteen years of age, of sound mind, may make a will.

Alteration and repeal, same as Georgia above, to which add, "and by subsequent marriage of testator."

Execution must be in writing, duly signed and attested.

Probate or proof. See text above. Wills executed out of this State may be admitted to probate in the manner provided for the probate of wills in this State, whether probated here or elsewhere.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator or by some person in his presence, at his direction.

[b] G. & H. 551, *et seq.* [c] G. S. 1868, 1106, *et seq.*

Witnesses. Such signature, etc., must be attested in the testator's presence by two or more subscribing witnesses.

See GENERAL FORMS, below.

INDIANA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.[b]

Age and mind. All persons of sound mind who are twenty-one years of age may make wills devising all their estate, of every kind or nature, to any person or corporation, saving only the legal provision for the widow and widower.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, by his express direction, with the intention to revoke, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing (except nuncupative, bequeathing not to exceed one hundred dollars), duly signed and attested.

Probate or proof. See text, above. Wills may be probated by the circuit court of any county where the testator resided, or in which he shall die leaving assets, on proof of execution by one or more subscribing witnesses, or by proof of the handwriting of the witnesses in case of their incompetency, death, or absence. Wills executed without the State, and probated in another State or country according to the laws thereof, may be recorded and shall have the same effect as if executed in this State.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or some person in his presence and by his direction.

Witnesses. Such signature must be attested by two competent persons subscribing as witnesses in his presence. See GENERAL FORMS, below.

IOWA.

Codicils.

See text, ante, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Personal property to the value of three hundred dollars may be bequeathed by a verbal will if witnessed by two competent witnesses.

A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a nuncupative will so witnessed.

Written Wills and Testaments.

After-acquired property may be devised when the intention is clear and explicit.

Age and mind. Any person of full age and sound mind may dispose of all his property except what is sufficient to pay his debts, or what is allowed as a homestead or other exemption for his wife and family.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person in his presence, and by his express direction.

Witnesses. Two disinterested and competent witnesses are necessary. Unless there be such witnesses no subscribing witness to a will can derive any benefit therefrom.

See GENERAL FORMS, below.

KANSAS.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.[c]

Age and mind. Any person of full age and sound mind and memory may give and devise his property of every description by last will and testament.

Alteration and repeal, same as Iowa above.

A will enclosed in an endorsed sealed wrapper may be deposited in the office of the judge of the probate court, subject only to the order of the testator during his life, and after his death to be delivered to the person named on it, or in absence of such name to be publicly opened in the probate court, within two months after notice of death of testator.

Execution must be by writing, duly signed and attested.

Probate or proof. See text, above. A will executed, proved, and allowed in another State, may be admitted to record in the probate court of the county where property devised, etc., is situated, by producing an authenticated copy.

Repeal. See ALTERATION, ETC., above.

Signature must be at the end thereof by the testator or by some other person in his presence, and by his express direction.

Witnesses. It must be attested and subscribed in the presence of the testator by two or more competent witnesses who saw the testator subscribe or heard him acknowledge the same.

See GENERAL FORMS, post.

KENTUCKY.

Codicils.

See texts, ante, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. All persons twenty-one years of age and of sound mind may bequeath and devise all his property by last will and testament.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, o by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be by writing, duly signed and attested.

Probate or proof. See text, above. Wills are proved before and admitted to record by the county court of the county of testator's residence, or where the land lies, or where he is deceased.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator himself, or by some other person in his presence, and by his direction. See WITNESSES, below.

Witnesses. If the will is not wholly written by the testator the subscription or signature must be made, or the will acknowledged by him in the presence of two credible witnesses, who shall subscribe their names to the will in the presence of the testator.

See GENERAL FORMS, below.

LOUISIANA.

Mystic, Nuncupative, and Olographic Wills and Testaments.

Execution, form, requisites, etc. Donations *inter vivos* or *mortis causa*, cannot exceed two-thirds of the property of the disposer, if he leaves at his decease a legitimate child; one-half, if he leaves two children, and one-third, if he leaves three or a greater number. The name *children* included descendants of whatever degree they be, it being understood that they are only counted for the child they represent.[d]

Donations *inter vivos* or *mortis causa* cannot exceed two-thirds of the disposer's property, if the disposer, having no children, leaves a father, mother, or both.[e]

Any disposal of property, whether *inter vivos* or *mortis causa*, exceeding the *quantum* of which a person may legally dispose to the prejudice of the forced heirs, is not null, but only reducible to that *quantum*.[f]

In all dispositions *inter vivos* or *mortis causa*, impossible conditions, those which are contrary to the laws, or to morals, are considered not written. Substitutions and *fidei commissa* are and remain prohibited.

Every disposition by which the donee, the heir, or legatee is charged to preserve for, or to return a thing to a third person is null, even with regard to the donee, the instituted heir, or the legatee.

The disposition by which a third person is called to take the gift, the inheritance, or the legacy, in case the donee, the heir, or the legatee does not take it, shall not be considered a substitution, and shall be valid. The same shall be observed as to dispositions *inter vivos* and *mortis causa*, by which the usufruct is given to one, and the naked ownership to another.[g]

There are four different forms of wills:

1. Nuncupative (or open) by public act.
2. Nuncupative by private act.
3. Mystic (or sealed).
4. Olographic.

A nuncupative testament, under private signature, must be written by the testator himself, or by any other person from his dictation, or even by one of the witnesses, in presence of five witnesses residing in the place where the will is received, or of seven witnesses residing out of that place. Or it will suffice if, in the presence of the same number of witnesses, the testator presents the paper on which he has written his testament, or caused it to be written out of their presence, declaring to them that that paper contains his last will. In either case, the testament must be read by the testator to the witnesses, or by one of the witnesses to the rest, in the presence of the testator; it must be signed by the testator, if he knows how, or is able to sign, and by the witnesses, or at least two of them, in case the others know not how to sign, and those of the witnesses who know not how to sign must affix their mark.

In the country, it suffices for the validity of nuncupative testaments under private signature, if the testament be passed in the presence of three witnesses residing in the place where the testament is received, or of five witnesses residing out of that place, provided a greater number of witnesses cannot be had.[h]

A nuncupative testament by public act must be received by a notary public in the presence of three witnesses, residing in the place where the will is executed, or of five witnesses not residing in the place.

This testament must be dictated by the testator, and written by the notary as it is dictated.

It must then be read to the testator, in presence of the witnesses.

Express mention is made of the whole, observing that all these formalities must be fulfilled at one time, without interruption, and without turning aside to other acts.

This testament must be signed by the testator; if he declares that he knows not how, or is not able to sign, express mention of his declaration, as also of the cause that hinders him from signing, must be made in the act. This testament must be signed by the witnesses, or at least by one of them for all, if the others cannot write.[i]

A mystic, or secret testament, is made in the following manner: the testator must sign his dispositions, whether he has written them himself, or has caused them to be written by another person.

The paper containing these dispositions, or the paper serving as their envelope, must be closed and sealed.

The testator shall present it thus closed and sealed to the notary, and to seven witnesses, or he shall cause it to be closed and sealed in their presence. Then he shall declare to the notary, in the presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses.

All that is above prescribed shall be done without interruption or turning aside to other acts; and in case the testator, by reason of any hindrance that has happened since the signing of the testament, cannot sign the act of superscription, mention shall be made of the declaration made by him thereof, without its being necessary, in that case, to increase the number of witnesses.

Those who know not how or are not able to write, and those who know not how or are not able to sign their names, cannot make dispositions in the form of the mystic will.

If any one of the witnesses to the act of superscription know not how to sign, express mention shall be made thereof.

In all cases the act must be signed by at least two witnesses.[j]

An olographic testament is that which is written by the testator himself. In order to be valid it must be entirely written, dated, and signed by the hand of the testator. It is subject to no other form, and may be made anywhere, even out of the State.

It suffices, for the validity of a testament, that it be valid under any one of the forms prescribed by law, however defective it may be in the form under which the testator may have intended to make it.

Testaments made in foreign countries, or the other States or Territories of the Union, shall take effect in this State if they be clothed with all the formalities prescribed for the validity of wills, in the place where they have been respectively made.[k]

d-Civil Code, art. 1493. e-Id. art. 1494. f-Id. art. 1505. g-Id. arts. 1519–1522. h-Id. arts. 1581–1583. i-Id. arts. 1578–1580. j-Id. arts. 1584–1587. k-Id. arts. 1588–1596.

The form of foreign wills is regulated by law of domicil.

Testaments of persons employed in armies in the field, or in a military expedition, may be received by a commissioned officer, in presence of two witnesses. If the testator is sick or wounded they may be received by the physician or surgeon attending him, assisted by two witnesses. These testaments are subject to no other formalities than that of being reduced to writing, and being signed by the testator. if he can write, by the person receiving them, and by the witnesses. The testament made in this form shall be null in six months after the return of the testator to a place where he has an opportunity to employ the ordinary forms.

Testaments made during a voyage at sea may be received by the captain or master, in presence of three witnesses, taken by preference from among the passengers; in default of passengers, from among the crew. The testament made at sea can contain no disposition in favor of any person employed on board the vessel, unless they be relations of the testator. This testament is subject to the same formalities as the preceding one, and no others, and is not valid unless the testator dies at sea, or within three months after he has landed, in a place where he is able to make it in the ordinary forms.[l]

Heirs. Ascendants and descendants are called forced heirs, because they cannot be deprived of a certain portion of the estate of their ascendants or descendants. The portion of which they cannot thus be deprived is called their *legitime*, and that portion of his estate of which the testator may dispose is called the disposable portion.

Witnesses. The following persons are absolutely incapable of being witnesses to testaments:

1. Women of what age soever.
2. Males who have not attained the age of sixteen years complete.
3. Persons insane, deaf, dumb, or blind.
4. Persons whom the criminal laws declare incapable of exercising civil functions.
5. Persons who are constituted heirs or named legatees, under whatsoever title it may be. Mystic testaments are excepted from this provision.

See GENERAL FORMS, below.

MAINE.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills, Etc.

Must be reduced to writing within six days, or it cannot be proved after six months, and cannot dispose of more than one hundred dollars, with but three witnesses requested to be such.

Written Wills and Testaments.

Age and mind. All persons must be of lawful age and of sound mind to execute a will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person in his presence, and by his express direction.

Witnesses. Three disinterested witnesses must be present at execution of a will and must all witness signature of testator, and signatures of each other.

See GENERAL FORMS, below.

MARYLAND.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.[m]

Age and mind. All persons must be, if male, twenty-one years of age; if female, eighteen years of age, and of sound and disposing mind, and capable of executing a valid deed or contract, in order to make a valid will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some other person in his presence, and by his express direction.

Witnesses. At least two witnesses must attest and subscribe such will in the presence of the testator.

Wills of personal property are not valid without witnesses.

See GENERAL FORMS, below.

MASSACHUSETTS.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every person of full age and sound mind may dispose of his or her real and personal estate by last will.

Alteration and repeal, same as Maryland.

A bequest to a subscribing witness, or to the husband or wife of such witness, unless there are three others, is void.

Execution must be by writing, duly signed and attested.

Probate or proof. See text, above. A will made out of this State, which might be proved and allowed according to the laws of the State or country in which it was made, may be proved, allowed, and recorded in this State, and have the same effect as though executed herein, according to the laws of this Commonwealth.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator himself, or by some person in his presence, and by his express direction.

Witnesses. It must be attested and subscribed by three or more competent witnesses.

See GENERAL FORMS, below.

MICHIGAN.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Nuncupative wills are valid to dispose of estate not exceeding three hundred dollars, when proved by two competent witnesses. Soldiers in actual military service, and mariners on shipboard, may dispose of their wages and personal estate by nuncupative will.

Written Wills and Testaments.

Age and mind. Every person of full age and sound mind may dispose of their property by will.

Alteration and repeal, same as Minnesota.

A living person may probate his or her own will, which probate is secretly kept until after death.

Execution. No will (except it be nuncupative) is effectual to pass any estate, real or personal, unless it be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person in his presence, and by his express direction.

Witnesses. It must be attested and subscribed in the presence of the testator, by two or more competent witnesses.

Devisees and legatees are incompetent subscribing witnesses, unless there are two other witnesses who are competent. See GENERAL FORMS, below.

MINNESOTA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Soldiers in actual military service and mariners while at sea may execute nuncupative wills.

Written Wills and Testaments.

Age and mind. Every person of full age and sound mind may devise real and personal property by will. No will shall be effective to pass real estate unless proved and allowed in Probate Court. Code 1889.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

l-Civil Code, Arts. 1597–1604. m-Code, Art. 93.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above. When executed according to the laws of this State they may, in the first instance, be probated here. It is not settled that wills executed according to the laws of another State or country (materially varying in general requisites) can be lawfully proved and allowed here.

Repeal. See ALTERATION, ETC., above.

Signature must be at the end thereof, by the testator himself, or by some person in his presence, and by his direction.

Witnesses. It must be attested and subscribed in his presence by two or more competent witnesses.

Beneficiaries are not competent witnesses.

MISSISSIPPI.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Any person twenty-one years of age, and of sound mind, may make a last will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested (except for nuncupative wills).

Probate or proof. See text, above. They must be proven in the chancery court of the proper county, and there recorded

Repeal. See ALTERATION, ETC , above.

Signature must be by the testator, or some person in his presence, and by his express direction.

Witnesses. Two witnesses are necessary when lands are devised, and two also are necessary when personalty is bequeathed.

If the will be wholly written and signed by the testator no witnesses are required.

See GENERAL FORMS. below.

MISSOURI.

Codicils.

See text above, and WRITTEN WILLS, ETC , below.

Written Wills and Testaments.

Age and mind. All males over twenty-one years of age, and of sound mind, may devise real property. Persons over the age of eighteen years may bequeath personalty, and females may bequeath realty also.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Curtesy or dower cannot be affected by will unless accepted by non-rejection of the provisions of the will in that respect, etc.

Execution must be by writing, duly signed and attested. Wills of non-residents must be executed according to the laws of this State to be effectual here.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator.

Witnesses. It must be attested at the testator's request by two witnesses.

See GENERAL FORMS, below.

MONTANA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills

May be made by a soldier while in actual service, or by a mariner at sea.

Written Wills and Testaments.

Age and mind. Persons over eighteen and of sound mind may dispose of their property, real and personal, by last will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested, and witsessed by two witnesses who must sign their names and write their places of residence, in the presence of testator and of each other, and at his request.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be at the end thereof, by the testator, or by some person in his presence, and by his express direction.

See GENERAL FORMS, below.

NEBRASKA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills

Are allowed, but under stringent statutory regulations.

Written Wills and Testaments.[b]

Age and mind. Persons of full age and sound mind may devise by last will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. All wills, duly proved and allowed in any of the United States, or any foreign country, according to the laws thereof, may be admitted to probate here.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some one in his presence, and by his express direction.

Witnesses. It must be attested and subscribed in the testator's presence by two or more competent witnesses.

See GENERAL FORMS, below.

NEVADA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

No nuncupative will is valid where the estate exceeds one thousand dollars in value, nor unless proved by two witnesses within three months after the testamentary words were spoken.

Written Wills and Testaments.

Age and mind. Every person over eighteen years of age, and of sound mind, may dispose of his or her property by will, subject to the payment of debts.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing (except nuncupative), duly signed and attested.

Married women may dispose of their separate property as though they were unmarried.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature and seal must be by the testator or some other person in his presence, and by his direction.

Witnesses. It must be attested by two competent witnesses in the presence of the testator.

See GENERAL FORMS, below.

NEW HAMPSHIRE.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.[c]

Nuncupative wills of personal estate not exceeding one hundred dollars in value are valid only when declared in the presence of three witnesses who were requested by the testator to bear witness thereto, in his last sickness, and at his usual dwelling, excepting when taken sick from home and dies before his return.

A memorandum of such will must be reduced to writing within six days, and presented for probate within six months.

Written Wills and Testaments.[d]

Age and mind. Persons of the age of twenty-one years, of sound mind, may execute a will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above.

b-Revised Statutes, p. 81, § 123, *et seq.* c-G. S. 358. d-G. S. 357.

Repeal. See ALTERATION, ETC., above.
Signature and Seal must be by the testator, or by some person in his presence, and by his express direction.
Witnesses. It must be attested and subscribed in the testator's presence by three or more credible witnesses.
Legatees or relatives ought not to be witnesses.
See GENERAL FORMS, below.

NEW JERSEY.

Codicils.

See text above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Any person twenty-one years of age, not an idiot, lunatic, or of non-sane memory, may make a valid will; but married women cannot affect their husbands' estates. A minor may make a will appointing guardian for infant child.
Alteration and repeal. Wills may be altered or repealed by burning, cancellation, destroying or obliterating by testator himself, or by some one in his presence, or by his express direction, or by s new will, codicil, or other writing, duly executed and proved as wills are proved.
Execution must be in writing duly signed, sealed and attested. Foreign wills must be executed according to the laws of this State.
Probate. A written will may be proved in 10 days, and a verbal will in 14 days, after death of testator.
Signature and Seal must be by testator's own hand (by mark at least) and acknowledged by him. He must declare the will and signature to be his last will in the presence of two witnesses (three in verbal will), present at the time, who must subscribe their names thereto as witnesses in the presence of the testator and at his request.
Devisees or legatees acting as witnesses void their devises and legacies, except as to charges on the estate for payment of debts.
See GENERAL FORMS, below.

NEW MEXICO.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Verbal wills must be proved by five witnesses, two of whom must swear that the testator was, at the time of making his will, in possession of a sound mind and entire judgment. The witnesses must all be present, see, and hear the testator speak, and each and every one of them must understand clearly and distinctly every part of the will.

Written Wills and Testaments.

Age, mind, etc. Persons of either sex may make a valid will, excepting only: 1. Those who are under legal age, which is 21 years. 2. Insane persons and persons of unsound mind, during that condition. 3. Prodigals prohibited the administration of their estate by a court of competent jurisdiction. 4. Deaf and dumb by birth, unless they can write such wills by themselves.
Execution. Written wills are irrevocable, except by specially mentioning it in a subsequent will, and either setting it out in full or by stating that he would have stated it verbatim could he have remembered it, and declaring that he thereby revokes the same.
Probate or proof. Probate judges have power to qualify and approve wills, after hearing the evidence of the attesting witnesses, etc.
Signature must be by the testator; or, if he is unable to write, he may request some reliable person to sign for him.
Witnesses. Two or more able and qualified witnesses, competent in a court of law, are necessary.
See GENERAL FORMS, below.

NEW YORK.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Codicils.

Age and mind. All persons of full age and sound mind may execute a valid will. Males can bequeath personal property at eighteen; females at sixteen
Alteration and repeal, same as New Jersey, above.
Execution. In writing, duly signed and attested No bequest to a charitable or religious corporation by one leaving a husband, wife, child, or parent, is valid to the extent of more than one-half the clear estate, nor to the extent of more than one-quarter the clear estate, unless made at least two months before death.
Probate or proof. See text, above.
Signature and witnesses It must be subscribed at the end thereof, and must be subscribed by the testator in the presence of at least two competent witnesses; or it must be acknowledged to each of such attesting witnesses, or to such of them as were not present at the making of such subscription, by the testator, to have been so made.
The testator, at the time of making such subscription, or at the time of acknowledging the same, or both, if subscribed in the presence of one, and acknowledged after subscription to the other, must declare in the presence of each witness that the instrument is his will.
Each of the two attesting witnesses must sign his name as a witness at the end of the will, at the request of the testator. (The residence of the witnesses should be added.)
See GENERAL FORMS, below.

NORTH CAROLINA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Nuncupative wills may be made during the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days, unless he died on a journey, or from home. They must be made in the presence of at least two credible witnesses, who must state that they were especially required to bear witness thereto. The estate disposed of cannot lawfully exceed two hundred dollars in value.
It cannot be proved after six months from the making, unless it was put in writing within ten days from making, nor until notice has been given to the widow and next of kin to contest it if they think proper.

Written Wills and Testaments.[e]

Age and mind. All persons of full age and sound mind may execute a valid will.
Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.
Execution must be in writing, duly signed and attested. Wills made out of this State, conveying real property therein, must be executed according to the laws of this State.
Holograph wills may be made, but must be written altogether by the testator's own hand, and signed by him. They must be proved by three witnesses.
Probate or proof. See text, above.
Repeal. See ALTERATION, ETC., above.
Signature must be by the testator.
Witnesses. Two or more subscribing witnesses thereto are necessary.
See GENERAL FORMS, below.

OHIO.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills

May be made in the last sickness, and are valid as to personal property if reduced to writing and subscribed by two competent, disinterested witnesses, within ten days after the speaking of the testamentary words.

Written Wills and Testaments.

Age and mind. Any person of full age and sound mind and memory may execute a valid will.
Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.
Execution must be in writing, duly signed and sealed. As against children and their legal representatives all bequests to any benevolent, religious, educational, or charitable purpose are void, unless the will be executed one year before the decease of the testator.[f]
Probate or proof. See text, above. If no person interested shall, within two years after probate, appear and contest the will, the probate is forever binding, saving against the rights of infants, married women, persons absent from the State, etc.
Repeal. See ALTERATION, ETC., above.
Signature must be at the end thereof by the testator, or by some other person in his presence and by his express direction.
Witnesses. It must be attested and subscribed in the presence of the testator by two or more competent

e-Battles Rev. Ch. 119. f-Laws, 1874, March 30.

witnesses, who saw the testator subscribe, or heard him acknowledge the same.

See GENERAL FORMS, below.

OREGON.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every person twenty-one years of age and upwards, of sound mind, may execute a will devising all his estate, saving to the widow her dower.

Every person of the age of eighteen years may dispose of all his personal property by will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing, duly signed and attested.

Married women may execute a valid will subject to the husband's right as a tenant by the curtesy.

Probate or proof. See text, above. Copies of the will, when duly executed, and the probate thereof, may be recorded in the same manner as wills executed and proven in this State, and will be admitted in evidence in the same manner and with like effect.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some other person in his presence and under his express direction, and such person signing the testator's name must subscribe his own name as a witness, and state that he subscribed the testator's name at his request. See WITNESSES, below.

Witnesses. It must be attested by two or more competent witnesses subscribing their names to the will in the presence of the testator. See SIGNATURE, above.

See GENERAL FORMS, below.

PENNSYLVANIA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Unwritten or nuncupative wills, disposing of personal property, may be made by persons during their last sickness, at their own dwelling, or while travelling and before reaching home, and by mariners at sea, and soldiers in actual military service.

Proof must be by two witnesses, that the person desired those present to bear witness that such was his will.

Written Wills and Testaments.

Every will must be in writing, unless the person making the same is prevented by the extremity of his last sickness.

Age and mind. Must be of sound mind, and over twenty-one years of age.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be at least one calendar month before the death of the testator, for charitable purposes.

Heirs, etc. The testator's whole estate in the premises devised passes without words of inheritance, unless it appear from the will that he intended to pass a less estate.

Probate or proof. See text, above.

Realty acquired after the execution of the will passes with a general devise unless a contrary intention appears upon the face of the will.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person in his presence, and by his express direction, at the end thereof. A mark is a good signature.

Witnesses. Wills must be proved by two witnesses, but they need not be subscribing witnesses.

See GENERAL FORMS, below.

RHODE ISLAND.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every person of twenty-one years of age, and of sound mind, may dispose of all their property by will.

Every person eighteen years of age and upwards may bequeath all their personal property by will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing, duly signed and attested.

Married woman cannot impair the rights of her husband upon her death as tenant by the curtesy.[a]

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or by some person in his presence and by his express direction.

Witnesses. It must be attested and subscribed in the presence of the testator by two or more witnesses, or it will be utterly void and of no effect.

See GENERAL FORMS, below.

SOUTH CAROLINA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. All persons of lawful age and of sound mind may execute a valid will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator.

Witnesses. It must be attested and subscribed by three or more witnesses.

See GENERAL FORMS, above.

TENNESSEE.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Unwritten or Nuncupative Wills.

Nuncupative wills, disposing of estate not exceeding in value two hundred and fifty dollars, may be made during last sickness, in the testator's own habitation, or where he has been previously residing ten days at least, except he be surprised by sickness on a journey to or from home, and dies without returning.

Such will cannot be proved after six months from its making unless it were put in writing within ten days after the testamentary words were uttered, and not until the widow or next of kin are called to contest the same.

Written Wills and Testaments.[b]

Age and mind. Every person of full age and of sound mind may execute a valid will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing duly executed or proved.

Execution must be in writing, duly signed and attested. It may be entirely written and signed by the testator, but his handwriting must be proved by at least two disinterested witnesses.

Married women, of age, may dispose of any estate in lands or personalty, by will in writing, subscribed by herself, or by some other person in her presence and by her direction, and the subscription must be made, and the will acknowledged by her, in the presence of at least two witnesses subscribing the will with their names, in the presence of the testatrix.[c]

Probate or proof. Wills executed in other States, Territories, or the District of Columbia, must be proved according to the laws of this State.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or some other person, in his presence and by his direction.

Witnesses. It must be attested and subscribed in the testator's presence by at least two witnesses, neither of whom must be interested in the devise of the testator's lands. None necessary to wills of personalty.

TEXAS.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below

a-G. S. Ch. 171. b-Code, § 2163, *et seq.* c-Code §§ 2168, 2486 *a*, 2486 *f*; Laws, 1870, March 2.

Unwritten or Nuncupative Wills.[d]

Nuncupative wills may be made during a person's last sickness, at one's own habitation, or where they may reside for ten days preceding death, or where they sicken and die from home. One witness must take notice and bear testimony that such was the person's will or words of like import. Cannot devise realty.

After six months from the time of speaking the testamentary words no testimony to prove such a will can be admitted, unless the same or the substance thereof was committed to writing within six days after the same was spoken by the deceased.

Written Wills and Testaments.

Age and mind. All persons twenty-one years of age and upwards and of sound mind may dispose of all their property, real and personal, by last will and testament.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be by writing, duly signed and attested.

Probate or proof may be by the testimony of one of the subscribing witnesses, or if none be living, are of unsound mind, or absent from the State, then the testimony of two witnesses to the handwriting of the subscribing witnesses, and of the testator, or that he was unable to write. If the will is in the handwriting of the testator, then the testimony of two witnesses is necessary to it.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator.

Witnesses. Two or more must attest and subscribe their names thereto.

See GENERAL FORMS, below.

UTAH.

Every sound-minded person over 18 years of age may make a valid will. Husbands cannot devise from wives more than two-thirds of realty without their consent in writing. Married women may devise as if sole. Wills, except nuncupative, must be in writing, subscribed by testator in presence of two witnesses, who sign at his request and in his presence. Witnesses must give residence.

VERMONT.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. All persons, including married women, of full age and sound mind may execute a valid will. Females are of full age at eighteen years.

Alteration or repeal. "No will shall be revoked except by implication of law, otherwise than by some will, codicil, or other writing executed as provided in the case of wills, or by burning, tearing, cancelling, or obliterating the same with the intention of revoking it, by the testator himself, or by some other person in his presence, or by his express direction." R. L. § 2047.

Execution must be in writing and signed by the testator, or by testator's name written by some other person in his presence and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. R. L. § 2042.

Probate or proof must be made in the probate court. A will made out of the State and proved or allowed according to the laws of the State or country where made, may be proved, allowed, and recorded in this State, and thereupon have the same force and effect as though made here. See GENERAL FORMS, below.

VIRGINIA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every person of twenty-one years of age and of sound mind may make a valid will of realty and personalty.

Persons eighteen years of age may make wills of personalty.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be by writing, duly signed and attested.

Married women may dispose of their separate estate by will.

Probate or proof. When a will affecting property within this State is proved without the same, an authenticated copy thereof, and certificates of probate thereof, entitles it to probate here, in the probate court.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or some other person in his presence, and by his direction. See WITNESSES, below.

Witnesses. Unless wholly written by the testator, the signature must be made or the will acknowledged by the testator in the presence of at least two competent witnesses, present at the same time; and such witnesses must subscribe the will in the presence of the testator.

See GENERAL FORMS, below.

WASHINGTON.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every male person twenty-one years of age, and female person eighteen years of age, of sound mind, may execute a valid will, devising real and personal property, or either.

Alteration and repeal may be by burning, cancelling, tearing, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a subsequent will or codicil, or other writing, duly executed or proved.

Execution must be by writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or some person in his presence, and by his direction.

Witnesses. Two or more must attest and subscribe the same in the presence of the testator.

See GENERAL FORMS, below.

WEST VIRGINIA.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.

Age and mind. Every person of twenty-one years of age and upwards, being of sound mind, may dispose of any estate, real or personal, by last will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be in writing, duly signed and attested.

Probate or proof. See text, above.

Repeal. See ALTERATION, ETC., above.

Signature must be by the testator, or some other person in his presence, and by his direction, in such manner as to make it manifest that the name is intended as a signature. See WITNESSES, below.

Witnesses. Unless the will is wholly written by the testator the signature must be made or the will acknowledged by the testator in the presence of at least two competent witnesses, present at the same time; and such witnesses must subscribe their names to the will in the presence of the testator.

See GENERAL FORMS, below.

WISCONSIN.

Codicils.

See text, above, and WRITTEN WILLS, ETC., below.

Written Wills and Testaments.[e]

Age and mind. Every person of full age and sound mind may execute a valid will.

Alteration and repeal may be by burning, cancelling, destroying, or obliterating by the testator himself, or by some one in his presence, or by his express direction, or by a new will or codicil, or other writing, duly executed or proved.

Execution must be by writing, duly signed and attested. Married women over 18 may make will.

Probate or proof. No will is effectual to pass real estate unless proved and allowed in the county court. Unless wholly written by testator, he must sign, or some one in his presence and at his request, in presence of at least two witnesses, who must certify signatures in testator's presence and of each other.

[d] Paschal Dig. Arts. 3868, 5361–5374, 5536–5544. [e] R. S. Ch. 97; Tay. St. 1207.

WYOMIMG.

All persons of full age and sound mind may make will. Married women as if sole. Must be in writing, signed by testator in presence of two witnesses. Nuncupative wills may be probated within six months, if reduced to writing within thirty days after words spoken.

WRITTEN WILL FORMS—VARIOUS DETAILS.

Introductions in Written Wills and Testaments.

The will of A. B., of ——, merchant:

I, A. B., of ——, farmer, make this, my last will:

The last will and testament of me, A B., of ——, made this —— day of ——:

I, A. B., of ——, merchant, declare this (*or* the following) to be my last will and testament:

I, A. B., of the town of ——, in —— county, and State of ——, merchant, declare this to be my last will and testament:

In the name of God. Amen.
I, A. B., of ——, mariner, being forthwith to depart on a voyage, do make this, my last will, as follows:

I, A. B., of the —— of ——, grocer, do make and publish this, my last will and testament, hereby revoking and making void all former wills by me at any time heretofore made:

I, A. B., of the township of ——, in the county of ——, and State of ——, do make and publish this, my (first as well as) last will and testament, in the manner following, to wit:

I, A. B., of ——, in the county of ——, and State of ——, farmer, being of sound mind, memory, and understanding, do make and publish this, my last will and testament (hereby revoking and making void all former wills by me at any time heretofore made):

In the name of God. Amen.
I, A. B., of the county of ——, in the State (*or* Commonwealth) of ——, farmer, being weak in body (*or* in perfect health of body), and of sound mind, memory, and understanding, but considering the uncertainty of this transitory life, do make and publish this, my last will and testament, in the manner and form following, to wit:

Know all men by these presents:
That I, A. B., of ——, in the county of ——, and State (*or* Commonwealth) of ——, counsellor at law, being in good health (*or* being in ill health), and of sound and disposing mind and memory, do make and publish this, my last will and testament, hereby revoking all former wills by me at any time heretofore made:

In the name of God. Amen.
I, A. B., of ——, in the county of ——, and State (*or* Commonwealth) of ——, being sick and weak in body, but of sound mind, memory, and understanding, and considering the certainty of death, and the uncertainty of the time thereof, and to the end that I may be better prepared to leave this world whenever it shall please God to call me hence, do therefore make and declare this, my last will and testament, in the manner following, that is to say:

In the name of God. Amen.
I, A. B., of ——, being in good health of body, and of sound and disposing mind and memory, and being desirous to settle my worldly affairs while I have strength and capacity, do make and publish this, my last will and testament (hereby revoking and making void all former wills by me at any time heretofore made).

And first and principally I commit my soul into the hands of my Creator who gave it; and my body to the earth, to be interred at ——, in ——, at the direction of my executors, hereinafter named. And as to such worldly estate wherewith it has pleased God to intrust me, I dispose of the same as follows:

I, etc.

I, W. B., wife of A. B., of ——, esq., do, by this, my writing, purporting to be my last will and testament, dispose of my estate, pursuant and according to the authority to me given and reserved in and by a deed of settlement, made on my marriage with the said A. B., bearing date, etc. (*here set forth the date and parties to the settlement*), and by virtue of the said deed, and of all other powers and authorities whatsoever to me given or reserved, in manner as follows, viz.:

Various Clauses, Conditions, Declarations, Directions, Powers, Provisions, Etc., Etc.

Advancements to be Deducted.

I declare that all such moneys as I have or shall have advanced to any of my said children, or as shall be owing to me from any of them at my decease, shall be considered as part of my residuary estate, and shall be deducted from his, her, or their respective shares.

Advancements Not to be a Satisfaction of Debts.

I direct that no legacy or gift contained in my will shall (except where a contrary intention is expressed) be taken to be in satisfaction of any debt owing by me

Advancements Not to be a Satisfaction of Portions.

I declare that such advancements as I may have made, or may hereafter make, to any of my children (*or* nephews and nieces, etc.), shall be in addition to, and not in satisfaction of, any legacies, portions, or other benefit given them by my will.

Annuity—Power to Grant in the Nature of a Jointure

Provided also, and my will nevertheless further is, that my said grandson, G. N., the younger, by any deed or deeds in writing, to be sealed and delivered by him, my said grandson, in presence of, and attested by, two or more credible witnesses, to grant, limit, or appoint any rent or annual sum to be issuing and payable out of all or any of the said premises, etc., which are hereinbefore given or limited to him for his life, remainder as aforesaid, unto and to the use of any woman or women he shall marry, for and during the life or lives of such woman or women respectively, for or in nature of her or their jointure or jointures, and in bar of dower, such rent or annual sum to take effect from the death of the survivor of my said daughter and grandson G. N., the younger, and be payable half yearly or quarterly, on or at such days or times as he shall think fit, but so as such rent or annual sum do not exceed —— per annum tax free, for or in respect of every ——, or the value thereof in freehold or leasehold estates, which my grandson, G. N., the younger, shall actually have and receive, or become and be entitled to, as and for the portion or fortune of each such woman respectively, and so in proportion for any greater or lesser sum than ——, which he shall actually have and receive, or become or be entitled to as aforesaid, and by the same deed or deeds, to give and grant to such woman or women respectively, and her or their assigns, such power and remedies, by entry and receipts of the rents and profits of the premises, for recovering such rent or annual sum, when in arrear, and to grant, limit, and appoint the hereditaments and premises chargeable therewith, to any trustee or trustees, for any term or number of years, as to my said grandson, G. N., the younger, shall seem meet, to commence from the death of the survivor of my said grandson and daughter, for the better securing the payment of such rent or annual sum, so as such term of years be made determinable or defeasible upon the payment of the said rent or annual sum of —— dollars, thereby secured, and all arrears thereof, together with all costs and charges (a

any) incident thereto, and such grants, limitations, or appointments as aforesaid to be made either before or after such marriage, etc.

ANNUITY—PREVENTING ANNUITANT FROM PARTING WITH IT.

I do hereby expressly declare and direct, that in case my said nephew N. W. shall alien, sell, assign, incumber, or transfer, or in any manner dispose of or anticipate the said annuity or yearly sum of —— dollars, or any part thereof, then and in such case, and from and immediately after such alienation, sale, assignment, or transfer, the said bequest so made thereof as aforesaid, and the use and estate so given to him therein, shall cease and be void to all intents and purposes as if the same had not been mentioned in this my will, or as if the said N. W. were naturally dead.

APPOINTMENT—GUARDIAN, AND SUBSTITUTES, ETC.

That I have committed and disposed, and by these presents do commit and dispose, unto G. N., of the said borough, the custody, tuition and education of my son, S. B., from and immediately after my decease, until my said son shall attain the age of twenty-one years. And if it shall happen that the said G. N. dies before me, or before my said son attains the age of twenty-one years, then and in such case, I do commit and dispose unto E. F., of the borough and State aforesaid, such custody, tuition and education, after my decease and the decease of the said G. N., until my said son shall have attained the age of twenty-one years, and desire the said E. F. to take upon him the charge, for the good of my said son.

ANOTHER.

In case I shall leave any child or children living at the time of my decease, my will is, and I do appoint, that my said beloved wife shall have the guardianship and tuition of them during their minority, so long as she shall continue to be sole; and in case of her death or marriage during the minority of such my children, then I will and appoint that my much esteemed friend, F. D., shall have the tuition and guardianship of them during such their minority; and in case of his refusal, renunciation, or decease, I will that my other executor, E. X., shall exercise the said guardianship. I desire that the utmost care may be given to the moral training and education of my children, if any such shall happen to survive me; and that they may be brought up and instructed in the doctrines and religion of the —— Church.

APPOINTMENT—EXECUTORS AND SUBSTITUTES, ETC.

I do hereby nominate and appoint my sons, S. B. and O. B. (*or* my friends, E. X. and T. R.), to be the executors of this my last will and testament, hereby revoking all former wills by me made.

APPOINTMENT—EXECUTORS.

I appoint my wife, W., and A. B. and C. D. to be executors (and trustees) of my will: (but if my wife should marry again, she shall thereupon cease to be an executor and trustee of my will, which shall thenceforth take effect, and be executed in the same or in like manner as if the said A. B. and C. D. had been originally appointed the sole trustees and executors.

ANOTHER.

—— And I do hereby nominate, constitute, and appoint my said wife, together with the said trustees, to be my executrix and executors of this my will, and in the case of the death of any two or more of them, before the trusts of this my will shall be fully executed and performed, then I do nominate, constitute, and appoint my two eldest sons, for the time being, when they shall respectively have attained the age of eighteen years, to be executors of this my will, in the place and stead of such two or more of them, my said wife and the said trustees, as shall so die before the trusts of my said will shall be fully executed and performed, and with all the same power and powers, authority and authorities, to all intents and purposes whatsoever, as such executrix or executors, who shall so happen to die, had or might have under and by virtue of this my will, at the time of his or her death.

ARBITRATION, ETC.

My express will and desire is, that if any difference or dispute, question or controversy, shall arise or happen concerning any gift, bequest, or other matter or thing in this my will, the same shall be referred wholly to the award, order, and determination of my esteemed neighbors, N. R. and R. S., with power for them to choose an umpire; but if they or either of them should not be able or willing to act in the premises, then I do direct that my eldest son and eldest daughter shall each appoint an arbitrator or arbitrators, with the same power of choosing an umpire; and what they or a majority of them shall order, direct, or determine therein, shall be binding and conclusive to and on all and every person and persons therein concerned.

ARRANGEMENT OR COMPROMISE—POWER TO.

I appoint the said E. X. and T. R. executors of this my will; and authorize the acting executors or executor for the time being of this my will to satisfy any debts claimed to be owing to me or my estate, and any liabilities to which I or my estate may be alleged to be subject, upon any evidence they or he shall think proper, and to accept any composition or security for any debt, and to allow such time for payment (either with or without taking security) as to the said acting executors or executor shall seem fit, and also to compromise, or submit to arbitration, and settle all accounts and matters belonging or relating to my estate, and generally to act in regard thereto as they or he shall deem expedient, without being responsible for any loss thereby occasioned.

ASSIGNMENT TO NEW TRUSTEE TO PREVENT TRUST GOING TO EXECUTOR OR ADMINISTRATOR.

I do hereby further order and direct, that when and so often as either of my said trustees shall happen to die, that then the survivor of them shall and do forthwith assign, or cause to be assigned, my said leasehold houses, etc., and all his estate, term and interest therein, to one or more new trustee or trustees, to be nominated by the person or persons, who for the time being shall be entitled to the rents and profits thereof by virtue of this my will, in such manner as that the legal interest thereof may be revested in such survivor and the person or persons who shall be so nominated for that purpose as aforesaid, upon the trusts aforesaid, and so from time to time, and as often as the present or any succeeding trustees shall be reduced by death to one; to the end that the same trust may not go or descend to an executor or administrator.

BEQUESTS. See WRITTEN WILLS, ETC., below.

CHILDREN BORN AFTER DEATH OF TESTATOR—PROVISIONS FOR.

I give and bequeath to my wife, W. B., the sum of ——, in trust for any child, or children, by me begotten, which may be born of her subsequent to the time of my decease, which said sum of money is to be paid to such child, or divided equally between them, when he, or she, or they, shall have arrived at the age of twenty-one years.

CHILDREN—BORN AFTER THE EXECUTION OF A WILL.

I give, bequeath, and devise, all the rest, residue and remainder of my real and personal estate, to my children now living, or who may be living at the time of my decease, to be divided equally between them, share and share alike.

ANOTHER.

I give and bequeath to each and every one of my children born subsequent to the execution of this my last will and testament, the sum of —— dollars, to be paid in the same manner as the other legacies hereinbefore mentioned.

CHILDREN—CUSTODY AND TUITION OF.

And I do hereby dispose of and commit the tuition and custody of my children, C. B., L. B., and D. B., and every one of them, for such time as they or any of them respectively continue unmarried and under the age of twenty-one years, unto my wife, W. B., provided she remains my widow; but if she shall die or marry during the single life and nonage of any of my said children, I hereby dispose of and commit their tuition and

custody to my executors hereinafter nominated and appointed.

DEBTS DUE FROM RELATIONS—RELEASE OF, ETC.

Whereas, there being considerable sums of money due and owing to me upon bonds, bills, and otherwise, from my relations hereinbefore named, which I desire to release, I do hereby direct that all such evidences of debt shall be cancelled and destroyed by my executors immediately after my death; and I hereby discharge my relations hereinbefore named, and their heirs, executors, and administrators, from the payment of any debts due and owing to me or my estate, upon any account whatsoever, without any abatement of the legacies hereinbefore given to them respectively.

DEBTS—ANOTHER ON CONDITION OF WILL BEING UNMOLESTED.

Whereas my brother, B. B., stands justly and duly indebted to me in several sums of money, which I have, for several years now last past, paid, lent, and advanced to and for him and his use, amounting in the whole to the sum of —— dollars, and upwards; my will therefore is, that in case he shall give no trouble or molestation to my executors hereafter named, in the execution and performance of this, my last will and testament, I do hereafter remit and release unto him the said debt of —— dollars, and that he shall not be answerable or accountable to my executors for the same: But in case he shall give any trouble, molestation, or disturbance to them, or either of them, for or on account of anything in this, my will contained, then I give the said —— dollars to my executors, upon the trusts, intents, and purposes in this, my last will mentioned, and in aid of the full execution and performance of the same.

DISPUTES—SUBMISSION TO ARBITRATION, ETC.

I hereby order and appoint, that if any difference shall arise or happen, concerning any gift, bequest, or other thing in this will, no suit shall be brought concerning the same, but the same shall be referred wholly to the award of my friends A. R. and T. S., both of ——, and what they shall order, direct, or determine thercin, shall be binding and conclusive on all persons concerned.

ANOTHER.

And I do hereby order and appoint, that if any difference, dispute, question or controversy, shall be moved, arise or happen, concerning any gift, bequest, or other matter or thing in this, my will, given and bequeathed, expressed or contained, that then no suit or suits in law or equity, or otherwise, shall be brought, commenced, or prosecuted for and concerning the same, but the same shall be referred wholly to the award, order, and determination of my loving friends, A. R. and T. S., both of ——, and what they shall order, direct, or determine therein shall be binding and conclusive to all and every person and persons therein concerned.

DISPUTES—CONCERNING VALIDITY OF WILL, ETC.

Provided always, that if any person or persons, to whom any estate or interest is given or limited, by this, my will, shall in any court of law or equity, or otherwise, controvert the same, or dispute or call in question the validity thereof, or of any of the estates, limitations, powers, provisos, or dispositions, hereby limited, or given, or made, or herein contained, then, and in such case, the estates, interests, limitations, etc., so hereby limited, etc., to or in favor of such person or persons, so controverting my said will, shall cease, determine, and be absolutely void, to all intents and purposes whatsoever, as if such person or persons was or were naturally dead: And then, and from thenceforth, such estates, interests, limitations, powers, provisos, and dispositions, shall go and belong to, and be vested in the person or persons who, by virtue of this, my will, shall be next in remainder, after the person or persons so disputing as aforesaid. Provided, he, she, or they shall not controvert or dispute the validity of this, my will, or of any of the devises, limitations, powers, provisos, or dispositions herein contained, or hereby made.

DWELLING-HOUSE—WIFE TO RESIDE IN DURING WIDOWHOOD, ETC.

Also, I further give and devise unto my said dear wife the use and occupation of my dwelling-house of ——, in the said county of ——, with the gardens and offices thereunto belonging, and also —— acres of land adjoining thereto, called ——, to be enjoyed by her so long as she shall continue my widow and shall choose to reside in the said dwelling-house; and I do direct my trustees of the said term of —— years hereinafter limited, to permit her to reside in, use, and occupy the same accordingly.

ANOTHER.

—— And my will is, that my said wife shall and may reside in the house wherein I now dwell, situate at —— aforesaid, in case she shall think proper so to do, and shall and may have and enjoy the use of all my furniture, plate, linen, china and glass, which shall be therein at my decease, for and during her life, if she shall so long continue my widow and unmarried, but not otherwise. And in case she shall think proper to quit the said house at any time after my decease, then I give and bequeath unto her, my said wife, the sum of —— dollars, in order to settle her in, and furnish for her any other habitation she may choose to reside in.

INVESTMENT OF PERSONAL ESTATE, FOR USE OF DAUGHTER.

I do authorize, empower, and direct the said E. X. and T. R., and the survivors and survivor of them, after payment of my just debts and incidental charges by course of administration, to retain and keep in their own hands, during the life of the said H. D., all my personal estate then remaining, and the same to invest in bank or other stock, or put out at interest on good security, and the interest and income thereof annually, at such times and places, and in such proportions as they shall judge expedient, to pay to my said daughter during her life, for her sole and separate use. And if my said daughter shall survive the said H. D., then, on his decease, to pay the whole of said personal estate to her, to her own use forever; but if she shall not survive the said H. D., then during his life, after her decease, to appropriate the same interest and income thereof to the maintenance and education of her children, or any, or either of them, as they shall judge expedient, and after the death of the said H. D. to distribute the whole of said personal estate among said children, to their respective use forever; and the legal representatives of any child who may have deceased to be entitled to the same share as his or her parent would have been if then living. And I do further authorize and empower the said E. X. and T. R., and the survivors and survivor of them, during the life of the said H. D., in case they shall judge expedient, to appropriate the whole, or any part of the principal of my said personal estate, either to the support and maintenance of my said daughter during her life, or after her decease to the education and maintenance of all, or any, or either of her children.

MARRIAGE OF DAUGHTER WITHOUT WIDOW'S CONSENT.

Provided also, that in case my said daughters shall, before their respective ages of twenty-one years, intermarry with any person or persons, against or without the consent of my said wife, if then living, but if dead, without the consent or approbation of my said executors, or the survivor of them (such consent as aforesaid to be testified by writing under the respective hands and seals of my said wife, or of my said executors); then, and in such case, the interest only, after the rate of —— per cent. on the portion or portions of such daughter or daughters so marrying without such consent as aforesaid, shall be paid to her or them during her or their respective life or lives, for her or their sole and separate use and benefit, exclusive of any husband; and that upon the death of such daughter or daughters, marrying without such consent as aforesaid, the portion or portions, so given or intended for such daughter or daugh-

ters, shall go and be paid to, and for the use and benefit of all and every the child or children of such daughter so marrying without such consent as aforesaid; the same to be divided equally to and amongst them, share and share alike (if more than one), and to be paid to such child or children, at his, her, or their respective age or ages of twenty-one years, or day or days of marriage, which shall first happen, together with interest for the same after the rate aforesaid, from the time of their respective mother's death until the same become payable and be paid.

MARRIAGE OF NIECES WITHOUT PARENTS' CONSENT.

Provided always, and my will and meaning is, that if any or either of my said three nieces, at any time hereafter during the lifetime of their father and mother and the said T. T. (the trustee), or the survivors or survivor of them, do and shall marry and take to husband any person or persons, without the approbation and consent of their said father and mother, and the said T. T., or of two of the survivors of them, in writing, under his or their hand or hands, first had and obtained, then, and in such case, all and every the devises, bequests, and legacies, and every of them, shall cease, determine, and become absolutely void, frustrated, and of none effect in law or equity, to all intents and purposes whatsoever; and then and from thenceforth, and after such marriage and marriages without such approbation as aforesaid, I do give, devise, and bequeath all and singular the messuages, etc., money, and all other the benefit and advantages of all and every the matters and things hereinbefore given, devised, or bequeathed, or which by virtue of this, my will, might have been had, claimed, or demanded, by such of my said nieces as shall so marry and take husband without such approbation and consent as aforesaid, in case she had married, etc., with such approbation, etc., to such of my said nieces, their heirs, etc., as shall not then be married, or if married, to her or them, who hath or have taken and married a husband by and with such approbation and consent as aforesaid.

NAME OF TESTATOR TO BE TAKEN WITH ESTATE.

Provided always, and my will nevertheless is, that, if the persons to whose use the said freehold, etc., etc., are hereinbefore devised or limited, in remainder from and after the decease of my said daughter, D. B., do not and shall not, as and when they shall severally, by virtue of the devises and limitations hereinbefore contained, become and be entitled in possession to the said premises, etc., respectively, or to receive and take the profits thereof, use, assume, and take upon themselves respectively, the surname of B., and by the said surname of B. only, and no other, from thenceforth forever, thereafter continue to name, style, and write themselves, in all deeds, instruments, and writings, and use their utmost endeavors for procuring and obtaining his majesty's license and authority for their respective assuming and taking the said surname of B. only, or shall refuse, decline, or neglect so to do, for the space of six calendar months after they shall severally become and be so entitled as aforesaid, and be of the age of twenty-one years or upwards: Then, and as often as the case shall so happen, the estate and interest of him, her, or them so refusing, declining, or neglecting as aforesaid, of and in all the said premises, etc., hereinbefore given and devised, shall from thenceforth cease, determine, and be void, in such and the same manner to all intents and purposes whatsoever, as if he, she, or they so refusing, declining, or neglecting as aforesaid, was or were actually dead without issue, anything hereinbefore contained to the contrary thereof notwithstanding.

REPAYMENT OF LOANS BY CHILDREN.

It is my will that whatever sum or sums of money I have loaned or may loan to any or either of my children, and which may remain unpaid at the time of my decease, shall be considered as a part of my said residuary estate.

REVOCATION OF BEQUESTS AND LEGACIES IF WIFE SUES FOR DOWER, OR THIRD, ETC.

Provided further, that in case my said wife W. shall not accept of the provisions and legacies hereinbefore by me made and given her as aforesaid, and shall, at any time or times hereafter, prosecute any action or suit for dower, thirds, or any other part of my estates, real or personal, other than what I have so hereinbefore devised and given her, then and in that case the several annuities of ——, and amounting together to ——, and each of them, and all other legacies and bequests hereby by me before given or intended to be given to her, shall cease and be void to all intents and purposes, anything to the contrary notwithstanding.

SALE—POWER OF, ETC., TO SUPPORT DAUGHTER.

I do hereby authorize and empower the said E. X. and T. R., and the survivors and survivor of them, during the life of the said H. D., if they shall judge expedient, either in the lifetime of my said daughter, for her support and maintenance, or after her decease in the lifetime of the said H. D., for the maintenance and education of her children, or any or either of them, to sell and convey, for such prices as they shall deem proper, in fee simple, or for any less estate, all or any part of my messuages, lands, and tenements aforesaid, and the whole proceeds of such sale or sales, or any part thereof, or the interest and income thereof, from time to time, and at such times and places, in such proportions as they may judge expedient, to appropriate to all or any of the purposes aforesaid; and after the decease of the said H. D. to pay the whole proceeds of such sales then remaining unto my said daughter, if living, for her own use forever; otherwise, to distribute the same among her children, to their respective uses forever, as tenants in common; and the legal representatives of any child, who may have deceased, to be entitled to the same share as his or her parent would have been, if then living.

ANOTHER.

I do further authorize and empower the said E. X. and T. R., and the survivors and survivor of them, in case my personal estate shall be insufficient to pay my just debts and incidental charges, to sell and convey in fee simple, or for a less estate, and for such prices as they shall judge expedient, such parts of my messuages, lands, and tenements aforesaid, as may be necessary for that purpose, and the proceeds of such sale or sales to appropriate thereto.

And further, the receipt or receipts in writing of my said daughter to the said E. X. and T. R., or either of them, for any sums of money paid to her by virtue of this will and testament, shall be a good and sufficient discharge unto them, and every of them, therefor, her coverture notwithstanding.

SUIT BY WIFE, ETC. See REVOCATION, ETC., above.

WINDING UP TESTATOR'S BUSINESS, ETC.

With respect to my share and interest in the business of ——, now carried on by me at ——, in partnership with ——, under the firm of —— and Co., I empower the executors or executor for the time being of this my will, to adjust and settle all accounts and transactions relating to the said partnership business, and to wind up the affairs and concerns thereof and ascertain the amount of my share and interest therein, either according to the provisions of the articles of partnership under which the said business shall be carried on at my decease, or upon such other terms and in such other manner as may be agreed on between them or him and my surviving partners or partner, with power for the said executors or executor to refer to arbitration, or otherwise to compromise or settle any question that may arise in or about the winding up of the said concern, in such manner as they or he may think fit, and generally to do and execute all such acts and things in relation to the premises as may appear to them or him necessary or expedient, without being answerable for any loss which may arise thereby.

And I authorize the said executors or executor, if they or he shall in their or his discretion think fit, to permit the whole or any part of the amount

which on taking the accounts of the said partnership shall appear to be due to my estate, as and for my share and interest in the said business, to remain in the said business as a loan for any period not exceeding seven years from my decease, but so that the repayment thereof, with interest after the rate of —— per cent. per annum, shall be secured by the joint and several bond of the persons or person for the time being, continuing to carry on the said business either with or without any other security for the same, as the said executors or executor shall think fit:

And subject to the provisions hereinbefore contained as to the said business, I empower my trustees or trustee to postpone the sale and conversion of my real and personal estate for so long as they or he shall think fit.

Conclusions to Written Wills.

In witness whereof, I have hereunto set my hand (and seal), this —— day of ——, in the year ——.

A. B. [*Seal.*]

(*Add witnesses' attestation here.*)

In witness whereof, I, the said A. B., have hereunder set my hand, this —— day of ——.

(*Add witnesses' attestation here.*) A. B.

In witness whereof, I have hereunto subscribed my name (and affixed my seal), the —— day of ——.

(*Add witnesses' attestation here.*)

In witness whereof, I have signed (and sealed), and published, and declared this instrument my will, at ——, in ——, this —— day of ——.

A. B. [*Seal.*]

(*Add witnesses' attestation here.*)

In witness whereof, I, A. B., the testator, have to this, my will, written on one sheet of paper, set my hand, this —— day of ——.

(*Add witnesses' attestation here.*)

In witness whereof, I, A. B., testator aforesaid, have to this, my will, consisting (*or* written on) —— sheets of paper (*or* parchment), set my hand and seal (at the bottom of each sheet), this —— day of ——.

A. B. [*Seal.*]

(*Add witnesses' attestation here.*)

In witness whereof, I, the said A. B., have to this, my last will and testament, contained in this and the four preceding sheets, set my hand and seal (to wit): my hand to the bottom of each of said four sheets and my hand and seal to this last sheet, and my seal at the top of said four sheets, where all said sheets are fixed together, this —— day of ——.

A. B. [*Seal.*]

(*Add witnesses' attestation here.*)

In witness whereof, I have, on the day and year hereinbefore mentioned, to this, my last will and testament, contained in —— sheets of paper, set my hand and seal, in the manner following, to wit: to the first —— sheets thereof I have set my hand, by subscribing the same with my name; and to the —— and last sheet thereof I have signed and subscribed my name, and set my seal.

(*Add witnesses' attestation here.*) A. B. [*Seal.*]

Attestations of Witnesses to Written Wills.

A person must not only be of sound mind at the time of making his will, but also at the attestation of it by the witnesses.[a]

Signed and acknowledged by said testator, in the presence of us, who hereunto subscribe our names, in the presence of said testator, and of each other. W. I., T. N., E. S.

Signed, published, and declared by the above-named A. B., as and for his last will and testament, in the presence of us, who, at his request, have signed as witnesses to the same.

W. T., N. S.

Signed, sealed, published, and declared by the said A. B. as his last will and testament, in the presence of us, who, in his presence, and at his request, have hereunto set our names as witnesses. W. T., N. S.

The said A. B., at ——, in —— county, on said —— day of ——, signed and sealed this instrument, and published and declared the same as and for his last will and testament; and we, at his request, and in his presence, and in the presence of each other, have hereunto written our names as subscribing witnesses. W. I., T. N., E. S.

—— Signed, sealed, published, and declared by the above-named A. B., as and for his last will and testament, in the presence of us, who, at his request, and in his presence, have subscribed our names as witnesses thereunto; (*if a duplicate is executed at the same time, say*) as we have likewise done to a duplicate of the above-written will at the same time.

W. I., of ——.
T. N., of ——.
E. S., of ——.

The above instrument, consisting of one sheet (*or* two sheets), was, at the date thereof, signed, sealed, published, and declared by the said A. B., as and for his last will and testament, in presence of us, who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

W. T., residing at ——, in —— county.
N. S., residing at ——, in —— county.

The above instrument, consisting of one sheet, was, at the date thereof, declared to us by A. B., the testator therein mentioned, to be his last will and testament; and he at the same time acknowledged to us, and each of us, that he had signed and sealed the same; and we thereupon, at his request, and in his presence, and in the presence of each other, signed our names thereto as attesting witnesses.

W. T., residing at ——, in —— county.
N. S., residing at ——, in —— county.

The above-written instrument was subscribed by the said A. B., in our presence, and acknowledged by him to each of us: and he at the same time published and declared the above instrument so subscribed to be his last will and testament; and we, at the testator's request, and in his presence, have signed our names as witnesses hereto, and written opposite our names our respective places of residence.

W. I., of ——, in ——.
T. N., of ——, in ——.
E. S., of ——, in ——.

Conclusion and Attestation under the Laws of England.

In witness whereof, I, the said A. B., have hereunder set my hand, this —— day of ——, A. D. ——.

[*Signature of testator.*]

Signed and declared by the said A. B., as and for his last will and testament, in the presence of us (both being present at the same time), who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

(*Signatures of witnesses.*)

Conclusion and Attestation under the Laws of Massachusetts.

See Conclusions, above.

Signed, sealed, published, and declared by the above-named A. B., as and for his last will and testament, in the presence of the three several persons, whose names do hereunder appear to be by them subscribed as witnesses to the signing, sealing, and publishing the same, which said several persons did so hereunder subscribe their names, in the presence of the testator, and in the presence of each other, two several interlineations being first made, and several words in two places scored through, in folio 14; and four several interlineations, being first made, and three words scored through in folio 20.

W. I., of ——.
T. N., of ——.
E. S., of ——.

CONCLUSION AND ATTESTATION UNDER THE LAWS OF NEW YORK.

In witness whereof, I (*name of testator*) have to this my last will and testament, consisting of —— sheets of paper, subscribed my name (and set my seal) this —— day of ——, A. D. ——.

[*Signature, with or without seal.*]

Subscribed by the testator in the presence of each of us (*or*, Acknowledged by the testator to each of us to have been subscribed by him), and at the same time declared by him to us to be his last will and testament, and thereupon we, at the request of the testator, sign our names hereto as witnesses, this —— day of ——, A. D. ——, at ——.

[*Signatures and addresses of witnesses.*]

CONCLUSION AND ATTESTATION UNDER THE LAWS OF PENNSYLVANIA.

In witness whereof, I, A. B., the testator, have to this, my will, written on one sheet of paper (*or* parchment), set my hand and seal, this —— day of ——. A. B. [*Seal.*]

Signed, sealed, published, and declared by the above-named A. B., as and for his last will and testament, in the presence of us, who have hereunto subscribed our names at his request as witnesses thereto, in the presence of the said testator, and of each other. W. I.
T. N.
E. S.

WRITTEN WILLS AND TESTAMENTS.

Written Will—Short Form.

The will of A. B. (of ——, farmer).

1. I give, devise and bequeath all my property, both real and personal, to C. D. (revoking all former wills).

2. I appoint E. X., executor of this will.

Signed and acknowledged this —— day of ——.
W. T. } *Witnesses.* A. B.
N. S. }

Written Will—Short Form.

I, A. B., of ——, a ——, make this, my last will:

I give, devise, and bequeath my estate and property, real and personal, as follows, that is to say:

I appoint E. X., of ——, a ——. executor (*or* executors) of this, my will.

In witness whereof, I have signed, and sealed, and published, and declared this instrument as my will, at ——, this —— day of ——.

A. B. [*Seal.*]

Attest in presence of said testator and of each other. W. T., N. S.

Written Will—Short Form.

In the name of God. Amen.

I, A. B., of ——, mariner, being bound to sea, do make this my last will and testament.

First, it is my will that my just debts and all charges be paid out of my estate.

Item. I give and devise all the residue of my estate to W., my wife, to be to her and her heirs forever.

Item. I appoint and make the said W. executrix of this my last will and testament.

Signed and sealed the —— day of ——.

Signed, sealed, published, etc. A. B. [*Seal.*]

Written Will—Short Form.

This is the last will and testament of me, John Stiles, of Cheapside, in the city of London, linen-draper.

I give, devise, and bequeath all my real estate and personal estate whatsoever and wheresoever, unto my wife, Mary Stiles, her heirs, executors, administrators, and assigns, for her and their own use and benefit forever.

And I appoint my said wife sole executrix of this, my will; hereby revoking all other wills made by me at any time heretofore.

In witness whereof, I, the said John Stiles, have hereunto set my hand, this —— day of ——, in the year of our Lord one thousand eight hundred and fifty ——. JOHN STILES. [*Seal.*]

(*Attestation clause here.*)

Written Will—General Form.

Devising Real Estate—Bequeathing Personal Property and Appointing a Residuary Legatee.

I, A. B., of ——, in the county of ——, and State of ——, declare this to be my last will and testament.

1. I give and bequeath to my wife, C. B., all the fixtures, prints, books, paintings, linen, china, household goods, furniture, chattels, and effects (other than money or securities for money), which shall, at my death, be in or about my dwelling-house at ——.

2. I give and devise to my said wife, her heirs and assigns, all, etc. (*describing the estate devised*), together with all the appurtenances thereunto belonging; to have and to hold the same unto the said C. B., her heirs and assigns, forever.

3. I give and bequeath to my said wife the sum of —— dollars, to be paid to her within one month after my death, without interest.

4. I also give and bequeath to my said wife the sum of —— dollars.

5. I give and devise to my son, D. B., his heirs and assigns, all, etc. (*describing the estate devised*), together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the premises above described to the said D. B., his heirs and assigns, forever.

6. I give and bequeath to my said son, D. B., the sum of —— dollars.

7. I also bequeath the following legacies to the several persons hereafter named: To my nephew, A. S., the sum of —— dollars: to my cousin, T. S., the sum of —— dollars: to my friend, N. S., the sum of —— dollars.

8. I also bequeath to the following of my domestic servants who shall be living with me at the time of my death, as (*etc., describing their capacity and the legacies to be given*).

9. All the rest, residue and remainder of my real and personal estate I give, devise and bequeath to R. S., his heirs and assigns, forever.

10. I appoint E. X. and T. R. executors of this my will.

In witness whereof, I, A. B., have hereunto subscribed my name this —— day of ——.

A. B.

Subscribed by the testator in the presence of each of us (*or* acknowledged by the testator to each of us to have been subscribed by him) and at the same time declared by him to us to be his last will and testament.

Witness our hands this —— day of ——, A. D. ——.
W. I.
T. N.
E. S.

Written Will—General Form.

With Various Bequests and Devises.

I, A. B., of the township of ——, in the county of ——, and State of ——, do make and publish this my last will and testament, in manner and form following, that is to say:

1. It is my will that my funeral shall be conducted without pomp, unnecessary parade or ostentation, and that the expenses thereof, together with all my just debts, be fully paid.

2. I give, devise and bequeath to my beloved wife, W. B., in lieu of her dower, if she should so elect, the plantation on which we now reside, situated in the township aforesaid, and containing two hundred and ten acres, or thereabouts, during her natural life: And all the live-stock, horses, cattle, sheep, swine, etc., by me now owned and kept thereon: Also, all the household furniture and other items, not particularly named and otherwise disposed of, in this my will, during her said life; she, however, first disposing of a sufficiency thereof to pay my just debts, as aforesaid. And, that at the death of my said wife, all the property hereby devised or bequeathed to her, as aforesaid, or so much thereof as may then remain unexpended, I give unto my three sons, S., O., and N., and to their heirs and assigns, forever.

3. I give and devise to my eldest son, S., the farm on which he now resides, situated, etc., and containing one hundred and fifty acres, or thereabouts, and to his heirs and assigns, forever.

4. I give and devise to my second son, O., the farm now in the occupancy of G. H., situated, etc., and containing one hundred and ten acres,

to him, the said O., his heirs and assigns, in fee simple.

5. I give and devise to my third son, N., the house and lot, in the —— of ——, in the county and State aforesaid, now in the occupancy of I. K., known and designated in the plan of said —— by No. 47, to him, the said N., his heirs and assigns forever.

And, last: I hereby constitute and appoint my said wife, W., and my said son, S., to be the executrix and executor of this, my last will and testament, revoking and annulling all former wills by me made, and ratifying and confirming this, and no other, to be my last will and testament.

A. B.

Signed, published, and declared by the above-named A. B., as and for his last will and testament, in presence of us, who, at his request, have signed as witnesses to the same. W. T.
N. S.

Written Will—General Form.

With Various Bequests and Devises.

I, A. B., of, etc., do make and publish this, my first as well as last will and testament:

I direct, that my body be decently interred in the burial ground of —— church, in ——, according to the rites and ceremonies of said church, and that my funeral be conducted in a manner corresponding with my estate and situation in life.

And, as to such worldly estate as it hath pleased God to intrust me with, I dispose of the same as follows:

First: I direct that all my debts and funeral expenses be paid as soon after my decease as possible, out of the first moneys that shall come into the hands of my executors, from any portion of my estate, real or personal.

Also: I direct that a fair valuation or appraisement be made, according to law, of all my estate, by three competent and impartial neighbors.

Also: I direct that all my stock in trade be sold at public vendue, or outcry, for good current money, but not upon credit; and that all the real estate of which I shall die seized, or possessed, shall be sold by my executors, for its reasonable value, for like current money, or on such credit, and the amount thereof be secured, in such a manner as is usual in like cases, to insure the full and punctual payment thereof: And to effect this, my intention, I do hereby vest in my executors full power and authority to dispose of my real estate, in fee simple, or for a term of years, or otherwise, in as full and large a manner, in every respect, as I could myself do, if living.

Also: I direct that the whole of my household furniture shall be and remain the absolute property of my beloved wife, if she shall be living at the time of my decease; but, if she shall not survive me, then that the same shall be given, absolutely, to my daughters then unmarried, as shall be living, share and share alike, and to be apportioned by three impartial neighbors, mutually chosen by my said daughters for that purpose.

Also: I do direct that the net proceeds of my personal estate, heretofore ordered by me to be disposed of, be divided equally as soon as it can be done, share and share alike, amongst my said wife and my several children who shall survive me; and that the proceeds of my real estate, if sold on credit, shall be divided in like manner, as soon as they shall come into the hands of my executors.

The heirs or representatives of any of my children, who shall have died between the time of my decease and the time of such division or distribution, to be entitled to such share or shares as their respective ancestors would have been entitled to receive if they were living.

And, the share of my real and personal estate, herein bequeathed to my wife, to be in lieu of her dower, at common law, if she shall so elect.

And, I do hereby appoint and nominate my esteemed neighbors, C. D. and E. F., executors of this, my last will and testament, reposing full confidence in their integrity to perform the trust thus committed to them.

In witness whereof, I, A. B., the testator, have to this, my will, written on one sheet of paper, set my hand, this —— day of ——, in the year ——.

A. B.

Signed and delivered in the presence of us, who have subscribed in the presence of each other.

W. T.
N. S.

Written Will—General Form.

With Various Bequests and Devises.

In the name of God. Amen.

I, A. B., of the county of ——, in the State of ——, farmer, being weak in body (*or* in perfect health of body, *as the case may be*), and of sound mind, memory, and understanding; but, considering the uncertainty of this transitory life, do make and publish this, my last will and testament, in manner and form following, to wit:

First: It is my will, and I do order, that all my just debts and funeral expenses be duly paid and satisfied, as soon as conveniently can be, after my decease.

Item: I give and bequeath unto my dear wife, W., one bed, one cow, etc., etc., together with such of my household furniture and kitchen utensils as she may choose to keep for her own use.

Item: I give and bequeath unto my said wife, the use and occupation of my plantation, etc., until my son, S., shall attain the age of twenty-one years (she maintaining and educating my minor children thereout), and from and after his arrival at such age, then I give and devise the said plantation, etc., unto my son, S., his heirs and assigns, forever; he or they paying thereout, unto my other children hereinafter named, the several sums of money to them respectively bequeathed; and also paying unto my said wife the sum of one hundred and fifty dollars (which sum I hereby bequeath to her) yearly, and every year, during her natural life, for her maintenance and support; all which legacies to my said wife I do hereby declare to be in lieu and stead of her dower, at common law. And, in case of the death of my said son, S., before his arrival to the age aforesaid, then I do order and direct that my executors, hereinafter named, or the survivor of them, shall, as soon as conveniently may be, after his decease, sell and dispose of my said plantation, etc., to such person or persons, and for such price or prices, as may be reasonably gotten for the same; and for that purpose I do hereby authorize and empower my said executors, or the survivor of them, to sign, seal, execute, and acknowledge all such deed or deeds of conveyance as may be requisite and necessary for the granting and assuring the same to the purchaser or purchasers thereof, in fee simple: And the moneys arising from such sale, to put and place out to interest, on good security, for the payment of the said annuity, hereby bequeathed to my said wife; the residue of the interest to be applied to the maintenance and education of such child, or children, as shall then be under age.

Item: I give and bequeath unto my son, O., the sum of one hundred dollars, to be paid to him six months after my decease.

Item: I give and bequeath unto my daughter, D., the sum of one hundred dollars, to be paid to her on her arrival at the age of twenty-one years, or the day of her marriage, whichever shall first happen.

And, as touching all the rest, residue, and remainder of my estate, real and personal, of what kind or nature whatsoever the same may be, in the county of —— aforesaid, or elsewhere, I give and devise the same unto my said wife, W., during her natural life, and from, and immediately after her decease, I give and devise the same unto my three children, S., O., and D., and to their heirs and assigns forever, to be equally divided among them.

And, lastly, I nominate, constitute, and appoint my said wife and my son S. to be the executors of this, my will, hereby revoking all other wills, legacies, and bequests by me heretofore made, and declaring this, and no other, to be my last will and testament.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, in the year ——.

(*Add attestation of witnesses here.*) A. B. [*Seal.*]

Written Will—General Form.

Appointing Residuary Legatees, Executors—Disposing of Stock in Trade—Granting Annuities, Bequests, Devises—Power to Employ Attorneys, Prosecute Suits Abroad, etc., etc.

I, A. B., of ——, in the county of ——, esq., being in a very infirm state of health, and sensible of my liability to sudden death, at the same time being in my own apprehension of sound mind, do judge it best to make, and accordingly do hereby make this my last will and testament.

It is my will that all my just debts and the charges of my funeral be paid and discharged by my executors hereinafter named and appointed, out of my estate, as soon as conveniently may be after my decease, and I leave the charges of my funeral to the direction of my said executors.

I give, devise, and dispose of all my estate, real and personal (save what shall be necessary for the payment of my just debts and funeral charges), in the following manner:

I give to my daughter, D. R., and to her heirs and assigns, seven thousand five hundred dollars lawful money, which with what I heretofore advanced to and for her, viz., before her intermarriage with H. R., I judge to make at least ten thousand dollars. And I discharge her and the heirs of her late husband, L. H. R., and all concerned, and that may be concerned with and for her and them, of what I charged him with in my books.

I give to my daughter, D. U., and to her heirs and assigns, ten thousand dollars lawful money.

I give to my daughter, D. T., and to her heirs and assigns, ten thousand dollars lawful money, to be paid to her when she shall arrive at the age of twenty-one years, if she shall live so long; if otherwise, and she shall leave lawful issue, then I give the same sum to such issue, to be paid to such issue, in equal shares, when and as each of them shall arrive at twenty-one years of age, or at the time of his or her marriage, whichever shall first happen. And in the mean time, it is my will that the same sum be put and kept at interest for the benefit of the said D. T., and such issue, and I empower my executors, or whoever shall have the care of the same, ten thousand dollars, to apply as much of the interest and income of the same sum, as they shall judge best for and towards her and their support and education.

I give to my beloved wife, W. B., sixteen hundred and seventy-five dollars lawful money, also the value of five hundred dollars, like money, more, in such of my household goods as she shall choose; also the household goods and other things which belonged to her, and which she brought to me at our marriage, and all the personal estate since left to her by Madam M. M. by her will.

I also give to my said wife, W. B., and to her heirs, my negro boy, named Titus, as a servant for life, with the apparel he shall have at the time of my decease.

I also give to her my two-wheeled chaise, and what belongs to it of tackling, etc., and one of my carriage horses, namely, that which she shall choose of them.

I also give to my said wife, W. B., during her residence at ——, the right of sitting in my pew below, where she and my children usually sit, in the meeting-house in said, etc., wherein the Rev. Mr. P. R. usually officiates as pastor, and in such part of the same pew as she shall think proper, she paying one sixth part of the taxes which shall be charged or laid on and for said pew during the same time.

I also give and grant to my said wife, W. B., during her life, the annuity and sum yearly of eight hundred dollars lawful money, which, with what I have hereinbefore given to her, I mean to be, and that she accept the same in full of her right of dower in my estate, and I give to her as above, upon condition, that she, my said wife, shall give to my executors, when demanded, a release of all demands and claims of dower and otherwise, of and against my estate, save what I have herein given to her.

As my body servant, named B. S.,[a] has generally served me with great diligence and integrity I give to the same B. S. —— dollars lawful money, together with his apparel, agreeably to a writing I have heretofore executed for that purpose; and if hereafter he be unable to support himself, that he be supported by my sons, S. and O., in equal shares, and so by their respective heirs, and so as to free the town of —— from any charge for the support and maintenance of the said B. S.; and I charge what I hereby give to my sons, as well as themselves, with the performance hereof.

I give and grant to my honored mother, M. B., during her life, the annuity and sum yearly of five hundred dollars lawful money, on condition that it be received by her in discharge of my part of the yearly payment, to be made to her by myself and others, by force of the last will of my grandfather, Capt. G. R., deceased: yet I mean that this payment or annuity shall not be so made or understood, as to bar my said mother from her claim which she has and may have against others, by force of my said grandfather's will.

I give to Mr. M. F., on the day and at the time of my decease, —— dollars lawful money, provided and on condition he shall then be employed or engaged in my business in like manner as he now is. This gift I so make him in testimony of the great regard I have for him, and the sense I have of his great faithfulness in my service.

I give to the Rev. Mr. P. R. —— dollars lawful money.

And to the end that the payment of the annuities and yearly payments aforesaid, may be effectually secured, and the same duly paid, it is my will that —— thousand and —— hundred dollars lawful money of my personal estate shall not be received by or for my children, or any of them, until the said annuities and yearly payments be completed and cease to become due; but that the same sum of my personal estate shall, until the same annuities cease to become due as aforesaid, rest in the hands, and be under the management and improvement of my executors hereinafter named and appointed, to be placed and kept at interest on what they shall judge to be good security, and that such interest shall be applied and used as by this my will is directed. Except, and it is my will, that if there be any overplus arising from the interest of the said —— thousand and —— hundred dollars, in any year, after the several annuities, in this my will ordered, are fully paid for the same year, in such case, the same overplus, as it shall be received, as soon as conveniently may be done, shall be placed and kept at interest for the uses, ends, and purposes in this my will mentioned. But in case of the death of my executors before the said annuities, and each of them shall cease to become due, or their refusing or neglecting to take the care of the said —— thousand and —— hundred dollars and the income thereof, and the application and payment of the same, then it is my will that the said —— thousand and —— hundred dollars of my estate, and what may have arisen by the income thereof, if any be, shall be delivered over and put into the hands of any two gentlemen (not being children), the judge of the probate of wills for said county for the time being, shall judge fit to nominate and appoint as agents or trustees (which I empower and request him to do) to receive the same, to be by them managed, let, and placed at interest as aforesaid, for the purposes aforesaid, and the interest thereof annually by them applied in payment of the said annuities and agreeably to my other directions about the same. And in case the said judge shall refuse or neglect, in the opinion of my said wife, seasonably to nominate, appoint, and engage such agents or trustees, then it is my will, that the same —— thousand and —— hundred dollars, and the interest thereof unapplied, if

[a] Where a testator in his will, directed his executor to support a person, it was held that such direction amounted to a legacy, and if the executor (or in case he refused the trust, the administrator *cum testamento annexo*), neglected it, an action would well lie, where there were sufficient assets. 4 Mass. R. 634.

any be, shall be delivered over and paid or put into the hands of any two gentlemen my said wife, W. B., shall please to nominate and appoint to receive the same, and these persons shall and may receive the same, in like manner, and for the uses, intents, and purposes aforesaid. But it is to be understood, that into whose hands soever the said —— thousand and —— hundred dollars and the interest thereof, shall be delivered as aforesaid, being nominated and appointed by the said judge of probate, or by my said wife, W. B., as aforesaid, the same shall be so received as that such receivers shall, at the time of the receipt of the same, make themselves accountable for the said —— thousand and —— hundred dollars and the interest thereof, according to the intent of this, my will, relative thereto, and that the gentlemen into whose hands the said —— dollars and any interest or income thereof shall be put and placed as aforesaid, shall, on receipt thereof, give bond to the said judge of probate to account for the same sum and the interest thereof, according to the tenor and intent of this, my will, and apply the interest thereof as hereinbefore directed.

And it is my will, that when the annuities aforesaid, and each of them, shall cease to become due, the said —— dollars, with the overplus interest thereof, if any there be, shall be divided to and among my children hereinafter named, to whom I give the same accordingly, as followeth, videlicit: To my daughter, D. R., and to her heirs, —— hundred and —— dollars thereof. To my daughter, D. T., and to her heirs, other —— hundred and —— dollars thereof. To my daughter, D. U., and to her heirs, other —— hundred and —— dollars thereof. And the residue and remainder thereof to my three sons, E., D., and O., in equal shares, and so to their respective heirs.

The residue and remainder of all my estate, both real and personal, not herein otherwise disposed of, I give and grant to my sons, E., D., and O., in equal shares and proportions, and so to their respective heirs forever. The share of my son, O., of the same residue and remainder of my estate, to be paid to him when he shall come to the age of twenty-one years, but until then the same share to remain and be in the hands of my said executors, the personal estate to be let and placed at interest, and the real estate improved or let to the best advantage, for the use of the said O., and so in like manner his share of all surplusage of interest and income, which I would have added to the capital stock, and let at interest for his benefit, saving, nevertheless, that the same interest and income may be used, paid, and applied, as I do by this will grant, allow, order, and provide.

If my estate at ——, or any part thereof, should at my decease remain by me unsold, and my executors shall think it best, that the same, or any part thereof, should be sold before my son, O, shall arrive at twenty-one years of age, in such case, I give and grant to my executors full power to grant and sell the share or part I give to the said O. therein, for such consideration as to my executors shall seem reasonable, and to make and duly execute any deed or instrument they shall judge proper for the purpose, and the money arising from the same sale to remain and be in the hands of the said executors during said O.'s minority, and by them be let at interest for the use of the said O. Provided, nevertheless, that my sons, E. and D., shall at the same time sell their respective shares in the same estate.

And it is my will that if my son, O., shall die before he shall arrive at the age of twenty-one years, then what shall remain of his share in the whole of my estate, according to this, my will, shall go, and I in this case give the same to his surviving brethren aforenamed, in equal shares, and so to their respective heirs. But if either of these brethren shall happen to die without legal issue living, and this while the said O. shall be living, then I, in the case aforesaid, give the same to the survivor of said brethren (namely, E. and D.), and the heirs of such survivor.

And in case my daughter, D. T., shall die before she shall arrive at the age of twenty-one years, leaving no lawful issue living, then what shall remain of the share of the said D. T. of my estate and the interest thereof, unapplied, shall go, and I give the same in such case as follows, viz.: one-half part thereof to my daughter, D. R., and to her heirs, and the other half part thereof to my daughter, D. U., and to her heirs. But if either the said D. R. or D. U. shall die without issue and before the said D. T. shall arrive at twenty-one years of age, and the said D. T. dying as aforesaid, then I give the whole of the same to the survivor of the said D. R. and D. U., and to the heirs of such survivor.

In case my executors shall judge it best not to sell my stock in trade, or any part thereof, immediately after my decease, but to continue the same, or any part thereof, in trade, for the benefit, but at the risk of such of my children as shall be concerned therein, then I empower my executors, for any term not exceeding twelve months next after my decease, to employ and improve my trading stock, or any part thereof, in the common course of trade as they shall think best for the benefit, and so at the risk of, those, to whom, according to this will, this part of my estate shall belong; yet I mean so to limit the time of such improvement, that if any of this interest shall be at sea at the expiration of said twelve months, a further reasonable time shall be allowed to complete the voyage and voyages, the same interest may then be abroad upon.

And it is my will, that my executors may pay the sums first mentioned to be given to my said daughters respectively, in good bonds, payable to me at the time of my death, or thereabout, accounting such bonds at the value of them on the day of my death. And I desire my executors, if need be, to lend their names in said capacity to my daughters respectively, when desired, for the recovery and receipts of what shall be due on such bonds, and give proper power therefor. But if my executors shall not think fit so to do, when requested, then my will is that my daughters be paid in money equivalent.

And as my executors must necessarily have much trouble, and employ a great deal of time in executing this, my will, I desire and empower them to employ Mr. A. A., or any other person they shall think fit, in assisting them in the settlement of my accounts and affairs, and in the improvement of my trading stock, and that they agree to give and pay to him and them such sums of money out of my estate therefor, as they, my said executors, shall judge reasonable.

Although it is my will, and I choose that the estates I have given to my son, O., and to my daughter, D. T., respectively, shall remain in the hands of my executors as aforesaid; yet, if my executors shall choose it, I consent that guardians be legally appointed for the said O. and D. T., respectively, and that their respective shares of my estate be paid to their respective guardians for the uses and intents in this, my will, limited, directed, and expressed.

And as it is my will, that so much of the income of what I have given to my daughter, D. T., as may be needful, may be applied for her support and education, so I will that the income of the estate I have given to my son, O., may be applied and expended for his support and education, until he shall arrive at twenty-one years of age, so far as shall be thought reasonable and best by such person or persons, as, during his minority, shall have the care of his share of my estate.

And it is my will, that my executors or either of them, join with Messrs. A. A. and A. Y. in prosecuting the cause now or late depending in England for the recovery of the schooner J. and cargo, and that he or they do everything which I might or could do for that end, so far as he or they shall think fit and judge best.

And I hereby nominate, constitute, and appoint my brother, B. B., and my friend, Mr. E. F., jointly and severally, to be executors of this my last will and testament, and so as that in case of the death of one of them, the survivor of

them shall then be sole executor of this my said will.

And I give such survivor all the power and direction I have given my said executors.

I also give to each of them all the power, and repose in each of them all and every trust I have given to them jointly, provided, and so far as he who shall act have the consent of the other executor, and it is my will that neither of my executors shall be answerable for any of my estate received or to be received by the other executor.

In witness whereof, I hereto put my hand and seal, and publish and declare this to be my last will and testament, etc.

(*Add attestation or witness clause.*)

Written Will—Married Woman.

Made in Virtue of a Power of Appointment Made at or Before Marriage.

I, W. B., wife of A. B., of ——, do by this my writing, purporting to be my last will and testament, dispose of my estate, both real and personal, pursuant and according to the authority to me given and reserved in and by a deed of settlement (*or* otherwise, as the case may be), made and executed on my marriage (*or*, in contemplation of my marriage) with my husband, the said A. B., and bearing date the —— day of ——, A. D. ——, by and between the said A. B., and E. F., and G. H., trustees, etc. (*here set forth the date and parties to the settlement*).

And by virtue of the said deed, and of all other powers and authorities whatsoever, to me given and reserved, in manner as follows, viz.:

1. I devise to my son, S. B., all that tract of land, called ——, being, etc. (*here describe it*), and to his heirs forever.

2. I give, bequeath, and devise to my daughter, Mary B., one hundred shares of stock in the Bank of ——, now standing on the books of said bank in the name of ——, to my use and benefit; together with all dividends which may be due and in arrear thereon at the time of my death.

Also to my said daughter the house and lot in which I now reside in the city of ——, situated, etc. (*here describe it*).

3. I give and bequeath to my said husband, A. B., a gold ring and a breastpin, to be made in such manner as he may direct, in testimony of my respect and affection for him.

In witness whereof, etc.

Written Will—Of Real and Personal Property.

See VARIOUS FORMS, above.

Know all men by these presents:

That I, A. B., of ——, in the county of ——, and State of ——, counsellor at law, being in good health (*or* ill health, as the case may be), and of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

And as to my worldly estate, and all the property, real, personal, or mixed, of which I shall die seized and possessed, or to which I shall be entitled at the time of my decease, I devise, bequeath, and dispose thereof in the manner following, to wit:

1. My will is, that all my just debts and funeral expenses shall, by my executors hereinafter named, be paid out of my estate, as soon after my decease as shall by them be found convenient.

Item. I give, devise, and bequeath to my beloved wife, W. B., all my household furniture, my library in my mansion or dwelling-house, my span of horses, coach and chaise, and my two horse carriage harness; and also twenty thousand dollars in money, to be paid to her by my executors, hereinafter named, within six months after my decease; to have and to hold the same to her and her executors, administrators, and assigns, forever.

I also give to her the use, improvement, and income of my dwelling-house, land, and its appurtenances, situated in, etc. (*here describe it*); and my land, wharf, and flats, situated in, etc. (*here describe it*), and its appurtenances; to have and to hold the same to her for and during her natural life.

I give and bequeath to my honored mother, M. B., five thousand dollars in money, to be paid to her by my executors hereinafter mentioned within six months after my decease; to be for the sole use of herself, her heirs, executors, administrators, and assigns.

I give and bequeath to my daughter, D. B., my fifty shares of the stock of the President, Directors, and Company of the —— Bank, which are of the par value of five thousand dollars; and my ten shares of the stock of the —— Manufacturing Company, which are of the par value of ten thousand dollars; to have and to hold the same, together with all the profit and income thereof to her, the said D. B., her heirs, executors, administrators, and assigns, to her and their use and benefit forever.

I give, devise, and bequeath to my son, S. B., the reversion or remainder of my dwelling or mansion house, land, and its appurtenances, situated in, etc. (*describe it*), and all profit, income, and advantage that may result therefrom, from and after the decease of my beloved wife, W. B.; to have and to hold the same to him, the said S. B., his heirs and assigns, from and after the decease of my said wife, to his and their use and behoof forever.

I give, devise, and bequeath to my son, O. B., the reversion or remainder of my land, wharf, flats, situated in —— (*describe it*), and its appurtenances, and all the profit, income, and advantage that may result therefrom, from and after the decease of my beloved wife, W. B., to have and to hold the same to the said O. B., his heirs and assigns, from and after the decease of my said wife, to his and their use and behoof forever.

All the rest and residue of my estate, real, personal, and mixed, of which I shall die seized and possessed, or to which I shall be entitled at my decease, I give, devise, and bequeath to be equally divided to and among my said sons, S., O., and N.

And lastly, I do nominate and appoint my said sons, S. B., O. B., and N. B., to be the executors of this, my last will and testament.

In testimony whereof, I, the said A. B., have to this, my last will and testament, contained on two sheets of paper (*or otherwise, as the case may be*), and to every sheet thereof, subscribed my name, and to this, the last sheet thereof, I have subscribed my name and affixed my seal, this —— day of ——, A. D. ——.

A. B. [*Seal.*]

Signed, sealed, published, and declared by the said A. B., as and for his last will and testament, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

W. I.
T. N.
E. S.

Written Will—Of Real and Personal Property, in Trust.

Be it remembered, that I, A. B., of ——, in the State of ——, merchant, being of sound, disposing mind and memory, do make and ordain my last will and testament, in manner following, viz.:

Imprimis. I direct all my just debts and funeral expenses to be fully paid and satisfied by my executors, hereinafter named, as soon as conveniently may be after my decease.

Item. All the rest, residue, and remainder of my estate, real, personal, and mixed, whatsoever and wheresoever, I order and direct to be converted into money as soon as the same can conveniently be done after my decease; and for that purpose, I do hereby authorize and empower my said executors, hereinafter named, and the survivor of them, to sell and dispose of all my said real estate, either by public or private sale or sales, for the best price or prices that can be gotten for the same, and by proper deed or deeds, conveyances, or assurances in the law, to be duly executed, acknowledged, and perfected, to grant, convey, and assure the same to the purchaser or purchasers thereof, in fee simple.

And, when the whole of my said residuary es-

tate shall be converted into money as aforesaid, then I will and direct that the same shall be divided into four equal parts or shares, and disposed of as follows, to wit:

One full, equal fourth part or share thereof I give, devise, and bequeath unto my said executors, hereinafter named, and the survivor of them, in trust, that they or he do and shall put and place the same out at interest on good, real security, or in the funded debts of the United States, the State of ——, or the city of ——, and pay over the interest or dividends thereof from time to time, when and as the same shall be got in and received, unto my beloved wife, W. B., during all the term of her natural life; which is to be in lieu of the dower to which she is entitled by law.

And from and immediately after the death of my said wife, W. B., I give, devise, and bequeath the principal of the said one-fourth part or share of my said residuary estate to be equally divided, share and share alike, between my daughters, D. B. and R. B., and my son, S. B., and any other child or children which I may have born by my present marriage; the part or share in this bequest of my said two daughters, D. B. and R. B., to be held, however, by my said executors, in trust, in the same manner and for the same uses as are hereinafter set forth and declared of and concerning the parts or shares of my said residuary estate bequeathed to them for the use of my said two daughters, D. B. and R. B.

One other of the said full, equal fourth parts or shares of the proceeds of my said residuary estate, I give, devise, and bequeath unto my said executors, hereinafter named, and the survivor of them, in trust, that they or he shall and do put and place the same out at interest in manner aforesaid, and pay over the interests and dividends aforesaid, from time to time, when and as the same shall be got in and received, unto my said daughter, D. B., for and during all the term of her natural life; so, nevertheless, that the same shall be for her sole and separate use, notwithstanding any coverture, and not to be in any way or manner whatever liable to the contracts, debts, or engagements of any husband which she may hereafter have or take, and not to be in any way or manner whatever subject to the control or interference of such husband. And from and immediately after the decease of her, my said daughter, D. B., then, as to the said principal, in trust to and for the only proper use and benefit of all and every the child and children which she, my said daughter, D., may leave, and the lawful issue of any of them who may then be deceased, having left such issue, to be equally divided between them, share and share alike, such issue of any deceased child or children of my said daughter, D., taking, however, only such part or share thereof as his, her, or their deceased parent or parents would have had and taken, had he, she, or they been living.

One other of the said full equal fourth parts, etc. (*as in preceding clause, only substituting R. B. for D. B.*)

And the remaining one full equal fourth part or share of the proceeds of my said residuary estate, I give, devise, and bequeath unto my said executors, hereinafter named, and the survivor of them, in trust, that they or he do and shall put and place the same out at interest in manner aforesaid, and pay and apply such interest, or so much thereof as shall be requisite, toward the education and maintenance of my said son, S. B., until he attains the lawful age of twenty-one years; and when and as soon as he, my said son, arrives at the age aforesaid, then in trust to pay over the principal thereof, together with any accumulation of interest thereon which may be in their hands uninvested, unto him, my said son, S. B.

Item. In case of the decease of my said daughters, D. B. and R. B., or either of them, without leaving lawful issue, or of the decease of my said son, S. B., under age, and without leaving lawful issue, then, in such case, I give, devise, and bequeath the said part or share, hereinbefore given, devised, and bequeathed to such child so dying, unto my said executors, hereinafter named, and the survivor of them, in trust, to hold the same for my surviving child or children, in equal shares and proportions, in the same manner, for the same uses, intents, and purposes, and under the trusts and limitations as are hereinbefore set forth and declared of and concerning the parts or shares of my said residuary estate hereinbefore given, devised, and bequeathed for the use, benefit, and behoof of my said children, respectively.

Item. I nominate, constitute, and appoint my friends, E. X. and T. R., of the said ——, merchants, executors of this my last will and testament, hereby revoking all former wills and testaments by me at any time heretofore made; and do declare these presents only to be and contain my last will and testament.

In witness, etc.

Written Will—In Trust for Certain Purposes.

The last will of me, A. B., of the town of ——, in the county (*or* district, *or* parish) of ——, and State of ——, being of sound mind at the time of making and publishing this my last will and testament.

I give and devise all my estate, real and personal, whereof I may die seized or possessed, to T. T., of the said town of ——, and E. X., of the same place: to have and to hold the same to themselves, their heirs and assigns forever, upon the uses and trusts following, namely:

In trust first to pay all my debts and funeral expenses:

Second, to pay to my wife, W., upon her sole and separate receipts, the interest, income, and revenue, of all my said estate, during the term of her natural life:

And third, upon the decease of my said wife, to convert all my said estate into money, if such a course shall be thought best by my said trustees, and pay to my daughter, D., the one third part thereof, it seeming to me best to give her so large a share on account of her bodily infirmities and inability to provide for herself, and the remaining two-thirds equally to divide between my four sons, F., S., O., and N.

If either of my children shall, before such division, have died, leaving lawful issue, such issue to receive the parent's share; but if there be no issue, then such share to fall into the general fund, to be divided among the survivors in the manner before directed.

And I hereby give to my said trustees full power and authority to sell any or all of my real estate at private or public sale, and invest the proceeds, or to lease the same as they may deem best for the interest of my family.

And if my said daughter, D., shall not have attained the age of twenty-one upon the decease of her mother, I hereby nominate, constitute, and appoint my said trustees guardians of the person and estate of my said daughter, D., during the remainder of her minority, commending her to their fatherly care and protection.

And I hereby nominate, constitute, and appoint my said trustees, T. T. and E. X., executors of this my last will and testament.

In witness whereof, etc.

Written Will—Of Widow, Containing Trusts.

Be it remembered, That I, W. W., of the city of ——, widow, being of sound mind and memory, have thought proper to make, and hereby do make my last will and testament in manner following, that is to say:

1. I direct all my just debts and funeral expenses to be fully paid and satisfied as soon as conveniently may be after my decease.

Item. I give and bequeath to my niece, N. C. E., all my household goods, kitchen furniture, silver plate, and wearing apparel.

Item. I give and devise my messuage or tenement, No. ——, on —— street, in the city of ——, and the lot of ground and appurtenances thereunto belonging, unto my nephew, N. H. W., his heirs and assigns forever, in trust nevertheless to pay the net rents and income thereof unto my said niece, N. C. E., for her sole and separate use

during the term of her natural life, without being subject or liable to or for the debts, contracts, or engagements of any husband she may have or take, and from and after her decease then in trust with respect to one moiety or half part thereof, for such person or persons, and such uses and purposes as my said niece, by any instrument of writing in the nature of a last will and testament, may direct, limit, and appoint.

And for want of such direction, limitation, or appointment, then in trust to grant and convey the said moiety to such person or persons as would have been entitled to the same in case the said N. C. E. had departed this life intestate, seized of said moiety in fee and for such estate and estates, and in such parts, shares, and proportions as such person or persons would in such case be entitled to by the intestate laws of ——.

And from and immediately after the decease of my said niece, then with respect to one equal half part of the remaining moiety of the said premises, to hold the same in trust, to pay the net rents and income thereof, to my nephew, N. E. P., during his natural life, free from his debts, contracts, and engagements, and from and after his decease, then in trust to hold the said half part of said remaining moiety for such person or persons, and for such uses and purposes as my said nephew, N. E. P., by any instrument of writing in the nature of a last will and testament, may direct, limit, and appoint.

And for want of such direction, limitation, or appointment, then in trust to grant and convey the same to such person or persons as would have been entitled to the same had the said N. E. P. departed this life intestate, seized of said half part of said moiety in fee, and in such parts, shares, and proportions as such person or persons would in such case be entitled to by the intestate laws of ——. And from and immediately after the decease of my said niece, I give and devise the remaining full equal half part of the said remaining moiety of said premises unto my said nephew, N. H. W., his heirs and assigns, forever.

Provided, however, and I do hereby direct the said trustee, at any time during the lifetime of my said niece, N. C. E., to sell and dispose, at public or private sale, of the whole of the said premises to such person or persons, for such price and upon such terms and conditions as she, my said niece, may in writing direct, limit, and appoint, if my said niece shall think proper to direct a sale of said premises, which without such direction shall not be made, and to grant and convey the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns, forever, free and discharged from all trusts whatsoever, and all liability to see to the application, or for the non-application of the purchase-money.

And the moneys arising from such sale to be invested in some safe securities at interest, and to be held in trust for the same uses and purposes above set forth with respect to the said premises.

Item. I direct all the rest, residue, reversion, and remainder of my estate, real, personal, and mixed, whatsoever and wheresoever, to be converted into cash as soon as conveniently may be after my decease, and for that purpose I hereby authorize and empower my executors, hereinafter named, and the survivor of them, to sell and dispose of all or any part of the residue of my real estate, at public or private sale or sales, for such price or prices, and upon such terms and conditions as to them may seem best, or to the survivor of them, and to grant and convey the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns, free from all liability for or on account of the application of the purchase-money.

One full equal third part of the net proceeds of the said rest and residue of my estate I give and bequeath to my said nephew, N. H. W., his executors, administrators, and assigns, in trust, to invest the same in safe securities at interest, and hold the same in trust for my said niece, N. C. E., as above set forth and directed with respect to the said premises on —— street devised in trust for her. One other full equal third part I give and bequeath to my said nephew, N. H. W., his executors, administrators, and assigns, in trust, to invest the same in safe securities at interest, and hold the same in trust for my said nephew, N. E. P., as above set forth and directed with respect to the part and share of said premises on —— street, devised in trust for him after the decease of my said niece. And the remaining full equal third part thereof I give and bequeath to my said nephew, N. H. W., absolutely.

Item. I nominate and appoint my said nephew, N. H. W., executor of this, my last will and testament.

Lastly, I revoke all former wills by me made, and declare this only to be and contain my last will and testament.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, in the year ——. W. W. [*Seal.*]

Signed, sealed, published, and declared by W. W., the testatrix above named, as and for her last will and testament, in the presence of us, who, in her presence, at her request, and in the presence of each other, have hereunto set our names as witnesses.

W. I.
T. N.
E. S.

Bequests and Legacies of Personal Property.

See definition of these terms in text above.

ANNUITY—PAYMENT OF, ETC.

And I direct that the said annuity of —— dollars shall be paid clear of all deductions, except legacy duty or tax, by equal half-yearly payments, the first payment to be made at the end of six calendar months from my death.

ANNUITY—PURCHASE OF, ETC.

I give and bequeath an annuity of —— dollars to ——, for her life, for her sole and separate use; and for this purpose I direct my executors, within —— months after my decease, to lay out a sufficient portion of my personal estate, in the purchase of such an annuity as aforesaid, in her name, from some incorporated company; but neither she nor any person claiming under her shall be entitled to claim or accept in lieu or satisfaction thereof the sum which may be required for the purchase of such annuity.

ANNUITY—TO WIFE DURING WIDOWHOOD.

I give and bequeath unto my wife, W., over and above the estates which are already settled upon her (situate, etc.), one annuity or yearly sum of —— dollars, for and during the term of her natural life, in case she shall so long continue my widow; and I do hereby direct that the same shall be charged upon the interest to arise, accrue, or be paid, as hereinafter is mentioned, from or by the capital to be employed in my trade or business of ——, which is to be carried on by my said executors, according to the direction hereinafter for that purpose given and contained. And that the said annuity or yearly sum of —— dollars shall be paid to her, my said wife, by four equal quarterly payments, on ——, on ——, etc. in every year, the first payment to begin and be made on such of the said days as shall next happen after my decease. But in case my said wife shall marry again at any time after my decease, then and in such case I revoke the said bequest of the said annuity of —— dollars hereinbefore given to her, and direct that the same shall from thenceforth cease and determine, etc.

CHARITABLE BEQUESTS.

—— I order and direct the sum of —— dollars to be divided as my wife shall think proper, or, in case of her death, as my said son shall think proper, among such of the poor persons resident in ——, where I now live, as shall happen to be upon my Christmas list, and shall have received a small donation by my order at the Christmas next preceding my death. I likewise order and direct the sum of —— dollars to be divided or given as my wife shall think proper, to or amongst any poor family or families of the aforesaid —— of —— and of ——, which shall seem to her to be most deserving of such reward or assistance.

I give to the said J. N. the sum of —— dollars, upon trust to place out the same on government or real securities, at interest, in the name of such persons as he, his executors or administrators, shall think proper, with liberty to the trustees or trustee thereof, for the time being, of transposing the same, to the intent that such trustees or trustee thereof do apply the interest or dividends arising therefrom, for or towards the education of four poor boys, at or in the said school at ——, aforesaid, to be from time to time nominated by such trustee or trustees for the time being.

CHILDREN—WITH DIRECTIONS FOR INVESTMENT, ETC.

I bequeath to each of my children, C. B., L. B., and D. B., the sum of —— dollars, with interest at the rate of —— per cent. per annum, from my death till the payment thereof, such interest to be paid half-yearly. And I hereby declare, that if my said daughter, D. B., shall be under twenty-one years at my death, and shall not have married, the legacy hereby given to her shall be retained by my trustees hereinafter named, their executors or administrators, upon trust, to pay the same to her when she shall attain twenty-one years or marry; and upon trust in the mean time to pay the interest of such legacy to her, and her receipt, notwithstanding her infancy, to be an effectual discharge for the same; and if the said D. B. shall not attain twenty-one years or marry, the same legacy shall, upon her death, sink into my residuary estate.[a]

CONDITIONAL BEQUEST.

Whereas the directors of —— University are now engaged in an effort to enlarge its sphere of action, and give it greater efficiency in promoting education, and being desirous, if such effort shall prove successful, of still further enlarging its sphere and efficiency by endowing a professorship of —— in said university: therefore I give and bequeath to said (*here insert full name*), the sum of —— dollars, to be paid within —— years after my death, for the purpose of founding and permanently endowing a professorship of —— in said university; upon condition, however, that the sum of —— dollars shall, within —— years from the time of my death, be raised for the purpose of endowing two other professorships, and paying the indebtedness of said university.

CORPORATION—BEQUEST TO.

I give and bequeath to (*stating the full name of the corporation, or, if not certainly known, describing it*), at ——, the sum of —— dollars, to be applied to (*state what*).

DEATH OF LEGATEE.

And if any legatee be now dead, or die before me, I give the legacy intended for him or her to his or her executors or administrators, to be applied as if the same had formed part of the personal estate of such legatee at his or her decease.

DEBT.

I bequeath to E. F., any debt which, at the time of my decease, shall be owing from him to me, together with any interest then due thereupon.

DEBTS—POSTPONEMENT OF COLLECTION, ETC.

I authorize and empower, but do not require, my executors to defer and postpone the requiring payment of any debt (carrying interest) which may be owing to me from (*name*) at the time of my decease, for such period as my executors shall think fit.

DOWER. See DEVISES, below.

DRESS AND ORNAMENTS.

I give and bequeath to my wife, W., absolutely all her trousseau, wearing apparel and linen, and the watches, rings, trinkets, jewels, and personal ornaments usually worn by her, or reputed to belong to her.

FURNITURE, ETC., TO CHILDREN.

I bequeath to my children who shall be living at the time of my death all (*etc., as below*), equally to be divided between them; and if any dispute should arise with respect to the division, I authorize my executors to distribute the said effects equally amongst my said children.

FURNITURE, ETC., TO WIFE DURING WIDOWHOOD.

I give and bequeath to my wife during her life, and so long as she shall remain a widow, the use of all (*state what*). And after her decease or remarriage, I give and bequeath the same to (*name*) absolutely if he (*or* she) should be living at the decease or remarriage of my wife; but if he (*or* she) should be dead, then to (*several parties may here be named in succession; or, in case the will has directed the testator's property to be sold, and the proceeds held in trust, say:* and after her decease or remarriage I direct my executors and trustees to sell the same, and add the proceeds to the trust-fund, under this my will).

FURNITURE, BOOKS, PROVISIONS, ETC., ETC.

I give and bequeath to (*state who*), all the household furniture, books, works of art, and other chattels and effects, together with wines, liquors, fuel, housekeeping provisions and other consumable stores, which shall at my decease be in or about my dwelling-house at ——, except (*state what*).

GOOD-WILL OF BUSINESS, ETC.

I give and bequeath the good-will and benefit of the business of ——, which I am now carrying on at ——, and also all my capital and property which shall be employed therein at my decease, and also the leasehold premises situate and being No. ——, at ——, aforesaid, wherein the said business is now being carried on, for all my term and interest therein, unto my ——, absolutely.

INFANT'S LEGACY.

I bequeath to I. I., of ——, the sum of —— dollars: and if the said I. I. shall be under twenty-one years when the same legacy shall be payable I direct the same legacy to be paid to his father, F. I., of, etc., to be managed by him at his discretion, for the benefit of his said son, till he shall attain twenty-one years; in such case the receipt of the said F. I. to be an effectual discharge for the same legacy.

JEWELRY, PLATE, AND HOUSEHOLD EFFECTS, DURING WIDOWHOOD.

I give and confirm to my dear wife all the jewels, trinkets, and personal ornaments worn or used by her during my lifetime; and I also give to her all my wines, liquors, and other consumable stores, and all my horses and carriages, for her absolute use and benefit.

I give all my plate and plated articles, books, pictures and prints unto my said wife, to use and enjoy the same during her life, if she shall so long continue my widow; and from and after her decease or second marriage (whichever shall first happen), to such son of me as shall first attain the age of twenty-one years.

I give my leasehold dwelling-house, being No. ——, etc. (*describing it*), and all my furniture and household effects being in or about or appropriated or belonging to the said dwelling-house, other than and not being plate or plated articles, books, pictures, or prints, unto my said wife, to occupy the said dwelling-house, and to use and enjoy the said furniture and household effects during her life, if she shall so long continue my widow, she paying the ground-rent, and all taxes and outgoings payable in respect of the said dwelling-house, and observing and performing the covenants contained in the lease under which the same is or at my decease shall be held.

And I declare that from and after the decease or second marriage of my said wife (whichever shall first happen) the said dwelling-house, furniture, and household effects shall sink into and form part of my residuary estate.

PAYMENT OF LEGACIES.

I direct that the legacies hereinbefore given to (*naming the legatees*) shall be paid in priority to any other legacy given by my will.

PAYMENT OF LEGACIES FREE FROM DUTY.

I direct that all legacies given by my said will, or any codicil thereto, shall be paid free from legacy duty or tax.

[a] This is a convenient proviso in the case of legacies of small amount to infants.

PECUNIARY LEGACY.

I bequeath to (*name the legatees*) the sum of —— dollars (to be paid to him, *or* her, within —— after my death).

ANOTHER.

I give the following legacies (that is to say):

To my nephew, N. W., —— dollars, to be paid to him at his age of twenty-one;

To N. E. —— dollars; to my niece, N. C., —— dollars, at and when she shall arrive at her age of twenty-one, or be married; to my nephew, N. U., —— dollars, at his age of twenty-one, with interest in the mean time;

Unto C. L. and D. N., children of my niece, N. S., —— dollars each; all the said legacies to be paid to the respective legatees within twelve months after my decease (save and except those given to my said wife, my said trustees and executors, and my servants, which are to be paid immediately after my death).

I give unto the said D. R., the daughter of ——, the sum of —— on the day of her marriage;

I give after her decease the said sum of —— dollars:

Unto such child or children of the said D. R. as shall attain the age of twenty-one years, to be divided among them (if more than one) in equal shares, and if but one, the whole to go to such one child as shall attain the said age. The portion or portions of such of them as may attain the said age in the lifetime of the said D. R. to be a vested interest or vested interests, though not payable till after her death, and the interest of the presumptive portions of such of her children as may be under the said age at the time of her death, or so much thereof as shall be thought necessary, to be applied for or towards the maintenance and education of such infant child or children, until he, she, or they shall attain the said age; and the surplus dividends or interest, which may not be applied for that purpose, to accumulate and go along with the original share or shares; or in case there shall be no such children who shall attain the said age, such accumulations to fall together with the principal sum into my residuary personal estate.

I give unto D. W., daughter of my nephew, N. W., —— dollars, but the same not to be vested in, or paid to her till she shall attain the age of twenty-one years, and not to bear interest in the mean time.

I give after the decease of R. S. unto such child or children of him, the said R. S., born in his lifetime or after his decease, as shall attain the age of twenty-one years, —— dollars, the same to be divided among them, if more than one, in equal shares, and if but one, the whole to go to such one child as shall attain the said age, and not to bear interest; save that, in case of the death of the said R. S., having a child or children under the age of twenty-one years, my will is, that my said trustees or trustee for the time being shall and may pay and apply any sum not exceeding the sum of —— dollars per annum, by equal quarterly payments, for and towards the maintenance and education of such infant child or children, until he, she, or they shall attain the age of twenty-one years. And I will that the portions of such children of the said R. S. as shall attain the said age of twenty-one years in her lifetime, shall be vested interests, though not payable till after his death.

ANOTHER—TO A MARRIED WOMAN.

I bequeath to W., wife of C. D., the sum of —— dollars. Said sum shall be for her sole and separate use and benefit, and that her receipt, notwithstanding her present or any future marriage, shall be a valid and effectual discharge of the same.

RESIDUE OF ESTATE.

And all the rest, residue, and remainder of my estate and effects, whatsoever and wheresoever, and of what nature and kind soever, which at the time of my decease I, or any person or persons in trust for me, am, or are possessed of, or entitled unto, and not hereinbefore disposed of, I give, devise, and bequeath unto the said A. B. and C. D., their heirs, executors, administrators, and assigns, according to the nature and quality thereof respectively, to and for their own separate use and benefit.

SHARE UNDER ANOTHER WILL.

And whereas, under the will of D. D., I am entitled to a —— share in his residuary personal estate, I bequeath the said share to L. E.

SHILLING TO SON.

Whereas, my eldest son, S. B., has highly offended and disobeyed me, I therefore give and bequeath unto my said son, S. B., one shilling, and no more.

STOCK—FOR SUPPORT OF WIFE AND CHILDREN.

I give and bequeath the interest and income of —— dollars, —— per cent. loan of ——, to E. X. and T. R., their executors and administrators, for the separate use of my niece, N. P., wife of H. P., so and upon this express trust and confidence, that they, the said trustees, do and shall receive the interest and income to arise therefrom, from and after the day of my decease, and apply the same to and for the maintenance and support of the said T. R., and to the maintenance, support, and education of her children, born and to be born.

And if the said stock shall be redeemed or paid off, then my said trustees shall reinvest the proceeds in such other stocks as they shall think best, in their names in trust, and receive and apply the interest and income thence to arise to the like uses and purposes aforesaid, and so on as often as any stock held or to be held under this trust shall be paid off, and after the death of the said N. P., then in trust to pay over and divide the principal and all unapplied interest to and amongst all and every her children, born and to be born, that shall be alive at the time of her death, in equal parts, and if either of her children, born or to be born, shall be then dead, leaving issue, then such issue shall take in equal parts the share that his, her, or their parent would have taken if then living.

TRUST FOR UNINCORPORATED SOCIETY.

I give and bequeath to A. B. and C. D., and to their successors forever, the sum of —— dollars, in trust, for the benefit of such undergraduate students of the collegiate department of the University of ——, as shall be, or shall from time to time become, members of a literary association or society now organized among said students, and known as the —— Society, of which society I am a graduate member, to be applied by the said trustees to educational purposes for their benefit, in manner following (*stating the application*).

Devises of Real Property.

See definition of this term in the text above.

DOWER—DEVISE IN LIEU OF, ETC.

I give and devise unto my beloved wife, W. B., all that, my lands or tenement and parcels of ground, situate (*giving the testator's precise words, etc.*), together with the appurtenances, to hold to her, my said beloved wife, W. B., and her assigns, for and during all the term of her natural life, she paying the taxes thereof and keeping the buildings in tenantable repair.

And I do, moreover, give to my said wife, to her absolute use, the sum of —— dollars, lawful money of the United States, to be paid to her in three months next after my decease.

And it is my will and meaning, that the provision hereinbefore made for my said wife, in manner and form as aforesaid, shall be and shall be deemed adjudged and taken to be in lieu and bar of her dower or thirds or other portion of and in all my estate.

DEVISE TO EXECUTORS IN TRUST—WITH POWER TO SELL, ETC.

I give and devise all my real and personal estate, of what nature or kind soever, to E. X. and T. R., the executors of this, my last will and testament, hereinafter nominated and appointed, in trust, for the payment of my just debts and the legacies above specified, with power to sell and dispose of the same, at public or private sale, at such time or times, and upon such terms, and in such manner as to them shall seem meet. PRO-

vided, however, that no part of my real estate as aforesaid shall be sold at public auction until after the expiration of —— years from the time of my decease.

FRIEND—DEVISE TO.

In consideration of the love and friendship which I have and bear for and towards him, the said E. X., and also in consideration of the many faithful services he has for many years last past done and performed for me in and about my affairs, and likewise in recompense for the great care and pains he may be at and put unto in the faithful execution of this my last will and testament, I give and devise unto him, the said E. X., and his heirs, all the rest, residue, and remainder of my real and personal estates whatsoever, goods and chattels, lands, tenements, and hereditaments, both in possession and in reversion, that I shall be possessed of, or any way entitled unto, at the time of my decease (after all my debts and legacies are first paid and satisfied thereout, as aforesaid), to hold and enjoy the same to his own proper use and behoof, and to his heirs and assigns, forever.

GRANDCHILDREN—DEVISE.

I give and devise unto my grandchildren, A. B., C. D., the children of my daughter, D., and such other child or children of my said daughter, as may be born of her in lawful wedlock, all my, etc., together with all my land, etc., and all the buildings thereon, etc., to hold the same to them my aforementioned grandchildren, the children of my aforesaid daughter, D., and their heirs and assigns, forever, as tenants in common and not as joint tenants; and I appoint my son, S. B., and his said wife, and the survivor of them, to be my trustees of the said estate, hereby empowering them and the survivor of them, immediately after my decease, to enter upon and manage the same to the best advantage of their said children during the life of my said son and daughter, or the survivor of them.

And in order to preserve that dependence which children ever ought to have upon their parents, I do further order that my said son and daughter, or the survivor of them, shall not be compelled to account to their said children for the profits of said estate during the lives of my said son and daughter; but said trustees shall account to their children, or to such guardian as shall be appointed to them, at such time as they the said trustees shall think proper. And if either of their said children shall dispute the account so by their said parents made, then I give and devise such part of said child's estate to my said daughter and her heirs forever, together with all the rents, issues, and profits that may have been made therefrom.

HOUSES AND LANDS, ETC.

I give and devise all my houses or tenements, lands and hereditaments, situate and being at ——, in the township of ——, in the said county of ——, which I purchased of G. R., unto and to the use of my son-in-law, S. L., the elder, his heirs and assigns forever.

HOUSES AND LANDS, TO GO WITH OTHER LANDS, ETC.

And I give and devise all the lands, tenements, and hereditaments, lying and being at or near ——, in the county of ——, which I purchased of G. R., and the devisees in the last will and testament of D. D., deceased, with the appurtenances, to such and the same person and persons, and for such and the same estate and estates, as the tenements, farm, and lands, commonly called —— farm, situate, lying and being, at or near ——, aforesaid, which belonged to my late uncle, U. D., deceased, are by his will given, devised, directed, limited, or appointed.

To the end and intent that the said lands and hereditaments so purchased by me as aforesaid may go along with said messuage, farm, and lands, called the —— farm, and be held and enjoyed therewith, by such and the same person and persons, for such and the same estate and estates, as the said messuage, farm, and lands, called —— farm, are by my said late uncle's will given, devised, directed, limited, or appointed.

LAPSE OF DEVISE, ETC.—PROVISION TO PREVENT.

Provided always, and I do hereby direct, that if any of the devisees or legatees in this, my will, named shall die before me, then the said devises and bequests shall not lapse, but in the case of real estate such person and persons as shall be the heirs of the devisee shall take as the devisee would have taken if such devisee had survived and outlived me; and in case of a bequest of personal estate, I will and direct that the same shall pass and go to the children of the legatee, and for want of a child or children of the legatee, then to the next akin of such legatee in the same manner that such legatee would have taken if such legatee had survived and outlived me.

DEVISE FOR LIFE TO ONE PERSON, AND REVERSION TO ANOTHER.

I give and devise all my real estate, of what nature or kind soever, to my wife, W. B. (*or* to my friend, F. F.), to be used and enjoyed by her (*or* him), during the term of her (*or* his) natural life; and from and immediately after her (*or* his) decease, I give and devise the same to my friend, F. D., his heirs and assigns, forever.

RESIDUE OF ESTATE—UPON TRUST, ETC.

I give all the rest and residue of my personal estate, which shall remain after payment of my debts and funeral expenses, unto the said —— and ——, their executors, etc., upon and for the trusts, etc., hereinafter mentioned (that is to say):

Upon trust that they, the said —— and ——, or the survivor, etc., do and shall, as soon after my decease as conveniently may be, with the consent and approbation of my said daughter during her life, and after her death, then of the proper authority of the said trustee or trustees for the time being, lay out and invest all the said rest and residue of my personal estate in the purchase of lands and tenements situate, lying, and being in ——, and convey and settle the said lands and tenements, so to be purchased as aforesaid, or cause and procure the same to be conveyed and settled, to such uses, and for such estates, and with and subject to such powers and provisos, as are hereinbefore limited, created, and expressed, of and concerning the said messuages, etc., which are situate, lying, and being in the parish of A. aforesaid (other than and except the estates for life hereinbefore given, or limited to my said wife and son successively, and the aforesaid term of ninety-nine years, and the trusts thereof), or as near thereto as the death of persons, and other circumstances, will then permit.

And, in the meantime, and until the said rest and residue of my personal estate shall be laid out and invested in such purchase or purchases as aforesaid, do, and shall from time to time, invest and lay out the same, or such part or parts thereof as he or they shall think fit, in the public stocks or funds, or on real securities at interest, etc.

And my will is, and I do hereby direct, that all the interest, dividends, and annual produce of the said rest and residue of my personal estate, and of the stocks, funds, and securities, wherein or upon which the same or any part thereof is or shall be invested or placed, shall belong and be paid and payable to such person or persons as would, for the time being, be entitled to the rents and profits of the lands and tenements so to be purchased as aforesaid, in case the same were actually purchased and settled as hereinbefore is directed.

SCHOOL OR COLLEGE.

I give, etc., unto the said M. A., and to his heirs and assigns forever, all that, etc. Upon this special trust and confidence, nevertheless, that he, the said M. A., and his heirs, shall, from time to time, and at all times hereafter, permit and suffer the directors (*or* trustees) of —— school (*or* college), etc., for the time being, and their successors forever, to receive and take the rents, issues, and profits thereof, which I direct and appoint, shall, from time to time, and at all times hereafter, be paid and allowed for and towards the maintenance and education of a poor scholar of the said school (*or* college), for and during and

until such scholar shall be Bachelor of Arts, or elected Fellow of the house; and then to another poor scholar to be elected and chosen, which scholar shall, from time to time, be nominated, elected, and chosen by the directors (*or* trustees) of the said college.

DEVISE TO TRUSTEES, DURING A LIFE, OR LIVES.

I give, bequeath, and devise all my real and personal estate, of what nature or kind soever, to E. X. and T. R., the executors of this, my last will and testament, hereinafter nominated and appointed, in trust, for the payment of my just debts, and the legacies and charges upon the said estate hereinafter specified, to be held and possessed by them, for the purposes aforesaid, for and during the natural life of F. M., of the town of ——, and State of ——, and for and during the natural life of S. M., infant son of the said F. M.; and after their decease, and the decease of each of them,

I give, bequeath, and devise my said estate to my son, S. B., his heirs and assigns: And I do hereby order and direct, that during the continuance of the said trust estate, as aforesaid, there shall be annually paid out of the net income and profits of the said estate, the sum of —— to my wife, W. B., in lieu of all dower or right of dower in and to my said estate; the sum of —— dollars to my son, S. B.; and the sum of —— dollars to my daughter, D. B.; and that the rest, residue, and remainder of the said net income and profits shall be divided equally between my said executors, in lieu of compensation for their services in the execution of the said trust.

CODICILS TO WRITTEN WILLS.

See VARIOUS CLAUSES, ETC., ETC., above.

Codicil to Will—General Form.

I, ——, of ——, a ——, do make this, my codicil, hereby confirming my last will, made on the —— day of ——, and all my former codicils (*if there be any*), so far as this codicil is consistent therewith; and do hereby (*state what*).

Codicil to Will—General Form.

Additional Legacies Given.

Whereas I, A. B., of ——, have made and duly executed my last will and testament, in writing, bearing date, etc. Now, I do hereby declare this present writing to be a codicil to my said will, and direct the same to be annexed thereto and taken as part thereof;

And I do hereby give, bequeath, etc.

In witness, etc.

Codicil to Will—General Form.

Whereas I, A. B., of ——, have made, published, and declared my last will and testament, in writing, dated, etc.

Now I, the said A. B., do by this present codicil, to my last will and testament annexed, confirm and ratify my said last will and testament, and every clause, bequest, and devise therein contained, etc.

Codicil to Will—General Form.

I, A. B., of ——, having made my last will and testament, bearing date the —— day of ——, do now make this codicil, to be taken as a part of the same:

First. I do hereby ratify and confirm said will in every respect, except so far as any part of it is inconsistent with this codicil.

Second. Etc. (*adding new provisions; revoking appointment of executor; substituting another executor for executor deceased; appointing additional executor; making additional bequests, etc., etc.*)

A. B.

In witness whereof, etc. (*as in form of will, above*).

Codicil to Will—General Form.

I, A. B., the within-named testator, do hereby make and publish this codicil, to be added to my last will and testament in manner following, to wit:

I give and bequeath, etc.

And whereas, in my said will, I have given and bequeathed unto my son, S. (who is since deceased), the sum of one hundred dollars, to be paid to him six months after my decease; I do hereby declare that my will is, that the same be paid unto my daughter, E., immediately after my decease.

And lastly, it is my will and desire, that this, my present codicil, be annexed to and made a part of my last will and testament aforesaid.

In witness, etc.

Codicil to Will—General Form.

This is a codicil, to be added to and taken as part of the last will and testament of me, A. B., which bears date the —— day of ——, whereby I do revoke the devise in my said will contained, to my son, S., of all that farm, situated, etc., and containing one hundred and fifty acres, and do give and devise the same to my daughter, D., her heirs and assigns forever.

I give and bequeath to my said son, S., in lieu of the said farm the sum of four thousand dollars; and do hereby ratify and confirm my said will in all other respects.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——, A. D. ——.

A. B.

Signed, sealed, published and declared by the said A. B. as and for a codicil to his last will and testament, in the presence of us, who in his presence, and in the presence of each other, have, at his request, subscribed our names as witnesses thereto.

W. T.

N. S.

Codicil to Will—General Form.

Appointing a Trustee and Executor in the Place of a Deceased Trustee and Executor Appointed by the Testator's Will.

Codicil to the last will and testament of me, A. B., of ——, which bears date the —— day of ——:

Whereas, by my said will I have appointed T. X. to be one of the trustees and executors thereof (and also one of the guardians of my infant children after the decease of my wife):

And whereas the said T. X. having lately died, I am desirous that E. F., of ——, shall be substituted as a trustee and executor of my said will (and a guardian of my infant children) in the place of the said T. X., deceased.

I do hereby declare that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said T. X.

And in all other respects I do confirm my said will.

In witness, etc.

Codicil to Will—General Form.

Revoking Several Legacies.

Whereas I, A. B., of ——, have by my last will and testament in writing, duly executed, bearing date, etc., given and bequeathed to, etc.

Now, I, the said A. B., being desirous of altering my said will in respect to the said legacies, do therefore make this present writing, which I will and direct to be annexed as a codicil to my said will, and taken as part thereof; and I do hereby revoke the said legacies by my said will given to ——, and I do give to each of them the said ——, and ——, the sum of —— dollars only; and I give unto ——, etc., etc.

And I do ratify and confirm my said will in everything, except where the same is hereby revoked and altered as aforesaid.

In witness, etc.

Codicil to Will—General Form.

Indorsed Upon the Back of a Will.

I, the within-named J. H., of ——, do make this present codicil, which I order and direct shall be taken as and for part of my within-written last will and testament, and which will as to all and every the uses, limitations, trusts, gifts, conditions, legacies, bequests, directions, and appointments, therein mentioned, devised, given and contained, of and concerning my real and personal estates therein mentioned, I do, by this my codicil, establish, ratify, and confirm (save and except such devises, uses, dispositions, and bequests therein mentioned, as are by me hereinafter revoked and made void).

Whereas since the making of my said will, my

eldest son, S., is dead, having left issue a third son, named O., now living, and the within-named N. is also dead; Now I hereby give and devise all, etc., unto my said grandson, G. S., etc.

Codicil to Will—General Form.

Revocation.

Whereas I, A. B., of ——, have made my last will and testament in writing, bearing date, etc., and have thereby made, ordained, constituted and appointed, my brother-in-law, B. L., and my cousin, C. N., executors of my said will:

Now I do by this my writing (which I declare to be a codicil to my said will, and direct to be taken as part thereof) will and direct that my said brother-in-law, B. L., shall not be an executor of my said will, and do hereby revoke my appointment of him as such; but that in his room and stead my cousin, D.M., of ——, shall be one of the executors of my said will, jointly and together with my said cousin, C. N.

And I do hereby accordingly make, ordain, constitute, and appoint them, the said D.M. and C. N., joint and sole executors of my said will, as fully and effectually, to all intents and purposes, and in all respects, as if they only and no other person or persons had been by me originally, in and by my said will, constituted and appointed executors thereof, etc.

In witness whereof, I, the said A. B., have this —— day of —— hereunto set my hand (and seal) unto this, which I declare to be a codicil, and desire the same added to my last will and testament aforesaid.

Signed, etc.

Codicil to Will—General Form.

Ratification, etc.

This is a codicil to be added to the last will and testament of me, A. B., of ——, which will bears date on or about, etc.

First, I do hereby ratify and confirm my said will in all respects, save so far as any part thereof shall be revoked or altered by this present codicil, and in particular, save so far as the same relates to the disposition thereby made of my residuary personal estate, in favor of my eldest son, S., as to which particular I do hereby revoke and alter my said will;

And all the rest and residue of my personal estate and effects, by my said will given and bequeathed unto my said son, S., I do hereby give and bequeath unto, etc.

And I give and bequeath unto my brother, B. B., the sum of, etc., etc.

And I do hereby revoke all former and other codicils by me at any time heretofore made.

In witness whereof, to this present writing, which I hereby declare to be a codicil to my last will and testament, and which I direct to be added thereto, and to be taken as part thereof, I have set my hand and seal this —— day of ——, in the year ——.

Signed, sealed, published, and declared by the said A. B., as and for a codicil to his last will and testament, and to be taken as part thereof, in the presence of three several persons, whose names are hereunder subscribed as witnesses to the signing, sealing, and publishing the same, which said three persons did so hereunder subscribe their names at the request and in the presence of the said A. B., and in the presence of each other.

W. I.
T. N.
E. S.

UNWRITTEN, VERBAL, OR NUNCUPATIVE WILLS.

Unwritten or Verbal Will—Memorandum Made and Signed by Witnesses.

1. The will of A. B., of ——, made and declared by him on ——, in the presence of us, who have hereunto subscribed our names as witnesses hereto, "My will is," etc. (*reciting the very words*).

Another.

A. B., his will by word of mouth, made and declared by him, on the —— day of ——, in the presence of us, who have hereunto subscribed our names as witnesses hereto: My will is that, etc.

Another.

Memorandum: That on the —— day of ——, A. D. ——, A. B., of, etc., being sick, of the sickness whereof he died on the same day (or on or about the —— day of —— following, *as the case may be*), at his dwelling-house in, etc. (*or* at ——, where he had been for his health and was taken suddenly ill), did make and declare his last will and testament, nuncupative, in these or the like words following, that is to say: "I give," etc.

These words, or to the like effect, the said A. B. declared in the presence of the subscribers, with intention that the same should be his last will and testament, whereof he desired them, or some of them, to bear witness.

Another.

Nuncupative will of A. B., deceased:

On the —— day of ——, A. D. ——, A. B., being in the extremity in his last sickness, in his habitation or dwelling, situated in —— street, in ——, where he had resided for more than ten days next before the making of his will (*or* at the residence or dwelling of A. B., situated in —— street, No. ——, in ——, where said A. B. was surprised by sickness, being from his own house in ——, and died before returning thereto; *or* on board the ship ——, said A. B. being a mariner at sea; *or* at ——, said A. B. being a soldier in actual military service), in the presence of the subscribers, did declare his last will and testament in the following words, or to that effect, viz.:

"He mentioned that he had about —— hundred dollars in the —— Savings Fund, and —— hundred dollars in the hands of E. F."

He then said that "I want E. F. to act as trustee and executor and put it out at interest for the sole use of my mother during her life, and, after her death, to go to her children. My household goods and other property I wish to be left in my mother's possession for her sole use."

At the time the said A. B. pronounced the foregoing will he was of sound and disposing mind, memory, and understanding, and did bid us, who were present, to bear witness that such was his will.

Reduced to writing, this —— day of ——, A. D. ——.

W. T.
N. S.

Unwritten or Verbal Will—Affidavit of Witnesses.

State ——, county of ——, ss.

Personally appeared before me, the undersigned, W. T. and N. S., who, being duly sworn (*or* affirmed), according to law, did depose and say, that they were present, on the —— day of ——, at the habitation or dwelling of A. B. (situated in —— street, in ——, *or otherwise, as the case may be*), in the time of his last illness, and did then and there hear the said A. B. utter what is contained in the above writing; that he did bid them bear witness that it was his last will; and that at the time of so doing he was of sound mind, memory, and understanding, to the best of their knowledge and belief.

(*The paragraph following should be omitted in the case of a mariner or soldier or person dying from home*):

Also, that he had resided for more than ten days, next before the making of his will, at the above residence.

W. T.
N. S.

Sworn (*or* affirmed) and subscribed before me, this —— day of ——.

(*Probate officer's signature and title.*)

Convict. See CRIMINAL LAW.
Conviction. See CRIMINAL LAW.
Convoy. See MARITIME LAW.
Co-Obligor. See CONTRACTS.
Cool Blood. See CRIMINAL LAW.
Cooling Time. See CRIMINAL LAW.
Coparcenary. See ESTATES
Coparceners. See DESCENT.
Copartner. See PARTNERSHIP.
Copartnership. See PARTNERSHIP.
Copy. See EVIDENCE.
Copyhold. See ESTATES.
Copyholder. See ESTATES.

COPYRIGHT. See ASSIGNMENTS; CONTRACTS, ETC.

COPYRIGHT is the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending any original book, map, chart, dramatic or musical composition, engraving, cut, print, photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, upon complying with the provisions of the law of copyright; and in case of a dramatic composition of publicly performing or representing it, or causing it to be performed or represented by others. Also, the right to dramatize or translate one's own work.[a]

Copyright is not of a simple, but a complex nature, involving two conditions: one of publication, the other of exclusion.[b]

Statutes of copyright do not grant monopolies; they are only protective legislation against trespass on the rights of authors. Not that writers are a more important body than many others, but because it gives the State more trouble to keep thieves off their productions than of those of other skilled laborers, and also because it needs superior intelligence to see that ideas and woven words can be made property, and that they must be, or else their authors outlawed, degraded, and starved, and the community suffer in the end.[c]

In order to acquire a valid copyright in a work it is necessary that it should be original. If any part of the composition is copied or adopted by the writer from a prior existing work, of course the title fails with respect to this, as the writer cannot be the author of what he has adopted from another.[d] The law does not require that the subject of a book should be new, but that the method of treating should have some degree of originality. Copyright may exist in a novel arrangement, as well as in recent corrections and additions to an old work not the property of the compiler.[e]

The law rests upon no code of comparative criticism. It protects alike the humblest efforts at instruction or amusement, the dull productions of plodding mediocrity, and the most original and imposing displays of intellectual power.[f] It will secure to every person the property in every genuine product of their own mental labor, whether that product take the form of compilation, abridgment, new arrangement, or a wholly original work, if indeed there can be any such thing as a wholly original work.

The law will be liberally construed in favor of authors; and, leaving their comparative merits to be settled by critics at the tribunal of public opinion, it will protect and encourage their labors; the fruits of their literary toil are secured to them by the highest title, in order that they may keep open the springs of thought and feed the intellectual life of the nation.[g]

ABRIDGMENTS. Writers of abridgments have in general been favorably regarded by both the courts of law and equity.[h] "Abridgments may with great propriety be called a new book, because not only the paper and print, but the invention, learning, and judgment of the author is shown in them, and in many cases are extremely useful, though in some instances prejudicial, by mistaking and curtailing the sense of the author." A fair abridgment is always entitled to protection.[i] To constitute a true and proper abridgment of a work the whole must be preserved in its *sense*, and then the act of abridgment is an act of the understanding, employed in copying a large work into a smaller compass, and rendering it less expensive and more convenient, both to the time and use of the reader, which make an abridgment in the nature of a new and meritorious work. An abridgment, when the understanding is employed in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work.[j]

A mere selection or different arrangement of parts of the original work, so as to bring it into smaller compass, will not be held a *bona fide* abridgment. There must be a real, substantial condensation of the materials, and intellectual labor and judgment bestowed thereon, and not merely the facile use of the scissors, or extracts of the essential parts constituting the chief value of the original work.[k] The abridgment must not only contain the arrangement of the book abridged: the ideas must also be taken from its pages. It must be in good faith an abridgment, not a treatise interlarded with citations. To copy certain passages from a book, omitting others, is in no sense a just abridgment; the judgment is not exercised in condensing the views of the author not condensed.[l] Between a compilation and an abridgment there is a clear distinction: a compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangement of the works cited; the latter must adopt the arrangement of the work abridged. The former infringes the copyright if the matter transcribed when published shall impair the value of the original work; a fair abridgment, though it may injure the original, is lawful.[m]

a-Laws U. S. 1870, July 8, Vol. 16, p. 212, Ch. 230, § 85; R. S. 1873–4, Title LX., Ch. 3, p. 965, § 4948; 14 M. & W. 316. b-2 DeG. & Sm. 674. c-1 Morgan, 19. d-Copinger on Copyright, 20. e-1 East. 358, 361; 3 Swanst. 672; 1 W. Bl. 321, 331; 5 Ves. 24; 8 Id. 223, n. 215; 16 Id. 269; 2 Beav. 6; 7 C. B. 4; 4 Bingh. 234; 2 Sim. & Stu. 1; 3 K. & J. 708; 3 Story, 768; 2 Blatchf. 46; 5 McLean, 32. As to musical compositions see 8 Law R. (6, 8), 411; 1 Y. & Col. 288. f-5 Blatchf. 87. g-See Id. h-But see 11 W. 877; 1 H. & M. 747; 4 McLean, 308, 309; Curtis Copyright, 272, 273. i-2 Atk. 143. j-Lofft. 775. k-2 Story, 107. l-4 McLean, 311. m-Id. 314; see 2 Story, 100; 8 Jur. 183; 4 Esp. 169; 17 Ves. 426.

ACCESSIONS are those productions and compositions of a kind for which in the course of a literary production an author employs others to assist him. In such cases the product of their individual labor belongs to him who is the author and proprietor of the whole.[n] To constitute a *bona fide* accession an author must by his own intellectual labor, applied to the materials of his composition, produce an arrangement, combination, or performance new in himself.[o]

ACCOUNTS between authors and publishers.[p]

ACQUIESCENCE. Even where the statutory requisites to copyright have been duly observed, the conduct of the proprietor of a periodical may be of such a nature as to disentitle him to aid from a court of equity by means of interlocutory injunction; for example, if one lie idly by and knowingly allow another person to incur the expense of bringing out a work, which is an infringement of his strict legal right.[q]

ADDITIONS. See introduction to this subject, above.

ACTS OF CONGRESS. See ASSIGNMENT, CONSTRUCTION, INFRINGEMENTS, LIBRARIAN OF CONGRESS, REMEDIES, REQUISITES, etc., etc., below.

ADDITIONS. Copyright may exist in a novel arrangement as well as in recent corrections and additions to an old work not the property of the compiler.[r]

ALIENS. Citizens of the U. S., residents therein, and certain foreign authors, are entitled to copyright.

AMENDMENT. See NAME AND DATE, below.

ALTERATIONS, by a publisher who is proprietor of a work, made in a new edition under the author's name, so incorrect as to be injurious to the author's reputation, renders the publisher liable in an action for damages.[t] When, however, a portion of a work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation.[u]

ASSIGNMENT OF COPYRIGHT.

Sec. 4955. Copyrights shall be assignable in law by any instrument of writing, and such assignment shall be **recorded in the office of the librarian of Congress within sixty days after its execution;** in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.[v]

—— FEES. **"Sec. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered, the following fees:**[w]

"1. For recording the title or description of any copyright book or other article, fifty cents.

"2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

"3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar.

"4. For every copy of an assignment, one dollar.

Foreigners and non-residents pay one dollar for recording title or description of articles.

Copyright is personal property, and may be assigned. It must, however, be in existence to be assigned at law.[x] An execution purchaser, however, does not acquire the rights of an assignee in the article sold on execution; and a seizure and sale on execution of plates for which the debtor has obtained a copyright does not transfer the copyright to the purchaser; the debtor is entitled, without reimbursing the purchaser for money paid on such sale, to an injunction to restrain the purchaser from striking off and selling copies therefrom.[y] The assignees under a commission in bankruptcy are not entitled to the manuscripts of an author, although the copyright of a book which has been printed and published will legally pass for the benefit of creditors,[z] and the price paid by the bookseller is as completely open to the diligence of creditors as the price of another commodity or merchandise. The reason assigned for this distinction is that the author's right of withholding the publication continues till the very moment his book is actually given out to the public; even the printer of the book would not be entitled to sell it for his payment, although there was not the smallest doubt that he has a complete lien over it till delivery, to prevent the author or his creditors from taking advantage of the publication till he shall have been paid.[a]

The assignment of a copyright in general terms will be referred to what was in existence at the date of the assignment, and not to any future contingency.[b] It should not by construction be extended beyond the first term, unless it seems to be actually meant by the author to be transferred forever, and including any future contingency.[c] Where, however, it is clear that the author intends to transfer all his interest in the copyright, as well as his right in the continuance or extension of the term, a court of equity will enforce a reformation of the contract so as to include all the assignees' interest.[d]

n-Poth. Prop. 170–175; 7 C. B. 268; 29 L. J. 20, C. P.; 1 L. T. (N. S.) 10; 9 Am. L. Reg. 33. See Code Napol. 566, 567. o-2 Blatch. 46; 3 Story, 782; 1 Id. 11; 2 Woodb. & M. 46. p-See 31 Beav. 258; 2 Jur. (N. S.) 348. q-12 L. T. (N. S.) 540; 11 Jur. (N. S.) 540; 13 Wood, 804. r-1 East, 358, 360, 361; 3 Swanst. 672; 1 W. Bl. 321, 331; 5 Ves. 24; 18 Id. 223, n.; 8 Id. 215; 16 Id. 269; 2 Beav. 6; 7 C. B. 4; 2 Sim. & Stu. 1; 3 K. & J. 708; 3 Story, 768; 2 Blatchf. 46; 5 McLean, 32; 8 L. Rep. (C. S.) 411. s-Laws U. S. 1870, July 8, Vol. 16, p. 212, Ch. 230, § 85, Rev. 1873–74, Title LX., Ch. 3, § 4948. t-See 1 Moo. & R. 162; 5 Carr. & P. 519; 11 Hare, 118; 11 Beav. 112. u-11 Hare, 118; see 11 Beav. 112. v-Laws U. S. 1870, July 8, Vol. 16, Ch. 230, § 89, p. 213; citing 8 Pet. 591; 18 How. 165; 2 Woodb. & M.; 42 Id. 497. w-Laws U. S. 1870, July 8, Vol. 16, Ch. 230, § 92, p. 213, Rev. 1873–74, Title LX., Ch. 3, § 4958; Laws U. S. 1874, June 18, Vol. 18, Ch. 301, § 2, p. 79. x-8 L. J. (N. S.) Ch. 216; 3 Jur. 217; 9 Sim. 151. y-2 Hilliard Torts. 58 n.; 14 How. 528; 17 Id. 447. z-2 Bos. & P. 67; see 4 Burr. 2311; Ambl. 695; 14 How. 528; 17 Id. 447; 4 B. Mon. 594, 596; 10 Mod. 518. a-1 Bell Comm. 68; Kerr Inj. 186. b-30 Mo. L. Rep. 101. c-2 Woodb. & M. 44. d-8 Wend 565; 2 Woodb. & M. 510.

The assignment of an interest in a copyright must be in writing, though an agreement to assign may be by parol; and such assignment though unrecorded will be valid as between the parties, and as to all persons not claiming under the assignees.[d]

An assignment of the copyright of a work must have been in writing, and attested by two witnesses, in order to entitle the assignee to maintain an action for pirating it,[e] for the statute requires two witnesses to a consent to publication, and it is naturally inferred that an assignment which is of a higher nature than a mere consent must have at least the same solemnity.[f]

In the absence of a special contract, the assignor of a copyright is entitled after assignment to continue selling such stock of the work as remains on hand at the date of the assignment.[g]

An agreement to assign will be treated in equity as a valid assignment, upon the maxim that equity considers done that which ought to have been done.[h]

An assignment made by parol may be valid if registered in the office where the copyright was entered, and certainly so if afterwards acted upon by the parties.[i]

An author or proprietor may assign a distinct portion of his copyright.[j]

See CONSTRUCTION; INFRINGEMENTS; LIBRARIAN OF CONGRESS; REMEDIES; REQUISITES, ETC., ETC., below.

ASSIGNMENT FORMS.

These assignments are void unless recorded in the office of the librarian of Congress within sixty days after their execution.

Copyright—Assignment—Short Forms.

See title ASSIGNMENTS, ante.

Copyright No. ——, A., is (hereby) assigned to C. D. A. B.
Dated ——. ———

I (hereby) assign copyright No. ——, D., to C. D., of ——. A. B.
Dated ——. ———

For value received I hereby assign copyright No. ——, C., to C. D., of ——.
Dated ——. ——— (*Signed*) A. B.

For a consideration of —— I hereby assign unto C. D. one-half of the undivided interest in copyright No. ——, F., for a term of —— years.
Dated ——. ——— (*Signed*) A. B.

Copyright—Assignment—General Form.

For the consideration hereinafter mentioned, I, the undersigned A. B., hereby sell, assign, transfer and set over unto C. D. all my title and interest in and rights under copyright No. ——, E. (*for, give title or description of copyright*).

In consideration of which said C. D. shall pay unto (*or* perform for) said A. B. the following sums (*or* the following things) to wit: —— (*setting forth the amounts, conditions, terms, and places of payment or performance, etc.* (*Signed*) A. B.
Dated ——. C. D.

Copyright—Assignment—General Form.

For a consideration of —— dollars, the receipt of which is hereby acknowledged (*or* for value received), I hereby assign, transfer, and set over to C. D. all my title and interest in and rights under a certain copyright, and the certificate thereof bearing date the —— day of ——, the title (*or* description) of which is in the following words, to wit: (*copying from the certificate*); the right whereof I claim as author (*or* proprietor).

To have and to hold the same unto the said C. D., and his legal representatives forever.

In witness whereof, I have hereunto set my hand, this —— day of ——. A. B.

Assignment—Communication Enclosing Assignment to Librarian of Congress, for Recording.

Place ——, Date ——

Librarian of Congress,
Washington, District of Columbia:

Enclosed please find an instrument of writing for the assignment of copyright No. —— C., from A. B. (of ——, author or proprietor) to C. D. (of ——, publisher), to be recorded in your office in conformity with the laws of the United States respecting copyrights.

Find also [post office order (*or* draft) No. ——, for] —— dollars, fee for recording and certifying said instrument. Very respectfully,
C. D.

Assignment—Certificate of the Librarian of Congress of Recording.

[L. S.] Library of Congress.
Washington, —— ——.

The within assignment of copyright is this day recorded in the office of the librarian of Congress, in conformity with the laws of the United States respecting copyrights.

Witness my hand and the seal of said office, this —— day of ——, A. D. ——.
L. C., *Librarian of Congress.*

ANOTHER.

[L. S.] Library of Congress.
Washington, District of Columbia.

An (instrument of writing for the) assignment of copyright No. —— C., by A. B., of ——, to C. D., of ——, was recorded in book (*or* assignment record No.) ——, folio ——, this —— day of ——.
L. C., *Librarian of Congress.*

ANOTHER.

[L. S.] Library of Congress.
Washington, District of Columbia.

The within (instrument of writing for the) assignment of copyright No. —— E. was recorded in (book ——, *or*) assignment record No. ——, folio (*or* page) ——, the —— day of ——.
Date ——. L. C., *Librarian of Congress.*

ARRANGEMENT. See introduction to this chapter, and ABRIDGMENTS, above.

ARTICLES. In order to give the proprietor of an encyclopædia, magazine, periodical, review, or serial, a copyright in articles composed for him by others, it is not necessary that there should be any express contract that he should have the property in the copyright: the fact of the author being paid by the proprietor for articles supplied expressly for the periodical raises the presumption that the copyright is intended to be the property of the proprietor; otherwise, the articles might be published by the writer simultaneously, or shortly afterwards, possibly to the detriment and injury of such proprietor. But any author may reserve to himself the right to publish any such composition in a separate form, and he will be entitled to the copyright therein when published separately,

d-2 Morgan, 228, 257. e-4 Campb. 8, S. C.; 3 M. & S. 7; 1 Jac. & W. 481; 2 B. & C. 861; 6 C. B. 456; 12 Jur. 922; 18 L. J. (C. P.) 14; 7 C. B. 4; 4 Ho. L. Cas. 815; 31 L. J. (Exch.) 80. f-As to the distinction between a license to publish and an assignment see 27 L. J. Ch. 254; 15 L. T. (N. S.) 512. g-Law Rep. 7 Eq. 418. h-Shortl. 158, *et seq.*; 2 Burr. 2400; 1 Sac. 315. i-See Scotch Sess. Cas. (N. S.) 8; 18 Id. (N. S.) 906 j-13 Mo. L. Rep. 401.

without prejudice to the right of the proprietor of the publication in which such article may have first appeared.

A person may be the proprietor of a copyright in the separate parts of a periodical, etc., simply by reason of his employment of the writers.[k] See AUTHOR, below.

AN AUTHOR is one who, by his own intellectual labor, applied to the materials of his composition, produces an arrangement or compilation new in itself.[l]

Authors may be considered as: 1. Originators; 2. Compilers; and 3. Translators.[m]

1. *An originator* has choice of his own thoughts and words, and his work is an entirely new and original one composed of such words and thoughts.

2. *A compiler*, abridger, arranger, or editor, is one who, by his own intellectual labor and judgment, arranges, composes, frames, or makes a composition of literary or scientific matter from various sources, and not originally produced by him.

3. *A translator* or interpreter is one who renders or interprets literary matter from one language to another, retaining the idea and the sense which are not his, and clothing them in words of his own selection. He is not a mere paraphraser, since a creditable paraphrase may be produced without the slightest familiarity with, knowledge of, or reference to the language of the original work, by a mere reference to a previous translation and a book of synonyms. The labor of a conscientious and faithful translator must be much more original and primary.

Where a person employs another to compile a book, and gives him some suggestions as to its character and form, and agrees to pay for such compilation, and thereupon the author conveys the copyright to the employer, such conveyance relates only to the original or first term of the copyright. The author has the sole interest in the additional term allowed to authors, and may renew the copyright and enjoy the benefit of such renewal.[n]

When, in the course of the composition or production of a literary or scientific work, an author employs another or others to assist him, the product of their individual labor will belong to him who is the author and proprietor of the whole.[o]

Where a person is employed, for a reward paid to him, to write a musical composition to be used as part of the representation of a dramatic piece, and as a mere accessory to such dramatic piece, the composer of the musical accessory has no copyright therein: the property in music so composed becomes vested in the employer, and he does not require the consent of the composer in order to represent it.[p]

Unknown author. Where an author is unknown, the copyright of a book belongs to its publisher.[q]

BANKRUPTCY. The assignees under a commission of bankruptcy are not entitled to the manuscripts of an author, although the copyright of a book which has been printed and published will legally pass for the benefit of the creditors.[r] And the price paid by the bookseller is as completely open to the diligence of creditors as the price of any other commodity or merchandise.[s]

BEQUEST. Copyright may be the subject of a bequest, and on the death of the person to whom it belongs, without any such bequest, will devolve on his personal representatives.[t]

BOOK. A "book" within the meaning of the act may consist of a single sheet, as the words of a song or the music accompanying it.[u] But a newspaper or price current is not a book within the meaning of the act.[v]

A label used in the sale of any article is not a book within the provisions of the copyright act.[w]

BUSTS. See SCULPTURE, MODELS, AND BUSTS, below.

BLASPHEMY AND PROFANITY are offences not only against morals and the public weal, but is in many States made a penal offence. They tend to undermine not only Christianity, which is a part of our law, but also disturb the peace and corrupt the morals of the community. If these offences in the shape of publications cannot be dealt with criminally, as in most cases they can, they are beyond the reach of any protection in law or equity; and while they are without relief from invasion by others, they will be restrained where any positive injury results from their publication.

CALENDARS, COURT GUIDES, DICTIONARIES, DIRECTORIES, AND WORKS OF THIS DESCRIPTION, ETC. The difficulty as to this class of cases is, that they do not only relate to a subject common to all mankind, but the mode of expression and language is necessarily so common that two persons must, to a very great extent, express themselves in identical terms in conveying the instruction or information to society which they intend.[x] In all cases where the sources from which materials for composition are to be derived are of a common or general nature, they are open to any one to gain a copyright in any arrangement of them which he chooses to make.[y] But although a person may thus acquire a copyright in his own arrangement of common materials, the materials themselves are equally open to every one else who chooses to have recourse to them, and different copyrights may be acquired in different arrangements of the same common materials. These

k-See 25 L. J. (C. P.) 127; 17 C. B. 427; 11 Jur. 77; 16 L. J. (N. S.) Ch. 140. l-2 Blatchf. 46. m-Morgan Law of Literature, vol. 1, p. 318, § 151, *et seq.*; Id. § 156, *et seq.* n-2 W. & M. 23. o-Poth. Propr. 170, 175; 7 C. B. (N. S.) 268; 29 L. J. (C. P.); 1 L. T. (N. S.) 10; 9 Am. L. Reg. 33; Code Nap. 566, 567. p-7 C. B. (N. S.) 268; 29 L. J. 20, C. P.; 1 L. T. (N. S.) 10; see 16 L. T. (N. S.) 453; 15 Wood, 838; 9 Am. L. Reg. 47. q-1 Morgan, 209, § 250. r-2 B. & P. 67; 4 Burr. 2311; Ambl. 695; 14 How. 258; 17 Id. 447; 4 B. Mon. 594, 596; 10 Mod. 518. s-1 Bell Comm. 68; Kerr on Injunction, 186. t-Ambl. 737. u-2 Paine C. C. 383, 391. v-Id. w-4 McLean, 516. x-6 W. R. 352; 2 W. & M. 497. y-9 Sc. Sess. Cas. (2d Ser.) 758; 2 Paine, 395; 3 Story, 781; Law R. 1 Eq. 697; 35 L. J. 423; 14 L. T. (N. S.) 222.

arrangements must, however, be independent; a later arrangement must not be a servile imitation or reproduction of an earlier one; otherwise it subjects its author to the charge of piracy.[z]

Of the whole class of works embracing tables of figures, dictionaries, calendars, court guides, etc., etc., the only mode of arriving at the amount of labor bestowed is by the common test resorted to of discovering the copy of errors and misprints indicating a servile copying.[a]

A CHATTEL MORTGAGE on the copyright of a work is not a mortgage on the profits arising from a use of the copyright.[b]

COMMON MATERIALS, ETC. See CALENDARS, COURT GUIDES, ETC., ETC., above; DICTIONARIES, DIRECTORIES, ETC., below.

COMPILATION. "It is a great mistake to suppose because all the materials of a work, or some parts of its plan and arrangements and modes of illustration, may be found separately, or in a different form, or in a different arrangement in other distinct works, that, therefore, if the plan, or arrangement, or combination in another work is new, or for the first time made, the author, compiler, or framer of it is not entitled to a copyright. The reverse is the truth in law," etc.[c] No person has a right to borrow another's plan and arrangement and illustrations, and servilely copy them into any other work.[d]

The preparation and collection of notes from various sources is a work of no small labor and intellectual exertion: the plan, the arrangement, and the combination of these notes belong exclusively to the person collecting and arranging them. He is justly deemed the author of them in their actual form and combination, and is entitled to a copyright accordingly. If no work could be considered by our law as entitled to the privilege of a copyright, which is composed of materials drawn from many different sources, and for the first time brought together in the same plan and arrangement, and combination, simply because those materials might be found scattered up and down in a great variety of volumes, perhaps in hundreds, and even thousands of volumes, and might have been brought together in the same way and by the same researches of another mind equally skilful and diligent, then what would become of the elaborate commentaries of modern scholars upon the classics, etc., treatises upon astronomy, mathematics, natural philosophy and chemistry, legal treatises, digests and text books, the materials of which must essentially depend upon faithful abstracts, formulæ, and illustrations?[e]

CONSTRUCTION OF COPYRIGHT—IMPORTATION, PRINTING, AND PUBLISHING OF FOREIGN WORKS, ETC., ETC.

Sec. 4971 of the U. S. Revised Statutes, which gave to citizens and residents the right to print, publish, import or sell books, maps, charts, musical or dramatic compositions, prints, cuts, engravings, or photographs, written, composed or made by persons not citizens nor residents, was repealed March 3, 1891.

See REQUISITES OF A VALID COPYRIGHT, below.

CONTRACTS BETWEEN AUTHORS AND PUBLISHERS, ETC.

In all agreements between authors and publishers the terms should be distinctly stated, and the respective rights of the parties clearly defined. The number of copies of which the edition is to consist should be declared; otherwise the publisher might, if so disposed, print 20,000 as one edition.[g]

Agreements between authors and publishers should express beyond a doubt whether they are to operate as *assignments* of the copyright in the work, or merely as *licenses* to publish.[h] If the author sell and dispose of his manuscript in specie to a publisher, with the express understanding that the latter is to publish it, he cannot afterwards copyright in his own name: the copyright belongs to the publisher.[i]

Where an agreement between author and publisher is that the publisher shall take the whole charge, risk, and duty of bringing out the work (as he thinks best for the interest of both parties), such publisher has the right of fixing the price of such work when brought out.[j]

When an agreement between author and publisher states that after payment of the expenses of publication, etc., "the profits remaining in every edition that should be printed of the work are to be divided into two equal parts, one moiety to go to the author, and the other to the publisher," this points out certain definite times for the adjustment of the accounts, and at which the author becomes entitled to terminate his agreement with the publisher. Nor can the publisher by stereotyping the work deprive the author of this right.[k]

Under a contract between author and publisher, where the publisher agrees to publish the work and pay the author for copyright seven and a half cents for every copy of the book published, the publisher does not obtain the exclusive right to publish the work.[l]

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same,[m] provided the work be one which, if published, would not subject the author to punishment.[n]

Where, however, the author is engaged for a certain sum to write an article to appear, among others, in a work which is discontinued before any of it had been published, the pub-

z-L. Rep. 1 Eq. 697; 35 L. J. 423, Ch.; 14 L. T. (N. S.) 222; 1 East. 361, n. a-6 Wood, 352; L. Rep. 9 Eq. 324. b-3 L. Rep. 3 Ch. App. 703; 38 L. J. 917, Ch.; L. T. (N. S.) 223. c-3 Story, 782. d-Id. e-See 1 Story, 11; 7 C. B. 4. f-Laws U. S. 1870, July 8, Vol. 16, Ch. 230, § 103, p. 215; Rev. 1873-4, title 60, Ch. 3, § 4971. g-4 K. & J. 656, 669. h-6 De G. M. & G. 223; 3 K. & J. 276. i-See 7 Blatchf. 152. j-See 3 K. & J. 276; Shortl. 271; 24 K. & J. 276. k-2 Morgan, 635, § 430 and note. l-33 N. Y. Superior Ct. 219. m-2 Stark. N. P. C. 107; See 2 Wils. C. C. 157. n-Id

lishers are not entitled to claim the completion of the article in order that it may be published in a separate form for general readers, but are bound to pay the author a reasonable sum for the part which he has prepared.[o]

An author may bind himself not to write upon a particular subject, or only for a particular person.[p]

CONTRACT FORMS.

See ASSIGNMENTS, above, LICENSES, below.
See title CONTRACTS, ante.

Agreement, Contract, or Memorandum.

Reservation by Artist of Copyright in a Drawing, Painting, or Photograph, etc.

It is hereby agreed between A. B., of ——, and C. D., of ——, that the copyright No. ——, C, of the drawing (painting, *or* photograph), entitled ——, representing ——, made (*or* produced) by said A. B., and now (sold, assigned, and disposed of, *or* now executed on my behalf), is reserved to said A. B.

Dated ——. (*Signed*) C. D.

Witnesses, W. T., N. S.

Agreement, Contract, or Memorandum.

Assignment of Copyright in Drawing, Painting, or Photograph to Purchaser, etc.

It is hereby agreed between A. B., of ——, and C. D., of ——, in consideration of the sum of ——, over and above the price of the work hereinafter described, paid by said C. D. to said A. B., that the said C. D. is entitled to the copyright in the (drawing, painting, *or* photograph), made (*or* produced) by said A. B., entitled ——, and representing ——, now first sold and disposed of to said C. D.

A. B.
(*or* A. B. by A. A., his agent.)

Witnesses, W. T., N. S.

Agreement, Contract, or Memorandum.

For Publication of a Limited Edition.

It is agreed:

That C. D., of ——, publisher, at his own cost and expense, upon the conditions and for the consideration hereinafter mentioned, shall publish —— copies of (*here copy the title of the work*).

That said work shall be printed in type and page corresponding with ——.

That said work shall be divided into —— volumes of —— pages (*or* sheets) each.

That said work shall be sold (in boards, etc., etc.) at the retail price of ——, and wholesale price of ——, but should said work exceed —— pages (*or* sheets) a proportionate increase shall be made in said charges, as well as the consideration hereinafter named.

That in consideration of the premises said C. D. shall pay said A. B. the sum of —— dollars (*or* —— per cent. of the retail [*or* wholesale] selling price of said work as follows, to wit):

That said C. D. shall present said A. B. with —— copies of said work, free of charge, upon publication thereof.

In witness whereof, said parties have hereunto set their hands this —— day of ——. C. D.

Witnesses, W. T., N. S. A. B.

Agreement, Contract, or Memorandum.

Compilation, etc., and Sale of a Work.

This agreement (contract, *or* memorandum), made this —— day of ——, between A. B., author (*or* inventor, etc.), of ——, of the one part, and C. D. and E. F. (hereinafter called D. & F.), publishers of ——, of the other part, witnesseth:

That said A. B. shall, on or before the —— day of —— next, compile, edit, and write a work, to be entitled ——, together with a comprehensive and full index and table of cases thereto, and correct and revise the proof-sheets of the same.

That said A. B. shall sell, assign, transfer, and set over unto said D. & F. his copyright, and all his title and interest in and rights under the same unto said D. &. F. for the sum hereinafter mentioned.

That said A. B. shall have —— copies of said work free of charge.

That said D. & F., and their legal representatives, shall print and publish, and bear all the charges and expenses of printing, publishing, advertising, and selling said work, and pay to said A. B. for his said copyright, interest, title, and right the sum of —— dollars, on the day of publication of the same.

In witness whereof, said parties have hereunto set their hands the —— day of ——. A. B.

Witnesses, W. T. N. S. D. & F.

Agreement, Contract, or Memorandum.

Publication and Sale Upon Half Profit.

This agreement (contract, *or* memorandum), made this —— day of ——, between A. B., of ——, and C. D., of ——, witnesseth:

That said C. D. shall, at his own expense and risk, publish a work entitled ——.

That said C. D., after deducting from the produce of the sale thereof the charges for plates, printing, paper, advertisements, embellishments, cuts, etc., and other incidental expenses, including the allowance of —— per cent. of the gross amount of sale, for commission and risk of bad debts, shall divide the profits remaining of each and every edition that shall be printed of the work into two equal parts, one moiety to be paid to said A. B. and the other moiety to be retained by said C. D.

That all books sold shall be accounted for at the wholesale (*or* retail) trade price, unless it be advisable to dispose of any at a less price, which shall be left to the judgment and discretion of said C. D., on due notice to said A. B.

That —— copies of said work shall be presented to said A. B. upon publication, free of charge.[q]

In witness whereof, said parties have hereunto set their hands, the day and year above written.

A. B.

Witnesses, W. T., N. S. C. D.

Agreement, Contract, or Memorandum.

To Correct, Enlarge, and Revise a Work.

This agreement (contract, *or* memorandum), between A. B., of ——, and C. D., publisher, of ——, witnesseth:

That A. B., in consideration of the sum of —— dollars, to be paid as soon as the last proof sheets of the work hereinafter mentioned are corrected for press, agrees to examine, correct, enlarge, and revise the work known as ——, and to furnish additional manuscript matter for a new edition of said work, and to examine, correct, enlarge, and revise the index of the same.

That the new edition of said work shall be of the same pages as the present work, and contain an equal amount of matter on each page.

That the additional matter furnished shall enlarge said work not less than —— pages.

That said matter shall be furnished to C. D. at not less than —— pages per day, commencing on the —— instant.

That said A. B. shall examine and correct all proof sheets as soon as they shall be furnished.

That said C. D. shall complete the index within a reasonable time (not to exceed ——) after the whole signatures of the text shall be ready for him for that purpose.

That said C. D. shall print said work as the matter shall be supplied, and provide said A. B. with proofs of the same by signatures as each signature shall be worked off, for the purpose of arranging said index.

That said C. D. shall furnish said A. B. with —— bound copies of said work as soon as convenient after publication.

In witness whereof, said parties have hereuntd set their hands, this —— day of ——. A. B.

Witnesses, W. T., N. S. C. D.

Agreement, Contract, or Memorandum.

This agreement (contract, *or* memorandum), made this —— day of ——, between A. B., of ——, author of ——, of the one part, and C. D. and E. F. (hereinafter called D. & F.), publishers, of the other part, witnesseth:

That said A. B. shall fully prepare the whole of said work for the press on or before the —— day of ——, and shall correct the proof sheets, and superintend the printing thereof.

o-5 C. & P. 58. p-18 Ves. 437; see 2 Cooper's Cas. 216. q-See 3 K. & J. 271.

That the alterations and corrections of the proof sheets and revises which shall exceed the charge of —— per sheet (*or* page) shall be borne and paid by said A. B., and shall be deducted out of his share of the profits.

That in case all the copies of said books shall have been sold off, and a second or any subsequent edition of said book shall be required by the public, the said A. B. shall make all the necessary alterations and additions thereto, and said D. & F. shall print and publish said second and every subsequent edition of said book upon the conditions herein contained.

That said D. & F. shall direct the mode of printing said book, and shall bear and pay all the charges thereof, and of publishing the same (except as herein otherwise provided), and shall take all the risk of the publication upon themselves.

That said D. & F. shall, out of the proceeds of the sale of said book in the first instance, be refunded all the costs and expenses which they shall have incurred respecting said book, after which the profits shall be equally divided between said A. B. and D. & F.

That accounts shall be made up at the end of every quarter (*or* six months, *or* year), and the profits, if any, be then divided.

That said D. & F. shall account for all the copies of said book which they shall sell, at the wholesale (*or* retail) bookseller's price deducting therefrom a commission of ——, they taking the risk of the credit they shall give on the same.

That in case all the copies of any edition of said work shall not be sold within —— years after the time of their publication, the said D. & F. shall be at full liberty to dispose of the remaining copies so unsold, either by public auction or private contract, or in such manner as they may deem most advisable, so that the account may be finally settled and closed.[p]

In witness, etc.

COPY—DEFINITION OF, ETC. A copy (of an engraving, cut, print, photograph, painting, drawing, chromo, etc., etc.) is that which comes so near to the original as to give every person seeing it the idea created by the original.[q] Trifling variations are not material,[r] whether reduced to the size of an engraving, or still more diminished in a photograph,[s] or enlarged to a painted dioramic copy.[t] It is for the jury to consider whether the main design of the plaintiff's engraving had been copied, and whether the defendant's engraving was substantially a copy of the plaintiff's.

COPYISTS. The mere copyist, or the slavish imitator, who produces old materials substantially in their own forms, without new combination, is entitled to no protection under the statute.[u]

CRIMINAL PUBLICATIONS. "No author or printer who fairly and conscientiously promulgates opinions, with whose truth he is impressed, for the benefit of others, is answerable as a criminal. A malicious and mischievous intention is, in such a case, the broad boundary between right and wrong: it is to be collected from the offensive levity, scurrilous and opprobrious language, and other circumstances, whether the act of the party was malicious."[v]

DELAY. If any delay occurs in the assertion of the title to copyright infringed, the delay must be accounted for to the satisfaction of the court; otherwise, no assistance will be given.[w]

DICTIONARIES. In dictionaries there may be a certain degree of skill exhibited as to order and arrangement, or ingenuity exhibited in the selection of phrases and illustrations, which are the best exponents of the sense in which a word is to be used; there may also be great labor in the logical deduction and arrangement of the word in its different senses, when the sense of the word departed from its primary signification. On the other hand there is a large mass of words that admit of only one acceptation, and can be translated only one way, and the large mass of dictionaries are composed of words of that description; hence the new dictionary must, of necessity, contain much of the information and the results obtained from its predecessors.[x] Where words are of such a nature that the information contained in them must of necessity, if it be correct, be exactly the same in both, the test frequently applied by the courts to determine whether the second is a mere unlaborious production of the first, or has been compiled by original effort from common sources, is this:—to examine the inaccuracies which appear in both works, and see whether they are identical; if so, the inference of piracy is almost invariably drawn.[y]

See CALENDARS, COURT GUIDES, ETC., ETC. above; DIRECTORIES, below.

DIGESTS, ETC. The digest of a report usually included in and known as the head note is a species of property that will receive protection. The head note, or the side or marginal note of a report is a thing upon which much skill and exercise of thought is required: it may be considered in itself a species of brief and condensed report—an abstract of the decision conveying the principle upon which it is founded, and the pith and substance of the case.[z]

The right of selecting passages from books of reports (including entire judgments) in treatises upon particular subjects is not disputed. Had it been, the greater part of our law libraries would be much thinned, and we deprived of many valuable works, as a great portion consists of mere transcripts from books of reports.[a] See COMPILATION, ETC., above.

Digests of legal decisions are somewhat of the nature of abridgments. They give, under headings arranged alphabetically, a summary of the legal points decided in each case referred to, and if such arrangement and summary are the product of skill and mental labor on the part of the compiler, and the compiler is guilty of no infringement of the copyright in the published reports, he is entitled to a copyright; but if the compiler's labor is purely mechanical, and he only arranges in alphabetical order the marginal or head notes of cases contained in published reports, he is guilty of infringing the copyright in such reports.[b]

p-See 6 D. M. & G 223. q-5 B. & Ald. 743. r-14 C. B. (N. S.) 317; 9 M. & W. 692. s-14 C. B. (N. S.) 742, 743. t-6 Sim. 297. u-5 Blatchf. 87. v-11 S & R. 394. w-See 1 R. & M. 76; Taml. 295; 2 Russ. 385, 393; 3 Beav. 135; 2 Id. 6; 5 DeG. & S. 80, 84; 11 Wood, 877; 32 L. J 539, Ch., and analogous patent cases; 12 Beav. 3; 4 L. J. 26 Ch; 1 Kay, 416, 417; L. R 18, Eq 444. x-Per Vice-Chancellor Wood, 6 W. R. 352. y-16 Ves. 271, 272; 6 W R 352; Law R. 9 Eq. 324 z-16 C. B 491; 1 Jur. (N. S.) 543; 2 Y. & C. 302. a-5 Ves. 709. b-16 C. B. 484.

"A digest, undoubtedly, may be made from the published reports without necessarily subjecting the compiler to the charge of piracy; for instance, where the party applies the exertion and skill of his own brain in extracting the principal or the substance of the decisions before him, dressing it up in his own language, so as to produce an original work, not a mere stringing together of marginal or side notes which the labor and intelligence of the authors have fashioned ready to the compiler's hand."[c]

DIRECTORIES, GUIDE BOOKS, MAPS, ETC. In the case of a directory, dictionary, guide-book, map, or the like, where there are certain common objects of information, which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. The compiler may not cut out slips from the former work and go and see whether they are accurate, and if so, copy them verbatim into his own work, but he is quite justified in referring to the former book in order to guide himself to persons on whom it would be worth while to call.[d]

DIVISIBILITY, ETC., OF COPYRIGHT. Copyright is not divisible,[e] though the term[f] may be divided.[g]

ENGRAVINGS, ETC. Where the subject from which the engraving is taken is common and open to all, the first engraver of a print of it is not entitled to restrain any one else from making an engraving of the same subject, provided it be made from the original subject and is not a copy of the first engraving; but he can prevent another from copying his own engraving.[h]

EXECUTION. Copyright in a published print is not the subject of seizure or sale by execution, although it may be reached by creditors' bill, and applied to the payment of the debts of the author.[i] But in case of such a remedy it would be necessary for the court to enforce a transfer to the purchaser in conformity with the requirements of the copyright act in order to invest such purchaser with a complete title to the property.[j]

Whether this right extends to the publishing an unpublished work of an author, or otherwise making the same available, is very doubtful.[k]

A manuscript[l] in the author's hands, or a book half-printed, or in the process of publication,[m] cannot be taken in assignment or execution.

See ASSIGNMENT, above.

GRATUITOUS DISTRIBUTION. A multiplication of copies for the purpose of gratuitous distribution is as much an infringement of the proprietor's copyright as if the multiplication had been made for the purpose of pecuniary profit.[n]

IGNORANCE. Copyright is like patent in this respect, that if it is infringed ignorance will not avail as a defence in the one case any more than in the other.[o]

IMMORAL OR LIBELLOUS WORKS. The law will not assist one in the recovery of remuneration for his labor on such works.[p]

IMPORTATION. Copyright may be infringed by the importation for sale or hire of copies printed abroad.

INFRINGEMENTS OF COPYRIGHT.

Copyright may be invaded:[q]

1. By reprinting the whole work verbatim.
2. By reprinting a part of a work verbatim.
3. By imitating the whole or a part, or by reproducing the whole or a part with colorable alterations.
4. By reproducing the whole or a part under an abridged form.
5. By reproducing the whole or a part under the form of a translation.

COPYING, ENGRAVING, ETCHING, IMPORTING, PRINTING, PUBLISHING, SELLING, VARYING, WORKING, ETC., OF COPYRIGHT MATTER, WITHOUT CONSENT OF PROPRIETOR IN WRITING SIGNED IN PRESENCE OF TWO OR MORE WITNESSES.

Sec. 4965. If any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this act, shall, within the term limited, contrary to the provisions of this act, and **without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, translate, or import, either in whole or in part,** or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall **sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates upon which the same shall be copied, and every sheet thereof,** either copied or printed, **and shall further forfeit one dollar for every sheet of the same found in his possession,** either printing, printed, copied, published, imported, or exposed for sale; **and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession,** or by him sold or exposed for sale.

A proviso limits the sum recoverable in an action for infringement of copyright of a photograph made from an object not a work

c-5 Ves. 709. d-Law Rep. 5 Ch. App. 279; 22 L. T. (N. S.) 78; see 2 Am. L Reg. 229; Law R. 7 Eq. 34; 19 L. T. (N S.) 550. e-4 Ho. L. Cas. 815. f-6 C. B. 458. g-2 Bliss, 208. h-4 Bingh. 246; 3 Ves & B. 78. i-14 How. U. S. 528. j-17 How. U. S. 447. k-See 4 Burr. 2311; Ambl. 695; 10 Mod. 518. l-Bell Comm. 38; 4 Burr. 2311, 2396, 2397; Godson Pat. & Cop. (2 Ed) 430; Curtis Copyright, 85, 218. m-Maugham Literary Property, 177, n. 4. n-11 C. B. 177; 9 Sc. Sess. Cas. (2d Ser.) 748. o-1 J. & H. 527. p-Ry. & M. 337. q-Shortl. 95; Curtis, Ch. 9. r-Laws U. S. 1870, July 8, Vol. 16, Ch 230, § 100, p. 214. Rev. 1873-74: citing 1 Story, 19; 2 Id. 115; 2 Blatchf. 39; Id. 85; 4 McLean, 306.

of fine art to not less than $100 nor more than $5,000; and where the infringement is of copyright of a painting, drawing, statue, engraving, etching, print, model, design, of a work of fine art, or photograph of a work of fine art, the sum recoverable is not less than $250 nor more than $10,000, half to the copyright owner and half to the United States.

IMPORTING, PRINTING, PUBLISHING, SELLING, ETC., OF COPYRIGHT MATTER, WITHOUT THE CONSENT OF PROPRIETOR, IN WRITING.

Sec. 4964. Every person who, after the recording of the title of any book, and the depositing of two copies of such book as provided by this act, shall, contrary to the provisions of this act, within the term limited, and **without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatize, translate, or import, or,** knowing the same to be so printed, published, dramatized, translated, or imported, shall **sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action** by such proprietor in any court of competent jurisdiction.[t]

"Any copy of such book" under this section may be understood to mean a transcript or copy of the entire book, and no less,[u] and courts will only adjudge such penalty for the copies found in the possession of the defendant.[v]

Where any wrong has been committed in respect to a literary work, and the complainant does not ask for an injunction to protect his common law rights, or the violation of his copyright, but only prays for an accounting, the redress must be sought at law for damages, and not in equity. The asking of an injunction is what constitutes the process equitable.[w]

PUBLICLY PERFORMING OR REPRESENTING DRAMATIC COMPOSITION, ETC., WITHOUT CONSENT OF PROPRIETOR.

Sec. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, **shall be liable for damages therefor;** such damages in all cases to be assessed at such **sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.**[x] Injunction provided by amendment, Jan. 6, 1897.

A previous acting or representing a play will not deprive the author of the right afterward to take out a copyright.[y]

An action may be maintained by the author, although he or his assignee has only filed his title-page, and has not published the work or play.[z]

An assignee of an exclusive right of performing a dramatic composition within certain limits may maintain an action for injunction to restrain its representation and performance within such limits,[a] if he has complied with all the acts required by law to secure a copyright.[b]

PRINTING OR PUBLISHING MANUSCRIPT WITHOUT AUTHOR'S OR PROPRIETOR'S CONSENT.

Sec. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, shall be liable to the author or proprietor for all damages occasioned by such injury.[c]

An author has a common law right in his manuscript until he relinquishes it by contract or some other equivocal act.[d] And a surreptitious publication of an important part of a manuscript is as much within the statute as if the manuscript were complete. Indeed the whole of a manuscript need not be printed.[e]

INTENTION TO PIRATE. The existence of an *animus furandi* (intention to steal) is deemed essential to piracy.[f] This *animus furandi* must not be understood to mean a deliberate design to steal the product of another's labor and surreptitiously appropriate it to one's own use and credit; the offence of piracy may be committed *bona fide*, with no dishonest intention, and without any idea on the part of him who commits it that he is infringing a copyright. "It is enough that the publication complained of is in substance a copy whereby the work vested in another is prejudiced.[g] In a book of avowed extracts from the poetical writings of others," if A. takes the property of B. the *animus furandi* is inferred from the act.[h]

The cases in which the *animus furandi* test properly applies is that difficult class relating to dictionaries, road books, and the like, where a certain amount of common material is used by different persons, and the matter at issue is "piracy or no piracy."[i]

INTESTACY. Where the owner of copyright in any published or unpublished production dies intestate, the copyright in such production devolves by operation of law upon his executor or administrator, who, as such, possesses all the rights that the original owner enjoyed.[j]

JOINT OWNERS OF A COPYRIGHT may make a contract between themselves as to the printing and publishing of a work, and neither will be permitted to set up against the other his

s-(See § 104-4968, post); 8 Law Rep. 412; 1 W. L Jour 240. t-Id § 99, Rev. 1873; 4 Id § 4964; citing 1 Story, 19; 2 Id. 115; 2 Blatchf. 39; Id. 85; 4 McLean, 306; 2 Woodb. & Min. 497. u-12 Monthly L. Rep. 340. v-7 How. 811; 1 N. Y. Leg. Obs. 198. w-3 Edw. Ch. 110–111. x-Id. § 101, Rev. 1873; 4 Id. § 4966; citing 5 Blatchf. 87; 6 Id. 256. y-13 Monthly L. Rep. (N. S.) 401. z-Id. a-Id. b-9 Am. L. Reg. 421; *contra* 13 Monthly L. Rep. (N. S.) 401. c-Id. § 102; Rev. 1873–74; citing 8 Pet. 657; 4 McLean, 300; 22 How. Pr. 207. d-5 McLean, 36, 38; 8 Pet. 957; 1 N. Y. Leg. Obs. 409; 18 How. 170; 32 How. Pr. 198. e-5 McLean, 39–40; see 9 Am. L. Reg. 45. f-4 Esp. 169; but see 1 J. & H. 527. g-1 Campb. 98. h-11 Sim. 38; see 1 W. L. Jour. 240; 1 Ciff. 98; similar cases, 16 L. T. (N. S.) 51; L. Rep. 3 Eq. 718. i-J. & H. 527. j-Shortl. 149.

original rights as a joint owner in violation of such contract.[z]

LEGAL FORMS. A person is entitled to copyright in practical forms and styles of writs and instruments introduced by acts of the general assembly or legislature, those acts giving only general descriptions of the forms to be used. "It is said that owing to the particular nature of the styles they cannot be the subject of copyright, because they are drawn up precisely after the form prescribed in the statute, and because any styles relating to the same subjects as those given by the complainer must, if the directions of the statutes and phraseology of conveyancers were used, be expressed in the same manner exactly as those proposed by the complainer. Now it may be quite true, that if the statute had supplied certain forms by which the operations intended to be thereby regulated were to be done, if the statute had contained, as statutes sometimes do, an appendix exhibiting certain schedules of forms which it was only necessary for any one to copy in order to avail himself of the provisions of the act, then I hold that the reprinting of such forms in a separate publication would not give him a copyright in those forms; but in the case here it is different, for the statute only gives very general directions and descriptions of the styles that are to be used. The schedules are very general in their terms, and it is no doubt of great practical importance to suit these general directions to each case falling under the statute as it may arise. The preparing and adjusting of such writings require much care and exertion of mind. As to invention, that is a different thing: it does not require the exercise of original or creative genius, but it requires industry and knowledge."[a]

LETTERS—PRIVATE. The copyright of private letters forming literary compositions is in the composer and not in the receiver, who has only a special property in them. "Possibly the property of the paper may belong to him, but this does not give a license to any person whatever to publish them to the world, for at most the receiver has but a joint property with the writer."[b]

Letters and communications sent expressly or impliedly for publication to editors or proprietors of legal publications become the property of such editor or proprietors, and cannot lawfully be published by any other person obtaining possession of them.[c]

LIBRARIAN OF CONGRESS.

See ASSIGNMENT, above; REQUISITES, ETC., below.

Sec. 4948. All records and other things relating to copyrights and required by law to be preserved, **shall be under the control of the librarian of Congress, and kept and preserved in the library of Congress.**

An amendment, added Feb. 19, 1897, provides for the appointment of a Register of Copyright, who shall, under direction of the librarian, perform all the duties relating to copyright.

Sec. 4949. The seal provided for the office of the librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office, and to be used in evidence, shall be authenticated.[d]

Sec. 4950. The librarian of Congress shall, on and after July 1, 1897, give a bond, payable to the United States, in the sum of twenty thousand dollars, with sureties approved by the Secretary of the Treasury, for the faithful discharge of his duties according to law.[e]

Sec. 4951. The librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.[z]

Sec. 4956. No person shall be entitled to a copyright unless he shall, on or before the day of publication, in this or any foreign country, deliver at the office of librarian of Congress, or deposit in the mail within the United States, addressed to the librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph or chromo, or a description of the painting, drawing, statue, statuary, or a model or design, for a work of the fine arts, for which he desires a copyright; nor unless he shall also, not later than the day of publication thereof, in this or any foreign country, deliver at the office of the librarian of Congress, at Washington, District of Columbia, or deposit in the mail, within the United States, addressed to the librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of fine arts, a photograph of the same: Provided, That in case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone, made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be and is hereby prohibited, except in the

z-8 Wend. 568. a-Per Lord Fullerton, 9 Scotch Sess. Cas. (2d Ser.) 754, 755, Feb. 27, 1847. On the question of industry and knowledge, time and labor, see 1 East 363; 17 Ves. 425; 11 W. R. 934; 3 Story, 768; 1 Tamlyn, 305; 5 S. C. Sess. Cas. (2d Ser.) 416; 1 Story, 17; 12 Ves. 276. b-Per Lord Hardwicke, 2 Atk. 342; 2 V. & B. 19; 4 Burr. 2331, 2330, 2303; Ambl. 694; 2 Eden. 329; 2 Bro. 189; 11 C. B. (N. S.) 139; Mor. Dict. of Dec. Vols. 19, 20; App. Lit. Prop. 13; 1 Coll. 565; 2 Story,

cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled an act to reduce the revenue and equalize the duties on imports and for other purposes, approved October 1, 1890 (said paragraphs embrace the list of articles importable free of duty); and except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time, and except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation: Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translations of the same, and the importation of the books in the original language shall be permitted.

The above section, it will be perceived, introduces the International Copyright feature.

Sec. 4957 provides the form which the librarian of Congress shall use when recording a copyright. See Section in full, p. 415, 2d col.

Sec. 4958 provides for fees for recording, certifying and entering assignments of copyright. See Section in full, p. 398.

Sec. 4959 provides that the proprietor of every copyright book or other article shall deposit with the librarian of Congress a copy of every subsequent edition wherein any substantial changes shall be made. See p. 415.

Sec. 4960 imposes a penalty of $25 on the proprietor of any copyright who fails to deliver, or deposit in the mail, either of the two copies or descriptions, or photograph, required by Sections 4956 and 4959. See full text, p. 415.

DIRECTIONS FOR REGISTERING COPYRIGHT,

Issued by Librarian of Congress.

Address.

"The Librarian of Congress, Library of Congress, Copyright Office, Washington, D. C."

Postage.

Send no stamps for return postage. The Copyright Office uses the Government frank.

Money Remittance.

Send no money for blanks; they are furnished without charge upon request.

Form of Application.

The Copyright Office will furnish, upon request, a legal form of application for copyright, with directions for filling it up.

First Step.

A first step to secure copyright is to send to Copyright Office a *printed* copy of the title of the book or other article. The recording of this is the record of claim of copyright. Written titles are not accepted, but will be if typewritten.

Formal Application.

Made by filling out the legal blank according to directions and properly addressing it. Accompany it with the title-page, preferably a *printed* title of the book or other article, or in lieu thereof a third copy. Sending two copies of a book or other article is not a compliance with the law that a title and two copies are to be sent, but *three* copies will serve, if such copies bear the printed title. Photograph and description must accompany title of paintings, drawings, statuary, etc.

When Title Filed.

Title must be filed on or before the day of publication in this or any foreign country, by delivery at Copyright Office or deposit in mail within the United States.

Date of Registration.

Titles are recorded under date of their receipt at the Copyright Office.

More than One Volume.

Each part or volume of works published in parts or volumes should be recorded as an independent work. The title for each number of newspapers, magazines and periodicals, distinguished by volume, number and date, must be filed as if a distinct work. Title alone is not sufficient.

Who can Copyright.

1. Authors, citizens of the United States, or of any country to which international copyright privileges have been extended. 2. Proprietors, assignees of authors. 3. Translators, editors, compilers, dramatizers, abridgers, etc.

Deposit of Copies.

No person shall be entitled to copyright unless he shall also, not later than the day of publication, in this or any foreign country, deliver at the office of librarian of Congress or deposit in the mail within the United States, properly addressed, two copies of such copyright book or other article. These must be complete copies of the best edition, and, if books, the copies must be printed from type set in the United States. If a new edition, one copy only is required. Failure to make the above deposits incurs a penalty of $25. Manuscripts should not be sent.

Receipts.

The official catalogue of entries will be mailed as a receipt; a certified receipt will be mailed on payment of fifty cents and the proper revenue stamp (ten-cent). Special receipts will be sent on request of proper form.

Notice of Copyright.

No copyright can be protected unless the notice prescribed by law is printed on, or inserted in, every copy of the article produced.

Form of Notice.

Either of these forms will do—*a*. Entered according to Act of Congress in the year (insert date), by (insert name), in the Office of the Librarian of Congress at Washington. Or, *b*. Copyright (insert date), by (insert name). The date must agree with the date of entry, and appear, in books, on the title or next page; on other articles on some conspicuous portion.

Penalty for False Notice.

False notice of copyright incurs a penalty of $100.

Fees.

See Sec. 4958, p. 398.

Term of Copyright.

The term of copyright is twenty-eight years from the time of recording title in the Copyright Office.

Renewal.

Within six months before the expiration of the first term of copyright the author, if still living, or his widow or children, if he be dead, can renew the copyright for another term of fourteen years. To renew, title must be filed a second time, and two copies sent. Fee for a certificate must be sent, and notice must be printed for four weeks in one or more newspapers of the United States.

Assignment.

See p. 398.

Publication.

Time of publication is not limited by statute, but it should take place within a reasonable time after recording the title.

Translations and Dramas.

These are copyrightable same as books. The forms and directions should be strictly followed.

Periodicals.

Each number of newspaper or periodical, distinguished by a statement of the volume, number and date, can be copyrighted. This can be done in advance, by entering the title volume, number and date of prospective issues, paying separate fees, and guaranteeing to send two copies to Copyright Office as soon as printed. Postmaster's receipt, as evidence of mailing, should be procured.

International Copyright.

The International Copyright Act of March 3, 1891, giving foreign authors the right to obtain copyright in the United States, limits the privilege to such countries as extend the same privilege to citizens of the United States. Up to the end of the nineteenth century such countries were: Belgium, Chili, Costa Rica, Denmark, France, Germany, Great Britain and colonies, Italy, Mexico, Netherlands and possessions, Portugal, Spain and Switzerland.

LIEN. Electro or stereotype printers have not a general lien on plates not manufactured by themselves, but only put into their hands for the purpose of printing from them.[m] To establish a *general lien* such printer must show such a custom of trade that the other party to the transaction contracted with reference to such custom; "nothing short of this will dispense with an express contract," etc.[n]

A printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work, has a general lien upon the copies not delivered for his balance due for printing the whole of those numbers.[o]

A printer of a book in process of publication is not entitled to sell it for his payment,[p] although he has a lien upon it against the author or his creditors until delivery.

See title BAILMENTS, ante.

LOCAL OR STATE COPYRIGHT. Although a particular State cannot take away from an individual the property given him by act of Congress, and though the laws of such State are imperative as against the laws of the United States with which they may come in collision,[q] yet if an author or inventor instead of resorting to the act of Congress should apply to the general assembly or legislature of a particular State for an exclusive right to his production, there is nothing to hinder that State granting it, though the operation of such grant would be confined to the limits of the State,[r] and the use of the property is of exclusively local character; like all other property it must be used and enjoyed within each State according to the laws of such State.[s]

MANUSCRIPTS. See INFRINGEMENT, above; REMEDIES, ETC.; UNPUBLISHED, below.

MUSICAL COMPOSITIONS. Although the score of an opera or piece of concerted music is so far an independent work as to be copyrighted in the name of the compiler, it seems that one may not compile such score without the consent of the composer of the opera or piece.[t]

Piracy may be of part of an air as well as of the whole.[u] To publish in the form of quadrilles and waltzes the airs of an opera, of which there exists an exclusive copyright is an instance of piracy.[v]

The addition of words, prelude, and accompaniment to an old air gave the adapter a copyright in the whole composition,[w] and where a person adapted words to an old air and procured a friend to compose an accompaniment, his assignee was entitled to describe himself in an action for piracy as proprietor of the copyright in the entire composition.[x] As to how far an arrangement for the pianoforte of the score of an opera is an original work.[y]

NAME AND DATE, ETC. Errors in the name of a person copyrighting, or of the date of copyright, prevent the author or proprietor from proceeding by action, suit, or otherwise, until such errors have been amended; or invalidate a subsequent assignment under the act.[z] The name of a firm will be sufficient without the names of all its members.[a] A change in the style of printing an author's or publisher's name, or a change of publishers will not affect the copyrighted title of a book.

See RECORD, ETC., below.

NAME OR TITLE. The name or title of a work may be considered as a kind of a trademark which no other person than the proprietor of the work can use so as to damage him in his property in it.[b] Cases of this kind depend rather upon the question whether the defendant has a right to sell as his own that in which another has acquired a description of property than on the question of copyright.[c]

NOTES—BONA FIDE The work or part of the work of another may be made the foundation of *bona fide* notes and observations, and may be published with such notes or observations without infringing the copyright in the original work. "Any person may copy and publish the whole of a literary composition, provided he writes notes upon it so as to present it to the public connected with matter of his own.[d] If a man took "Paley's Philosophy and copied a whole essay, with observations and notes, or additions at the end of it, it would depend on the facts of whether the publication of that essay was to convey to the

m-M. & M. 456, 465: 4 C. & P. 152. n-Id., Id. o-3 M. & S. 167. p-Maugham Literary Property, 177, n. 4. q-See 9 Wheat. 186. r-9 Johns. 581. s-Id. t-See opinions of Cockburn, C. J., and Blackburn, J., in L. Rep.; 2 Q. B. 350, 354; 7 B. & S. 869; 15 L. T. (N. S.) 530; 36 L. J. 103, Q. B.; and Kelly, C. B. on Appeal, L. Rep.; 3 Q. B. 223; 9 B. & S. 175; 37 L. J. 84; 9 B; 18 L. T. (N. S.) 105; Shortl. 118. u-1 Y. & C. 301. v-Id. w-1 C. B. (N. S.) 182. x-7 C. B. 4. . y-See 7 B. & S. 869; 9 Id. 175; L. Rep. 2 Q. B. 340; L. Rep. 3 Q. B. 223; 18 L. T. (N. S.) 105. z-This is the English rule, 33 T. J. 717, Ch. 10; L. T. (N. S.) 838; 10 Jur. (N. S.) 922; 12 W. R. 1069; L. R. 7 Eq. 270; 15 Id. 104. a-L. R. 7 Eq. 270; 15 Id. 104. b-See 11 Sim. 582; 2 Phil. 154. c-2 K. & J. 126; 8 Ves. 215; 16 Ves. 271; 2 Jur. (N. S.) 414; 4 Wood. 519; 1 Giff. 98; 5 Jur. (N. S.) 947; 2 K. & J. 123; 3 B. & C. 541. d-6 Sim. 298.

public the notes and observations fairly, or only to color the publication of the original essay and make that a pretext for pirating it; if the latter it could not be sustained.[d]

The quantity as well as the character of critical notes added to the work of another is an important element in determining the question of *bona fide* notes.[e]

NOTICE. Where the title-page of a book was deposited in 1846, and the notice of the entering inserted in the volume stated it to have been deposited in 1847, even though the error arose from a mistake, it was nevertheless held fatal to the copyright.[f]

OBSCENE, IMMORAL, OR LIBELLOUS WORKS. The author or publisher of a work of libellous or an immoral tendency can have no property in it. Such a work is not the subject of copyright. They are entitled to no protection whatever, and no action can be maintained for pirating them.[g]

OBSCENE, IMMORAL, AND INDECENT PUBLICATIONS, ETC. "Every person who, within the District of Columbia, or any of the territories of the United States, or other place within the exclusive jurisdiction of the United States, sells, or lends, or gives away, or in any manner exhibits, or offers to sell, or to lend, or to give away, or in any manner to exhibit, or otherwise publishes or offers to publish in any manner, or has in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image, on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception, or for causing unlawful abortion, or who advertises the same for sale, or writes or prints, or causes to be written or printed, any card, circular, book, pamphlet, advertisement or notice of any kind, stating when, where, how, or of whom, or by what means any of the articles in this section hereinbefore mentioned can be purchased or obtained, or manufactures, draws or prints, or in any wise makes any of such articles, shall be imprisoned at hard labor in the penitentiary for not less than six months, nor more than five years for each offence, or fined not less than one hundred dollars, nor more than two thousand dollars, with costs of court."[h]

"No obscene, lewd, or lascivious book, pamphlet, paper, picture, print, or other publication of an indecent character, or any article or thing designed or intended for the prevention of conception or procuring of abortion, nor any article or thing intended or adapted for any indecent or immoral use or nature, nor any written or printed card, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, when or how, or of whom, or by what means, either of the things before mentioned may be obtained or made; nor any letter upon the envelope of which, or postal card upon which indecent or scurrilous epithets may be written or printed shall be carried in the mail; and any person who shall knowingly deposit, or cause to be deposited for mailing or delivery, any of the hereinbefore mentioned articles or things, or any notice or paper containing any advertisement relating to the aforesaid articles or things, and any person who, in pursuance of any plan or scheme for disposing of any of the hereinbefore mentioned articles or things, shall take or cause to be taken from the mail any such letter or package, shall be deemed guilty of a misdemeanor, and shall, for every offence, be fined not less than one hundred dollars, nor more than five thousand dollars, or imprisoned at hard labor not less than one year, nor more than ten years, or both."[i]

"All persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image, on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception, or for causing unlawful abortion," etc. (providing mode of proceedings against, for seizure, forfeiture, and destruction of same, etc.)[j]

"Whoever, being an officer, agent, or employé of the government of the United States shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall, for every offence be punishable by a fine of not less than one hundred dollars, and not more than five thousand, or by imprisonment at hard labor for not less than one year, nor more than ten, or both."[k]

The test of obscenity is, "Whether the intention and tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into those whose hands a publication of the sort may fall.[l] This test unmodified would sweep away such works as Shakespeare, Jonson, Beaumont, Fletcher, Chaucer, Dryden,

[d]-4 Esp. 169; see 3 M. & Cr. 711, 728. [e]-11 Sim. 31. [f]-2 Blatchf. 82. [g]-7 D. & R. 625; 5 B. & C. 173; 2 C. & P. 163; 7 Ves. 1; 2 Merriv. 435; 11 Beav. 117, 119; L. R. 2 Ch App. 310; 16 L. T. (N. S.) 130; 36 L. J. 438 Ch.; L. R. 6 Eq. 561; 19 L. T. (N. S.) 65; 37 L. J. 889 Ch.; Jacob 471. [h]-Laws U. S. 1873, March 3, Vol. 17, Ch. 258, § 1, p. 598; Rev. 1873-4, § 5389. Modified by last Congress. [i]-Laws U. S. 1873, March 3, Vol 17, Ch. 158, § 2, p. 599; Rev. 1873-4, § 3893. [j]-Laws U. S. 1857, March 2, Vol. 11, Ch. 63, p. 168; Laws 1873, Vol. 17, Ch. 258, §§ 1, 3, 5, pp. 598, 599; Rev. 1873-4, title 33, §§ 2491, 2492; Sprague, 467. [k]-Laws U. S. 1873, March 3, Vol. 7, Ch. 258, § 4, p. 599; Rev. 1873-4, title 19, § 1785. [l]-L. Rep. 32, B. 371; 18 L. T. (N. S.) 398; 36 L. J. 9, 8 M. C.

Byron, De Foe, Smollett, Fielding, and others, in whose works such tares are accessories which form the great contrasts and effects intended by these writers, and which, separated by themselves, could not be tolerated.

ORIGINALITY. The law will secure to a man the property in every genuine product of his own mental labor, whether that product takes the form of a compilation, abridgment, new arrangement, or wholly original work—if indeed there can be any such thing as a wholly original work. "In truth, in literature, in science, and in art there are and can be few, if any, things which in an abstract sense are strictly new and original throughout. Every book in literature, science, and art borrows, and must necessarily borrow and use much which was well known and used before; no man creates a new language for himself, at least if he be a wise man, in writing a book; he contents himself with the use of language already known, and used and understood by others. The thoughts of every man are more or less a combination of what other men have thought and expressed, although they may be modified, excelled, or improved by his own genius or reflection. If no book could be the subject of copyright which was not new and original in the elements of which it is composed, there could be no ground for copyright in modern times; and we should be obliged to ascend very high even in antiquity to find a work entitled to such eminence."[m]

The test of originality is "whether the claimant's book contains any substantive product of his own labor."[n]

To constitute one an author he must, by his own intellectual labor, applied to the materials of his composition, produce an arrangement or compilation new in itself.[o] In the case of subjects open to all, the work of the author must not be copied, but recourse must be had to the original sources.[p] One who gets another, or others, to compile a work or engrave a print is not entitled to copyright.[q]

The utmost that the law can do is to require and insist that the secondary author shall have exercised original labor in devising the plan, selection, arrangement, and presentation of the materials which he has found *in medio* (common to all) and open to all. It will not be sufficient on the one hand that he has bestowed upon his work the manual labor of copying or clipping the material; nor will it be necessary on the other, that he has used such judgment in discovering the wants of the public, and such skill as to have produced a really valuable book; the product of actual mental labor, whether valuable or worthless, will be protected by law.[r]

A judicious, careful, and useful arrangement of old and well-known material may be produced by original labor, and, if so, will be entitled to protection.[s] But though any person may thus acquire a copyright in his own arrangement of common materials, the materials themselves remain, as always, open to the next comer who chooses to have recourse to them, and different copyrights may be acquired in different arrangements of the same common materials. These different arrangements must, however, be independent. A later arrangement must not be a servile imitation or reproduction of an earlier one.[t]

PARTS OF WORKS. Where the parts of a work can be separated, there may be a copyright in any distinct part of it.[u]

PARTS AND EXTRACTS OF A WORK. That part of the work of one author is found in another is not of itself piracy, or sufficient to support an action; but the extracts may be too many, or contain too large or important a portion of the work from which they are made; then they will amount to piracy, even though they were published in the form of quotations, and the source from which they were taken is expressly declared.[v]

See QUOTATIONS, below.

PERIODICALS. Copyright in periodical publications may be infringed in the same manner as in the case of other literary works; but this species of property may also be infringed in a manner peculiar to itself. Even when the copyright in contributions to encyclopædias, reviews, magazines, and other periodicals is vested in the proprietors of such encyclopædias, etc., the right of publishing his contribution in a separate form reverts to the author twenty-eight years from the first publication, and the proprietor cannot, during the term of his own copyright, publish it in a separate form without the previous consent of the author or his assigns.[w] A republication in supplemental numbers of a selection of various tales previously published in that periodical is an infringement.[x]

The author has a modified property in possession, and the sole property in reversion.

PHOTOGRAPHING. Making an unauthorized photograph of the engraving of a picture is a photographing or copying of the picture itself. If the design is copied, it is immaterial whether it is done directly from the original, or indirectly through the medium of a copy.[y] It would be otherwise if the owner had parted with the right to multiply engravings.[z]

PIANO SCORES of operas are independent musical compositions, specific, separate, and distinct from operas themselves. It requires time, reflection, skill, and mind, so to condense the opera score as to compose the piano-

m-3 Story, 770. See also 1 Id. 16. n-Curtis Copyright, 171, 172; 5 Ves. 23; 1 East. 358; 8 Ves. 221; 16 Id 269; L. R. 1 Eq. 702; 14 L. T. (N. S.) 222; 35 L. J. 423; 14 W. 496; 3 K. & J. 708. o-2 Blatchf. 46; see above. p-2 Paine C. C. 400, 401; 3 Story, 781; 1 Id. 17. q-2 Woodb. & Min. 46; 2 Blatchf. 46. r-1 Morgan, 316, § 150, citing Curtis Copyright, 172. s-2 Blatchf. 39. t-1 Morgan, 344, § 169, and notes. u-L. Rep. 6 Eq. 418. v-See 10 Jur. 420; L. Rep. 3 Eq. 718; 16 L. T. (N.S., 51. w-See 16 Sim. 190; 1 J. & H. 312; 3 L. T. (N. S.) 466; 9 Sc. Sess. Cas. 1026; 13 Id 219. x-4 Giff. 632; 6 L. T. (N. S.) 437; 33 L. J. 137, Ch. y-9 B. & S. 395, 401. z-Id.

forte accompaniment.[a] Whether a piano-forte arrangement of the score of an opera, executed without the consent of the composer of the opera, would be an infringement of his copyright therein has not been expressly decided.[b]

PIRACY IN GENERAL. If so much is taken as to impair the value of the original work, or so that the labors of the original author are substantially appropriated, this will constitute a piracy.[c] But the question of piracy does not depend solely upon quantity.[d] Intention is not a necessary element in the offence of piracy. If a copyright has been invaded, whether the party knew the work was copyrighted or not, he is liable to the penalty for violation thereof.[e]

The inquiry in most cases is not whether the defendant has used thoughts, conception, information, and discoveries promulgated by the original, but whether his composition may be considered a new work, requiring invention, learning, and judgment, or only a mere transcript of the whole or parts of the original, with mere colorable variations.[f]

PLAN OR METHOD. There can be no copyright of a mere plan or method of a work, distinct from the work itself, any more than there can be copyright of an abstract idea.[g]

"QUOTATION is necessary for reviewing; the quotation for such a purpose is not to have the appellation of piracy affixed to it, but quotation may be carried to the extent of manifesting piratical intention."[h] "A reviewer may fairly cite largely from the original work, if his design be really and truly to use the passages for the purposes of fair and reasonable criticism. On the other hand, it is as clear that if he thus cites the most important parts of the work with a view not to criticise, but to supersede the use of the original work, and substitute the review for it, such a use will be deemed in law a piracy. A wide interval might, of course, exist between these two extremes, calling for great caution and involving great difficulty."[i]

See PARTS AND EXTRACTS, ETC., above.

RECEIPT BOOKS. The composing receipts, or arranging them in a book, will give a copyright to the compiler. But the mere collecting them and handing them over to the publisher will not. Nor will the mere copying that which is public property. But if there be some new arrangement or classification of the subject, or the copy be not identical, and not a mere colorable variation,[j] then a copyright may exist for it.[k]

RECORD. Care should be taken that the copyright record is accurate, for an error in it will be a fatal defect in the author or proprietor's copyright.

REMEDIES UNDER THE COPYRIGHT ACT.

Jurisdiction.

Sec. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.[l]

The jurisdiction given the federal court by the acts of Congress has not taken away or diminished the original jurisdiction which before such acts[m] the state courts exercised; except when the jurisdiction was made exclusive in express terms, or by the necessary construction of the constitution.[n]

Limitation.

Sec. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, **unless the same is commenced within two years** after the cause of action has arisen.[o]

Pleading and Evidence.

Sec. 4969. In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence[p]

COPYRIGHT PLEADINGS

Under the Statute.

Title of Action or Suit.

In the Circuit Court of the United States.
Fifth Circuit, Southern District of Alabama.

A. B. *vs.* C. D. } **Complaint** (declaration, *or* petition). **Infringement of copyright.**

Said A. B. (in person, *or* by A. A., his attorney) **respectfully represents** (*or* **alleges, and complains**) **as follows:**

ANOTHER.

In the Circuit (*or* **District**) **Court of the United States.**
For the Middle District of Tennessee.

A. B. *vs.* C. D. } **Complaint** (declaration, *or* petition) **Infringement of copyright.**

Said A. B., etc (*as above*).

ANOTHER.

United States Circuit Court.
Western District of Virginia.
Etc., etc. (*as above*).

Complaint, Declaration, or Petition.

For Infringement—General Form.

(*Title, as above.*)

I. Said A. B., etc. (*as above*).

II. That said A. B. is a citizen of the United States.

Or,

That said A. B is a resident of the United States.

III. That he is the (author, *or* designer or) **proprietor of a book** (*or other article, describing it*) **entitled** (*here copy the title or description as contained in the book, etc., and certificate of copyright*).

Or,

That he is the (author, *or* designer and) **proprietor of a map, — chart, — dramatic or musical com-**

a-L. Rep. 2 Q. B. 358; 15 L. T. (N. S.) 530; 36 L. J. 103, Q. B.; 15 Wood. 309. b-L. Rep. 2 Q. B. 350, 354; 1 Y. & C. 288; 18 L. T. (N. S.) 108; L. Rep. 3 Q. B. 223: 37 L. J. 84, Q. B.; 16 Wood. 485. c-2 Story, 115. d-4 McLean, 309, 310. e-1 West. L. J. 240. f-2 Wall. C. C. 547; S. C. 2 Am. L. Reg. 231. g-4 McLean, 316. h-2 Russ. 393; 1 Campb. 97; 3 Jur. 218; 8 L. J. 216 Ch.; 10 Jur. 421; 11 Sim. 580; 2 Swanst. 428; Ambl. 402, 405. i-2 Story, 106. j-2 Sim. & Stu. 1. k-4 Bing. 234. l-Laws U. S. 1870, July 8, Vol. 16, Ch. 230, § 106; p. 215; Rev. 1873-4, Title 60, Ch. 3, § 4790. m-2 Woodb. & Win. 43-45. n-4 Duer. 382. o-Id. § 104; Rev. 1873-74; Id. § 4968. p-Id. § 105; Rev. 1873-4; Id. § 4969.

position, — engraving, — cut, — print, — photograph or negative thereof, *or* — painting, — drawing, — chromo, — statue, — statuary, *or* — model or design intended to be perfected as work of the fine arts), described as follows: (*here copy the description as contained in the certificate of copyright*), and further described by a photograph thereof, which is hereunto attached, marked "Exhibit A," and made a part hereof.

IV. That on the —— day of ——, and before publication, said A. B. did deliver at the office of the librarian of Congress (*or* deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia), a printed copy of the title of said book (*or other article, describing it*), *or* a description of said painting, (drawing, chromo, statue, statuary, *or* model, *or* design for a work of the fine arts).

V. That on the —— day of ——, and on or before the publication thereof, said A. B. did deliver at the office of the librarian of Congress (*or* deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia), two copies of such copyright book (*or other article, describing it, as above*), (*or in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts*, a photograph of the same).

VI. That on the —— day of —— the librarian of Congress did record the name, description, and title of said copyright book (*or other article, naming it*), in conformity with the laws of the United States respecting copyrights, a certificate of which recording is hereunto attached, marked "Exhibit B," and made a part hereof.

VII. That on the —— day of ——, and thereafter, he did give notice of his said copyright (*if it be a book, say*, by inserting in the several copies of every edition published, on [the page immediately following]) the title-page thereof the following words, viz.:

(*If a map, chart, musical[a] composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, say*) by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.:

"Entered according to act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington;" (*or* "Copyright, 18—, by A. B.")

When the Infringement is by Importing, Printing, or Publishing a Book, Continue as follows:

VIII. That said C. D., on the —— day of ——, and after the recording of the title of said book as aforesaid, did, within the term limited by law, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish (*or* import), (*or* knowing the same to be so printed, published, *or* imported), sell and expose to sale —— copies of such book.

That by reason of the premises said A. B. has been prevented selling —— copies of said book, and his profits in said copyright has been diminished —— dollars.

IX. Said A. B. therefore prays judgment:

That said C. D. shall render an account of all printing, publishing, and importation of said book from —— unto ——, etc., etc.

That said C. D. shall forfeit and deliver forthwith every copy thereof, so printed, published, and imported, etc., unto him, the said A. B.

That said C. D. shall also forfeit and pay unto him, the said A. B., —— dollars damages.

That said C. D. be henceforth enjoined and restrained from printing, publishing, and importing said book, and from committing any further, or other similar, injuries relating to said copyright.

That said C. D. be awarded his costs herein taxed at —— dollars, etc.

(And any further relief.) (*Signed*) A. B.

A. A.,
Plaintiff's (Declarant's or Petitioner's) Attorney.

When the Infringement is by Engraving, Etching, Working, Copying, Printing, Publishing, or Importing, Either in Whole or in Part, or by Varying, etc., Selling and Exposing to Sale, etc., etc., continue as follows, according to the facts:

VIII. That said C. D., on the —— day of ——, and after the recording of the title of said map (chart, musical composition, print, cut, engraving, photograph, *or* chromo; *or* description of any painting, drawing, statue, statuary; *or* model *or* design intended to be perfected and executed as a work of the fine arts), as provided by law, did, within the term limited, and without the consent of said proprietor of said copyright first obtained in writing, signed in presence of two or more witnesses, engrave, (etch, work, copy, print, publish, *or* import), (either in whole or in part, *or* by varying the main design with intent to evade the law)—*or*, knowing the same to be so printed, published, (*or* imported), sell and expose to sale —— copies of such map (*or* other article), as aforesaid.

That —— sheets of said map (etc.) was, on the —— day of ——, found in the possession of said C. D., of which

—— was printing.
—— was printed.
—— was copied.
—— was published.
—— was imported.
—— was exposed for sale.

(*In case of a painting, statue, or statuary, say:*)

That —— copies of said —— was found in the possession of said C. D.

That —— copies of said —— was sold by said C. D.

That —— copies of said —— was exposed for sale by said C. D.

IX. Said A. B. therefore prays judgment:

That said C. D. shall forfeit unto him, the said A. B., all the plates upon which said map shall be copied, and every sheet thereof, either copied or printed.

That said C. D. shall further forfeit unto him, the said A. B., one dollar for every sheet of the same found in his possession, printing, printed, copied, published, imported, and exposed for sale, as aforesaid.

(*In case of a painting, statue, or statuary, say:*)

That said C. D. shall forfeit ten dollars for every copy of the same in his possession, and by him sold and exposed for sale; one-half thereof to said A. B., and the other half to the use of the United States. (*Signed*) A. B.

A. A., Plaintiff's (Declarant's or Petitioner's) Attorney.

Complaint, Declaration, or Petition.

Infringement Upon Dramatic Composition.

(*Title and introduction as above.*)

That A. B. is a citizen (*or* resident) of the United States.

That A. B. was, on the —— day of ——, has ever since been, and now is, proprietor of a subsisting copyright of a dramatic composition entitled (*describe title as in the certificate of copyright*), a certificate of which is hereunto attached, marked exhibit "A.," and made a part hereof.

That on the —— day of —— C. D. did publicly perform and repre nt said dramatic composition without the cons t of said proprietor thereof, or his heirs or assig s.

That said A. . was thereby deprived of the profits and bene s of said performance and representation, to ' s damage —— dollars.

Wherefore sa A. B. demands judgment in the sum of —— dol s damages, etc.

Complaint Declaration, or Petition.

Infringement Upon Manuscript.

(*Title and introduction as above.*)

That A. B. is a citizen (*or* a resident) of the United States.

That said A. B. is the author (*or* proprietor) of the following manuscript (*describing it*), of the value of —— dollars.

[a] Dramatic compositions are not included in this section.

That C. D., on the —— day of ——, did print and publish said manuscript without the consent of said author (*or* proprietor) first obtained.

That by reason of the premises said A. B. has been prevented from the publication and sale of said work, and his profits in the same have been entirely destroyed.

Wherefore he prays judgment for the sum of —— dollars, etc.

For other precedents in copyright pleading, see Shortt. App. 723, *et seq.*, citing, in relation to Books—Copies of, Bullen and Leake's Precedents, 297: Books—Selling Copies of, Id. Id.; Song, 4 D. & L. 147: 18 C. B. 194: 25 L. J. 22, C P.; portions of periodicals, 16 C. B. 159; musical composition, 4 Ho. L. Cas. 815: 24 L. J., 81 Exch: 5 C B. 860: 4 Exch. 145: 2 B. & C. 861: 12 C. B. 177, 18 C. B. 197; prints by photography, 16 L. T. (N.S.) 98: L. Rep. 2 C. P. 410; 36 L. J. 139, C. P.; prints from spurious plates, 29 L. J., 98 Exch.; 5 H. & N. 5.

Plea—General Issue.

(*Title as above.*)

A. B. } Plea.
vs. } General Issue.
C. D. }

Said C. D. (in person, *or* by A. Y., his attorney) says that he is not guilty.

Under the general issue the defendant may prove:

"That ——, and not the plaintiff, was author of said book."

"That the plaintiff was not the proprietor of the said copyright, as alleged."

"That said copyright was not a subsisting copyright, as alleged (at the time of the alleged grievances)."

"That the plaintiff did not give notice of his copyright in said book, by inserting in the several copies of every edition published the notice required by law."

"That said plaintiff did not give notice of his copyright in said map, etc., by inscribing upon some visible portion thereof, or of the substance on which the same was mounted, the notice required by law."

"That the plaintiff was not the proprietor of, nor had he the sole liberty of representing (and performing) or causing to be represented (and performed) the dramatic (*or* musical) composition, as alleged."

"That the alleged musical composition was part of a dramatic piece, to wit: ——, adapted to the stage by the defendant, with the aid of scenery, dresses, and alleged composition, and other music and accompaniments, the general design of which representation was formed by the defendant."

"That the defendant employed the plaintiff, for a reward, to compose said musical composition, as a part of the said representation and dramatic piece, and as a mere accessory to the same, on the terms: that in consideration of said reward, said musical composition should become part of said dramatic piece, as designed and adapted for representation by said defendant, and that said defendant should have the sole liberty of representing and performing, and causing and permitting to be represented and performed, the said musical composition with said dramatic piece, and as an accessory thereto, and a part thereof."

For other and similar precedents in pleas see Shortt. App. 730, *et seq.*, citing in relation to musical compositions as accessories, 29 L. J. 20, C. P.; 7 C. B. (N. S.) 268.

REQUISITES OF A VALID COPYRIGHT.

1. Parties Entitled to Copyright.

Sec. 4952. The author, inventor, designer or proprietor of any (1) book, (2) map, (3) chart, (4-5) dramatic or musical composition, (6) engraving, (7) cut, (8) print, (9–10) photograph or negative thereof, or of a (11) painting, (12) drawing, (13) chromo, (14) statue, (15) statuary, and of (16) models, or (17) designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person, shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others.[r]

And authors or their assigns have right to dramatize or translate their works, copyrighted under laws of the United States.

In the construction of this act, the words "ENGRAVING," "CUT," and "PRINT," shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the commissioner of patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the commissioner of patents, to the party entering the same.[t]

Assignee. See PROPRIETORS, below.

Author, Designer, Inventor. See AUTHOR, ante.

An American author residing abroad is entitled to copyright.

See INVENTOR, below.

Book. A "book," within the statute, need not be a volume made up of many sheets bound together. It may consist of a single sheet or page of character, as, for instance, the words of a song, or the music accompanying a song.[u]

"Book" is a general name given to every literary composition which is printed.

Citizens are those under the constitution and laws of the United States who have a right to vote for representatives in Congress and other public officers, and who are qualified to fill offices in the gift of the people. Any person born in the United States, or naturalized person born out of the same, who has not lost his right as such—including men, women, and children.

The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.[v]

A citizen of the United States residing in

r-Laws U. S. 1870, July 8, Vol. 16, Ch. 230, § 86, p. 212; Rev. 1873-4, Title 60, Ch. 3, § 4952, citing 8 Pet. 591; 14 How. 528; 1 Blatchf. 625; 5 Id. 87, 325, 362; 6 Id 256. s-Id. t-Laws U. S. 1874, app. June 18, took effect August 1, Vol. 18, Ch. 301, § 3, p. 79; Strive *vs.* Schwedler, 4 Blatchf. 1857; 2 Id. 83: 5 Id. 323, 362. u-1 Morgan, 222, § 255. v-Const. U. S. Art. 4, § 2.

any of the States of the Union is a citizen of that State.[w]

As to citizenship of children born in foreign lands to citizens.[x]

Construction is not "SHAPE."

"*Design*," when used as a term of art, means the giving of a visible form to the conceptions of the mind, or, in other words, to the invention.[y]

See PATENTS, ETC., post.

"*Inventor*" is one who finds out something new. One who contrives, or discovers, or produces a thing which did not before exist.

See AUTHOR, above.

"*Map*," "*Chart*." The words "Map" and "Chart" are to be understood as applying to a particular map or chart copyrighted, since the natural objects from which maps and charts are made are open to all.[z]

Proprietors are owners. Under derivation of title from non-resident authors, or the assignee of a work composed by a non-resident alien, they cannot obtain a copyright therefor.[a] But the above decision, rendered under the prohibition of law in existence before the passage of the International Copyright Act of March 3, 1891, is doubtless invalid under that act.[b]

Resident is one who has his residence in a place. Residence is personal presence in a fixed and permanent abode.[c] Residence differs from domicil, although it is a great matter of importance in determining the place of domicil.[d]

A person, to be entitled to copyrignt as a "resident" under the corresponding sections of previous copyright laws, and by inference under the present, must be a permanent resident of this country.[e] But this decision, rendered under former laws, is invalidated in part by the International Copyright law of March 3, 1891, extending copyright privileges to certain foreign countries.

See ASSIGNEES.

Trustee. See PROPRIETOR, above.

2. How to obtain copyrights.

Under the provisions of Sec. 4956 of the Revised Statutes (see p. 406), it will be observed that the old word "before" has been changed to "on or before," and that under the International Copyright feature the place of publication is "in this or any other country." Therefore, the title-page must be deposited on or before publication of the book, in order to entitle the copyright to protection,[f] and the record from the proper office, made in the prescribed form, is *prima facie* evidence of the deposit.[g] Or a description of the painting, drawing, chromo, statue, statuary, or model or design for a work of the fine arts. In case of a painting, statue, model, or design intended to be protected as a work of the fine arts, the description provided for in this section must be definite and complete, and the photograph must be at least as large as what is technically known as cabinet size,[h] for which he desires a copyright. (By taking this incipient step a right is acquired which chancery will protect until the other acts may be done.[i] And if the title-page has been duly entered, the author may maintain an action for infringement if the printed copies were never deposited, and even if the work was never published at all.[j]) **Nor unless he shall also, not later than the day of the publication thereof**, deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, two copies of such copyright book or other article, or, in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same.[k]

The process of copyrighting must be gone through with in the case of every volume of a work separately.[l]

Communication to Librarian of Congress, Accompanying Titles or Descriptions.

Place ——, Date ——.

Librarian of Congress, at Washington, District of Columbia:

Enclosed find for deposit in your office a printed copy (each) of the title (*or* description) of a book (map, chart, *or other work*), the right whereof A. B. claims as author (originator, *or* proprietor), in conformity with the laws of the United States respecting copyrights.

Also find —— dollars and —— cents, the same being 50c. each for recording the same.

Also find —— dollars and —— cents, for a copy of the following of said titles (*or* descriptions), under your official seal, viz.:

No. ——. A. B.,
Author (or Proprietor).

Postmaster's Receipt for Titles.

Sec. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.[m]

—— Post Office.

Date ——.

Received this day, from ——, one package copyright matter for transmission by mail, addressed to Librarian of Congress, Washington, D. C.

——, *P. M.*

Mr. ——. Per D. Y.

Another

No. ——. —— Post Office.

On this —— day of ——.

A printed copy (each) of the title of a book (map, chart, *or other work*), the title of which is in the following words: (*setting out the title page in full*), and —— dollars and —— cents, fees of the librarian of Congress, for recording the same, were deposited in the —— M. mail, in a package, on the outside of which the words "copyright matter" were

w-6 Pet. 761; Paine C. C. 594; 1 Brock. C. C. 391; 1 Paige, Ch. 183. x-See 10 Rich. Eq. 38; and see 26 Barb. 383; 9 Md. 74; 3 Story Const. 1687; 2 Kent Comm. 258; Bouv. Inst. Vattel, I, 1 C. 19, § 212. y-4 Wash. 52. z-2 Paine C. C. 400, 401. a-9 Am. L. Reg. 45. b-2 Blatchf. 366. c-20 Johns. 208; 1 Met. Mass. 251. d-See 13 Mass. 501; 5 Pick. 370; 1 Met. (Mass.) 251; 2 Gray, 490; 19 Wend. 11; 11 La. 175; 5 Me. 143. See 2 Kent Comm. 10th ed. 574 n., 576; 19 Me. 293. e-1 Morgan, 245, § 245, citing 26 Niles Reg. 262. f-2 Blatchf. 84. g-3 Monthly L. Rep. 401; 2 Blatchf. 84. h-2 Morgan 233, § 258. i-5 McLean, 332. j-13 M. L. Rep. 401; contra, 1 Am. L. Reg. 33. k-Id. § 90; Rev. 1873-4; Id. § 4956. l-2 Morgan, 232, § 258. m-Id. § 96, Rev. 1873-4; Id. § 4961.

plainly written, and which was addressed, "Librarian of Congress, at Washington, District of Columbia." P. M.,
No. ——. *Postmaster.*

Librarian of Congress' Receipt of Titles, Etc.

[L. S.] Library of Congress.
Washington, —— ——.

Sir: In reply to your communication of ——, I have to advise you that $—— in copyright fees is received, and —— tities accompanying duly entered. Very respectfully,
L. C., *Librarian of Congress.*

Sec. 4959. The proprietor of every copyright book or other article shall deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition, wherein any substantial changes shall be made: And if such changes are made by foreign authors in books before published, and appear in books published after date of act, they are copyrightable, except when a series began before the act was passed.

Sec. 4960. For every failure on the part of the proprietor of any copyright to deliver, or deposit in the mail, either of the published copies, or description, or photograph, required by Sections 4956 and 4959, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.[n]

Communication to Librarian of Congress, Accompanying Two Complete Copies, etc.

Librarian of Congress, at Washington, District of Columbia:

Enclosed please find for deposit in your office two complete copies of the best edition of a book (map, chart, *or other work*), the right whereof A. B. claims as author (originator, *or* proprietor), in conformity with the laws of the United States respecting copyrights.

Also find —— dollars and —— cents for a copy of the following of the titles (*or* descriptions) of said book (map, chart, *or other work*), under your official seal, viz. A. B.,
Author (*or Proprietor*).

Postmaster's Receipt for Two Complete Copies, etc.

No. ——. —— Post Office.

On the —— day of ——, two complete copies each of said book (map, chart, *or other work*) of the best edition issued were deposited in the —— M. mail, in a package, on the outside of which the words "copyright matter" were plainly written, and which was addressed, "Librarian of Congress, at Washington, District of Columbia."
P. M., *Postmaster.*

Librarian of Congress' Receipt of Two Complete Copies, etc.

[L. S.] Library of Congress.
Washington, —— ——.

A. B. ——.

The undersigned hereby acknowledges the receipt of two copies of ——, transmitted to the Library of Congress in conformity with the laws of the United States respecting copyrights.
Very respectfully,
L. C., *Librarian of Congress*

"Sec. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered the following fees:[o]

"1. For recording the title or description of any copyright book or other article, fifty cents.

"2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

"3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar.

"4. For every copy of an assignment, one dollar.

For recording title or description of article for copyright by a foreigner, $1.00.

Sec. 4957. The librarian of Congress shall record the name of such copyright book, or other article, forthwith in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the —— day of ——, ——, A. B., of ——, hath deposited in this office the title of a book (map, chart, or otherwise, as the case may be, or description of the article), the title or description of which is in the following words, to wit: (here insert the title or description), the right whereof he claims as author (originator, or proprietor, as the case may be), in conformity with the laws of the United States respecting copyrights. C. D., Librarian of Congress." And he shall give a copy of the title or description, under the seal of the librarian of Congress, to the proprietor whenever he shall require it.[p]

The requirements of sections 4956, 4957, 4958, must be strictly complied with to secure a copyright.[q]

Certified Copy of Title or Description Under Seal, etc.

[L. S.] Library of Congress.
No. —— C. Copyright Office, Washington.

To wit: Be it remembered:

That on the —— day of ——, A. D. ——, A. B., of ——, hath deposited in this office the title of a book (map, chart, *or otherwise, as the case may be, or description of the article*), the title or description of which is in the following words, to wit: (*here insert title or description*), the right whereof he claims as author (originator, *or* proprietor, *as the case may be*), in conformity with the laws of the United States respecting copyrights.
L. C., *Librarian of Congress.*

3. Notice of Copyright.

Sec. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted,

m-Id. § 93; Rev. 1873-4; Id. § 4959. n-Id. § 94, Rev. 1873-4; Id. § 4960. o-Id. § 92; Rev. 1873-4; Id. § 4958. p-Id. § 91; Rev. 1873-4; Id. § 91. q-1 Blatchf. 620.

the following words, viz.: "Entered according to act of Congress, in the year ————, by A. B., in the office of the Librarian of Congress, at Washington;" or, at his option the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: **"Copyright, 18—, by A. B."**[s]

Manufacturers of designs for molded decorative articles, titles, placques, articles of pottery and metal, subject to copyright, may put the copyright mark on the bottoms of such articles, or in such other place as has been usual.

The record or notice must be accurate in point of date, for an error in this would be a fatal defect in the author's or proprietor's copyright.[v]

Sec. 4963 imposes a penalty of one hundred dollars upon any one who inserts or impresses a false notice of copyright on any article, or who knowingly issues or sells fraudulently copyrighted articles: one-half of said sum to go to the person who sues, the other half to the United States. The importation of articles bearing copyright notices, when there is no existing copyright thereon in the United States, is prohibited; and the courts may enjoin their issue or sale.

SALE OF COPYRIGHT. Where an author sells the copyright of a work published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, another publisher (who has no notice of this covenant) may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name on the same subject, but under a different title, and though there be no piracy of the first book.[x]

Where no such covenant has been entered into, and the publisher has agreed with the author for an edition of history or the like, and the work is completed, a continuation of such work by the author, independently or with another publisher, is no violation of the previous contract.[y]

If an author sells his copyright in a work for a limited term, the publisher may, except in case of actual fraud, continue, after the expiration of the term, to sell copies of the work printed during its continuance.[z]

A contract for the sale of a copyright is enforceable in equity.[a]

See TRANSFER OF COPYRIGHT, below.

SALE OF EDITION, ETC. Where an author has sold an edition of a given number of copies to one publisher, he is not at liberty before they are sold to publish the same work himself or through another publisher in such a manner as to compete with the edition he has sold, but is bound to afford the publisher a full opportunity of realizing the benefit of his contract.[b]

THE STATUTE OF FRAUDS applies to contracts between authors and publishers in the preparation or publication of literary matter.[c]

TERM OF COPYRIGHT, 28 YEARS.

Sec. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof in the manner hereinafter directed.[d]

—Continuance of 14 Years.

Sec. 4954. The author, inventor, or designer, if he be still living, or his widow or children if he be dead, shall have the same exclusive right continued (provided all legal forms are observed). for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such persons shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.[e]

The taking out of a second term of a copyright is not like the strengthening of a defective title, but rather like a new interest obtained after the general interest has expired.[f] The extension provided for applies exclusively to the author, his widow or children.[g]

An assignee alone cannot take out a second or extended term unless he has clearly and unequivocally contracted and paid for it, and is entitled to be protected in it in equity rather than according to any mere technical rule of law.[h]

TITLE. There cannot be what is termed copyright in a single word, although the word should be used as a fitting title for a book.[i] The copyright contemplated by the act must be, not in a single word, but in some words in the shape of a volume, or part of a volume which is communicated to the public, by which the public are benefited, and in return for which a certain protection is given to the author of the work. Nor will any amount of expenditure incurred upon a work not yet given to the world, or any outlay in advertisements of the title of the work, give a right to an injunction restraining another person from using the same title.[j] But though two periodicals or books may have a similar title, the form, title, and mode of publication of one cannot be imitated by another in such a manner as would necessarily mislead the public

s-Laws 1874, June 18, Vol. 18, Ch. 301, § 1, p. 78; 5 Blatchf. 362. t-1 N. Y. Leg. Obs. 198. u-Id. 199. v-2 Blatchf. 82. w-Laws 1870, July 8, Vol. 16, Ch. 230, § 98, p. 214; Rev. 1873-4, Title LX., Ch. 3, § 4963, citing 1 Blatchf. 154. x-2 Sim & Stu. 1; 1 L. J. (Ch.) 90; 10 Bing. 133. y-See 2 Sess. Cas. 719; (N. E.) 671. z-20 Wood. 381; 6 L. T. (N. S.) 348. a-1 Jur. 198. b-5 Jur. 68; 11 Sim. 572. c-4 Scotts. N. R. 77; 3 M. & Gr. 452; 1 Bingh. 9; 1 Campb. 513; 2 M. & W. 633; 11 East. 142. d-Laws U. S. 1870, July 8, Vol. 16, Ch. 230, § 87, p. 212; Rev. 1873-4, Title LX, Ch. 3, § 4953. e-Id. § 88; Rev. 1873-4, Id. § 4954, citing 8 Pet. 591; 2 Woodb. & M. 42. f-2 W. & M. 46. g-Id. 23. h-Id. 44. i-1 Blatchf. 627, 12. j-L. Rep. 2 Ch. App. 307; 16 L. T. (N. S.) 131; 36 L. J. 433 Ch.

and induce them to purchase the latter work as continuing parts of the former one.[k]

——*False and Pretentious Titles.* Publications whose titles, advertisements, and pretensions are calculated to deceive the public are not entitled to any protection. By this is meant works which are subversive of good order, morality, or religion. Indeed, it would be unjust, where literary productions are entirely innocent, harmless, and permissible, to deprive the author of a *nom-de-plume* whereby to conceal his name, if he from modesty or for the success of his work desired to do so. In such a case there is no serious design to deceive the purchaser or prevent an interposition to suppress any evil tendency the work may effect.

TRANSFER OF COPYRIGHT.

Copyright may be transferred by writing or parol in the same manner as other personal property. In the latter case, in order to be binding in law, it must be recorded in the office from whence the copyright issues.[l]

TRANSLATIONS into English, German, or any other tongue, of works published in other languages, if original, are entitled to copyright. If a foreign work is not protected by international copyright it is open to any one to translate it, but a translation already existing is the product of the translator's mental labor, and his property in it must not be infringed. Independent recourse must be had by subsequent translators to the common original source. "A man has a right to a copyright in a translation upon which he has bestowed his time and labor. To be sure another man has an equal right to translate the original work, and to publish his translation, but then it must be his own translation, by his own skill and labor, and not the mere use and publication of the translation made by another."[m]

If a foreigner translates an English copyright work, and then a subject or resident retranslates that foreign work into English, this last would be an infringement of the original copyright, and it would be no defence that the retranslator was not aware that the work he translated was itself a translation from an English work.[n]

A translation is not a copy of a book within the meaning of the statute.[o] The words "copy of a book" mean a transcript or copy of the entire book.[p]

UNPUBLISHED WORKS. Every new and innocent product of mental labor which has been embodied in writing or some other material form becomes the exclusive property of its author. Whether the ideas thus published take the shape of written manuscripts of literary, dramatic, or musical composition, or designs for works of ornament or utility planned by the mind of the artist, they are equally inviolable while they remain unpublished, and the author possesses an absolute right to publish them or not as he thinks fit, and to hinder their publication, either in whole or in part, by any one else.[q] For this exclusive property in the unpublished products of his mental labors, the author is not indebted to the copyright laws; his right is independent of statute, and depends entirely on the common law right of property.

The sale by the author of several thousand copies of a musical composition in the manuscript did not defeat the author's right to a copyright.[r]

The mere parting with the possession of manuscript, or intrusting its possession to another person, or a permission to another to take and keep a copy of the manuscript, does not authorize its publication by that other person.[s]

An author's rights concerning unpublished manuscripts do not depend wholly upon the common law. They are the subject of statutory regulation.

See INFRINGEMENT, ETC.

WILL. The proprietor of a copyright may transfer it by last will and testament. In the absence of such will it passes in the same manner as other personal property.[t]

Corn. See EMBLEMENTS.
Coroner. See OFFICE AND OFFICERS.
Corporal. See MILITARY LAW.
Corporal Oath. See PRACTICE.
Corporal Touch. See PRACTICE; ARREST.

CORPORATIONS. See titles BAILMENTS; BONDS; NOTES AND BILLS.

A CORPORATION is a body consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by a succession of members. It is this last characteristic of a corporation, prolonging its existence beyond the term of natural life, and thereby enabling a long continued effort and concentration of means to the end which it was designed to answer, that constitutes its principal utility. A corporation is modelled upon a state or nation, and to this day is called a body *politic* as well as corporate—thereby indicating its origin and derivation.

Aggregate corporations are those which are composed of two or more members at the same time. Sole corporations are those which by law consist of but one member at any one time. Civil corporations are those which are created to facilitate the transaction of business. Ecclesiastical corporations are those which are created to secure the public worship of God.[u] Eleemosynary corporations are those which are created for the purpose of charities; as schools, hospitals, for the relief of the impotent, sick, deaf and dumb, and the like.[v] Lay corporations are those which exist for secular purposes.[w]

k-8 Ves. 215. l-4 Camph. 8; 2 M. & S 7; 2 B. & C 861; 6 C. B. 456; 1 J. & N. 481; Sc Sess. Cas. (N. S.) 8; 18 Id. 906. m-3 Story, 780. n-1 Drew, 353; 22 L. J. 457, Ch. o-2 Am. L. Reg. 230. p-12 Monthly L. Rep. 340, 341. q-4 Burr. 2378; 13 Jur. 112; 1 Moc. & Gr. 42; 18 L. J. 126 Ch.; 4 McLean, 301; 3 Barb. Ch. 323; 8 Pet. 657. See 2 DeG. & S. 696; 13 Jur. 58; 1 M. & G. 43; 18 L. J. 126 Ch.; 13 Jur. 112; 4 Burr. 2329, 2330, 2386; 1 Jac. & W. 481; Ambl. 694; 2 B. & C. 861. r-2 B. & Ald. 298. s-Story Eq. Jur. 943; 4 McLean, 300, 303; 5 Id. 41; 4 Burr. 2330; 2 Eden. 329; 2 Merriv. 435. t-Godson, 168. u-Ang. & A. Corp. 36, 37; 1 Bl. Comm. 470; 2 Kent Comm. 274. v-Ang. & A Corp. 39; 1 Kyd Corp. 26; 4 Cain. 272; 3 Bland. Ch 401; 1 Ld Raym. 52; T. R. 346; 4 Wheat. 681. w-Ang. & A. Corp. 28-30, 1 Sharsw. Bl. Comm. 470.

Moneyed corporations are those having the power to make loans upon pledges or deposits, etc., insurance and the like.[d] Municipal corporations are public corporations created by government for political purposes, and having subordinate and local powers of legislation; for example: boroughs, cities, counties, districts, parishes, towns, townships, etc.[e] It is an incorporation of persons, inhabitants of a particular place, or connected with a particular district, enabling them to conduct its local civil government.[f] Private corporations are those which are created wholly, or in part, for purposes of private emolument.[g] Public corporations are those which are exclusively instruments of the public interest.[h]

By both civil and common law, the sovereign authority only can create a corporation; a corporation by prescription, or so old that the license or charter which created it is lost, being presumed, from the long-continued exercise of corporate powers, to have been entitled to their sovereign grant. Corporations are created by legislative enactment of a State, or the Congress of the United States.[i] All corporations, of whatever kind, are moulded and controlled, both as to what they may do and the manner in which they may do it; by their charters, or acts of incorporation, which to them are the laws of their being, which they can neither dispense with nor alter. Subject, however, to such limitations as these, or general statute or constitutional law, may impose, every corporation aggregate has, by virtue of incorporation and as incidental thereto:

1. The power of perpetual succession, including the admission, and, except in the case of mere stock corporations, the removal, for cause, of members.

2. The power to sue and be sued, to grant and receive grants, and to do all acts which it may do at all in its corporate name.

3. To purchase, receive, and hold lands and other property, and to transmit them in succession.

4. To have a common seal; to make, break, alter, and renew it at pleasure.

5. To make by-laws for its government, so that they may be consistent with its charter and the law. Indeed a corporation may, within the limits of its charter, or act of incorporation, express or implied, lawfully do all acts and enter into all contracts that a natural or individual person may do, or enter into, so that the same be appropriate as means to the end for which the corporation was created.

A corporation may be dissolved, if of limited duration, by the expiration of the term of its existence fixed by charter or general law; by the loss of all its members, or of an integral part of the corporation, by death or otherwise, if the charter or act of incorporation provide no mode by which such loss may be supplied; by the surrender of its corporate franchise to, and the acceptance of the surrender by the sovereign authority; and, lastly, by the forfeiture of its charter by the neglect of the duties imposed, or abuse of the privileges conferred by it; and forfeiture being enforced by proper legal process.

Although the charter of a public corporation may be altered or repealed at pleasure, the charter of a private corporation, whether granted by the king previous to the revolution, or by the legislature of any of the States since, is, unless in the latter case express power be for that purpose reserved, within the protection of that clause of the constitution of the United States which among other things forbids a State from passing any "law impairing the obligation of contracts."[j] A corporate franchise, however, as to build and maintain a toll bridge, may, by virtue of the power of eminent domain, be condemned by a State to public uses, upon just compensation, like any other private property.[k]

ADMISSION. In trading and joint stock corporations no vote of admission is requisite, for any person who owns stock therein, either by original subscription or by conveyance, is in general entitled to, and cannot be refused, the rights and privileges of a member.[l] All that can be required of the person demanding a transfer on the books is to prove to the corporation his right to the property.[m] In a mutual insurance company a person may become a member by insuring his property, paying the premium and deposit money, and rendering himself liable to be assessed according to the rules of the corporation.[n]

AMOTION (the removal of an official agent of a corporation before the expiration of the term for which he was appointed, from a station assigned to him[o]) may be exercised with or without an express reservation for just cause;[p] and in the case of mere ministerial officers appointed during the mere pleasure of those appointing them.[q] Mere acts which are a cause for amotion do not create a vacancy till the amotion takes place.[r] The causes for amotion may be: 1. Such as have no immediate relation to the office, but are in themselves of so infamous a nature as to render the offender unfit to execute any public franchise, but indictment and conviction must precede amotion for such causes. 2. Such as are only against his oath and the duty of his office as a corporator, and amount to breaches of the tacit condition annexed to his office. 3. Such

[d]-3 N. Y. 479. [e]-2 Kent Comm. 275; Ang. & A. Corp. 9, 29; 1 Baldw. C. C. 222. [f]-Glover Munic. Corp. 1. [g]-4 Wheat. 668; 9 Id. 907. [h]-See MUNICIPAL CORPORATIONS, above. [i]-4 Wheat. 424. [j]-Const U. S. Art. 1, § 10; 4 Wheat. 518. Under this clause of the constitution it has been settled that the charter of a private corporation, whether civil or eleemosynary, is an executed contract, between the government and the corporation, and that the legislature cannot repeal, impair, or alter it against the consent, or without the default of the corporation; judicially ascertained and declared. Id. [k]-6 How. 507. [l]-3 Mass. 364; Dougl. 524; 1 M. & R. 529. [m]-See 8 Pick. 90. [n]-2 Mass. 315. [o]-8 T. R. 356; 1 East. 562; 6 Conn. 532. [p]-1 Burr. 539; Dougl. 149. [q]-Willcock Munic. Corp. 253; 23 Mo. 22; see 1 Ventr. 77; 2 Show. 70; 11 Mod. 403; 9 Wend. 394. [r]-2 Green. 332.

as are an offence, not only against the duty of his office, but also a matter indictable.[r]

See DISFRANCHISEMENT, below.

BODY CORPORATE OR POLITIC. These terms are undoubtedly correct though very early terms applied to corporations.[s]

BY-LAWS, ORDINANCES, OR RULES. The power to make by-laws is usually conferred by express terms of the charter creating the corporation; though, when not expressly granted, it is given by implication; it is incident to the very existence of a corporation. Where there is an express grant, limited to certain cases and for certain purposes, the corporate power of legislation is confined to the objects specified, all others being excluded by implication.[t] The power of making by-laws is to be exercised by those persons in whom it is vested by the charter; but if that instrument is silent, it resides in the members of the corporation at large.[u]

The Constitution of the United States and acts of Congress enacted in conformity thereto, the constitution of the State in which a corporation is located, and acts of the legislature enacted in conformity thereto, together with the common law as therein accepted, are of superior force to any by-law; and any by-law contrary to either of them is void, whether the charter authorizes the making of such by-law or not, for no legislature can grant power greater than they themselves possess.[v]

CAPITAL STOCK is not only the sum divided into shares and raised by mutual subscription of the members of a corporation, but also the sum upon which calls may be made upon the stockholders and dividends are to be paid.[w] It is the capital of the corporation. It is entered in the proper books in the name of the person owning it, and can only be transferred by such person or his attorney. Certificates are issued to the person to whom it is transferred; and when a new transfer is effected, such certificate surrendered and cancelled, a new one being issued to the transferree. Sometimes it is sold by delivering the certificate accompanied by a power of attorney to transfer it, but such a sale is merely an equitable assignment.[x] Bonds are transferable by delivery, and are payable to bearer. Stock held by individuals in corporation, whether States, municipal, or private, is personal property.[y]

Stock issued by an agent of a company transcending his authority, as in case of over issue, is not binding on a corporation or company.[z]

CARRIERS; COMMON CARRIERS; COMMON CARRIERS OF PASSENGERS. See title BAILMENTS, ante.

CHARTER. ALTERATION AND REPEAL. See INTRODUCTION, above.

COMMON SEAL. The ancient and technical rule of the common law that a corporation cannot manifest its intention by any personal act or oral discourse, and that it acts and speaks only by its common seal, is no longer law in the United States.[a]

COMPANY property is an association of a number of individuals for the purpose of carrying on some legitimate business. Company is not partnership, usage reserving the term to associations whose members are in greater number, with greater capital and greater enterprise. When such a company is authorized by the State or general government it becomes a corporation.

DIRECTORS are appointed or elected according to law to direct and manage the affairs of a corporation or company. Collectively they form a board of directors. To make a legal board of directors they must meet at a time when and a place where every other director has the opportunity of attending to consult and be consulted with; and there must be a sufficient number present to constitute a quorum.[b] The acts of such a board evidenced by a legal vote are as binding upon the corporation, and as complete authority to their agents, as the most solemn acts done under their corporate seal.[c]

Directors are generally invested with certain powers by the acts of the legislature to which they owe their existence. In corporations created by statutes it is generally contemplated by the charter that the business of the corporation shall be transacted exclusively by the directors.[d]

Directors of a corporation are trustees, and as such are required to use due diligence and attention to its concerns, and are bound to a faithful discharge of the duty which the situation imposes. They are liable to the stockholders whenever there has been gross negligence or fraud, but not for unintentional errors.[e]

See GENERAL STATUTES.

DISFRANCHISEMENT is the depriving a member of a corporation of his right as such, by expulsion.[f] It differs from amotion, which applies to the removal of an officer from office, leaving him his rights as a member.[g]

DISSOLUTION. See INTRODUCTION, above.

DIVIDEND is that part of the principal or profits divided among the members or stockholders of a corporation, or to its creditors upon bankruptcy, dissolution, or insolvency.

EXPULSION. Corporations have an inherent right of expulsion: 1. Where an offence has been committed which has no immediate relation to a member's corporate duty, but is of so infamous a nature as to render him unfit for the society of honest men, as perjury, forgery,

r-Dougl. 149; 2 Binn. 448. s-Co. Litt. 250 *a*; Ayliffe Partn. 196; Angell Corp. § 6. t-2 Kyd Corp. 102; 1 P. Wms. 207; Angell Corp. 177. u-1 Harris & J. 519; 4 Burr. 2515, 2521; 6 Brown Part. Cas. 519. v-7 Cow. 585, 604; 5 Id. 538. w-1 Sandf. Ch. 280; Walford Rlys. 252, 4 Zabr. 195; Angell & A. Corp. §§ 151, 556. x-2 Wheat. 203; 1 Pet. 299; 10 Id. 616; see 3 Monr. 126. y-4 Dane Abr. 670; 6 Cush. 282; Ang. & A. Corp. § 560. z-13 N. Y. 599; 17 Id. 592. a-7 Cranch. 299; 9 Paige Ch. 188; 21 Vt. 343; 21 Miss. 408; 1 Smith (Ind.) 98; 6 Ga. 166; 2 Kent Comm. 289. b-3 La. 574; 6 Id. 759; 13 Id. 527. c-8 Wheat. 357, 358. d-2 Caines, 381. e-1 Edw. Ch. 513; 8 Martin (N. S.) 80; 3 La. 575. f-1 Bouv. Inst. n. 192. g-Willcock Corp. n. 708; Ang. & A. Corp. 237.

and the like. But before an expulsion is made for a cause of this kind it is necessary that there should be a previous conviction by a jury, according to the law of the land. 2. When the offence is against his duty as a corporator, in which case he may be expelled, on trial and conviction before the corporation. 3. When the offence is both against the member's duty as a corporator and also indictable.[h]

Members of joint stock, incorporated companies, or of any corporation owning property, cannot, without express authority in the charter, be expelled, and thus deprived of their interest in the general fund.[i]

MANAGERS. See DIRECTORS, above.

NAME. Corporations must, in general, contract, sue and be sued, by their corporate names.[j] Yet a slight alteration in stating the name is unimportant, even if there be no possibility of mistaking the identity of the corporation suing.[k]

NUMBER. When a corporation is composed of an indefinite number of persons, any number of them consisting of a majority of those present may do any act, unless it be otherwise regulated by the charter or by-laws.

POWERS. See INTRODUCTION, above.

PREDECESSORS in a corporation stand in the same relation to the successor that the ancestor does to the heir.

PRESIDENT. The president of a corporation usually directs the mode in which business is to be transacted; from his decision there is an appeal to the body over which he presides.

QUASI CORPORATIONS are those bodies or municipal societies which, though not vested with the general powers of corporations, are yet recognized by statute or immemorial usage as persons or aggregate corporation with precise duties which may be enforced, and privileges which may be maintained in actions and suits at law. They possess limited powers coextensive with the duties imposed upon them by statute and usage, but are restrained from a general use of authority. Among quasi corporations may be ranked towns, townships, parishes, hundreds, and other political divisions of counties, which are established without an express charter of incorporation; also commissioners of a county, supervisors of highways, overseers of the poor, loan officers of the county, and the like, who are invested with corporate powers, *sub modo*, and for a few specified purposes only; but not such a body as the general assembly of the Presbyterian church, which has not the capacity to sue and be sued.[l]

QUORUM is the number required to transact business. There is a difference between an act done by a definite number of persons and one performed by an indefinite number. In the first case a majority is required to constitute a quorum, unless the law expressly directs that another number may make one. In the latter case any number who may be present may act, the majority of those present having, as in other cases, the right to act.[m] Sometimes the law requires a greater number than a bare majority to form a quorum. In such case no quorum is present until such a number convene.

SCRIP. The possession of scrip certificates is *prima facie* evidence of ownership of the shares therein designated.[n] Such certificates are not goods, wares or merchandise within the statute of frauds.[o]

SHARES. See CAPITAL STOCK, above.

STOCK. See CAPITAL STOCK, above.

ULTRA VIRES are those acts beyond the scope of the powers of a corporation as defined by the charter or acts of incorporation.

As a general rule, such acts are void, and impose no obligation upon the corporation, although they assume the form of contracts, inasmuch as all persons dealing with a corporation, especially where it is created by the laws of the State or country where it exists, of which every one is presumed to have notice and information. It is otherwise as to laws imposing restraints upon it not contained in its charter, where the contract is made or the transaction takes place without the limits of the State or county under whose laws the corporation exists.[p] If, however, a corporation receives money or other valuable consideration under such a transaction or contract, upon rescinding or repudiating the act or contract under which it was paid or delivered, it could be recovered back by action or suit for that purpose.[q] So, too, the corporation is liable to be proceeded against by *quo warranto*, for the usurpation of powers in its name by its officers and agents, and deprived of its charter as a penalty for such acts; the defence of a want of power to bind the corporation not being available in such cases, since it would lead to entire corporate irresponsibility.[r]

A court of equity, at the suit of the stockholders of the corporation, will restrain the commission of acts beyond the corporate power, by injunction operating upon the individual officers and directors, as well as the corporation.[s] But acquiescence for any considerable time in the exercise of excessive powers after they come to the knowledge of the stockholders, would be a decisive objection to such a remedy.[t]

Corporeal Hereditaments. See HEREDITAMENTS; PROPERTY.

Corpus Delicti. See CRIMINAL LAW.

h-2 Binn. 448. i-Ang. & A. Corp. 238. j-8 Johns. 295; 14 Id. 238; 19 Id. 300; 4 Rand. 359. k-12 La. 144; see 20 Me. 41; 2 Va. Cas. 362; 16 Mass. 141; 12 S & R 369. l-4 Whart. 53. See 2 Kent. Comm. 224; Ang. & A. Corp. 16; 18 Johns. 422; 1 Cow. 258, and note, 682; 2 Wend. 103; 2 Johns. 325; 2 Pick. 352; 7 Miss. 187; 9 Id. 250; 13 Id. 192; 1 Me. 363. m-7 Cow. 402; 9 B. & C. 648; Ang. & A. Corp. 281. n-Addison Contr. 203.* o-16 M. & W. 66. p-8 Barb. 233. q-22 N. Y. 25; 14 Penn. St. 81. r-7 Wend. 31; 1 Blackf. 267. s-Redfield Rlys. 400, § 4; 4 Rly. Cas. 513; 6 Id. 289; 10 Beav. Rolls. 1; 12 Id. 339. t-29 Eng. L. & Eq. 7.

Correction. See MARRIAGE; MILITARY LAW; PERSONS.
Correspondence. See COPYRIGHT · LETTERS, ETC.
Corruption. See CRIMINAL LAW.
Costs. See PRACTICE.
Council. See GOVERNMENT; OFFICE AND OFFICERS.
Counsel. See AGENCY; ATTORNEYS.
Counsellor at Law. See AGENCY; ATTORNEYS.
Count. See PLEADING.
Counter Affidavit. See AFFIDAVITS.
County. See CORPORATIONS.
Course. See BOUNDARIES; REAL PROPERTY.
Course of Trade. See CONTRACTS; CUSTOM.
Court. See PRACTICE.
Cousin. See PERSONS.
Covenants. See CONVEYANCES.
Covenants Performed. See PLEADING.
Coverture. See MARRIAGE.
Cow. See ANIMALS.
Cowardice. See MILITARY LAW.
Credentials. See INTERNATIONAL LAW.
Credibility, Credible Witness. See EVIDENCE.
Creek. See MARITIME LAW; REAL PROPERTY.
Crim. Con. See CRIMINAL LAW.
Crime. See CRIMINAL LAW.
Criminal Law. See LAW, Subdiv. "Criminal Law."
Criminals. See CRIMINAL LAW.
Criticism. See COPYRIGHT, "Extracts."
Crop. See EMBLEMENTS.
Cross. See SIGNATURE.
Cross Action. See EQUITY; PRACTICE.
Cross Bill. See PRACTICE.
Cross Examination. See EVIDENCE.
Cruelty. See ANIMALS.
Cruise. See MARITIME LAW.
Cucking Stool. See PERSONS; SCOLD; WOMEN.
Culprit. See CRIMINAL LAW; PRISONER.
Curtesy. See ESTATE.
Curtilage. See REAL PROPERTY.
Custom. See CONTRACTS; USAGE.
Custom of Merchants. See BONDS, NOTES, AND BILLS; MERCANTILE LAW.
Custom House. See GOVERNMENT.
Customs. See GOVERNMENT.
Cy Pres. See CONVEYANCES; WILLS.
Dam. See REAL PROPERTY; WATER.

DAMAGES. See titles AGENCY; BAILMENTS; BONDS, NOTES, AND BILLS; CONTRACTS, ETC., ETC.

DAMAGES is the indemnity recoverable by a person who has sustained an injury, either in his person, property, or relative rights, through the act or default of another. The sum claimed as such indemnity by a plaintiff in his complaint. The injury or loss for which compensation is sought.

Actual damages are those awarded for a loss or injury actually sustained; in contra-distinction from damages implied by law, and from those awarded by way of punishment. Compensatory damages are those allowed as a recompense for the injury actually received. Consequential damages are those which, though directly, are not immediately consequent upon the act or default complained of. Exemplary damages are damages allowed as a punishment for torts committed with fraud, actual malice, or deliberate violence, or oppression. General damages are those which necessarily, and by implication of law, result from the act or default complained of. Liquidated damages are damages whose amount has been determined by anticipatory agreement between the parties. Measure of damages is a rule or method by which the damage sustained is to be estimated or measured. Nominal damages are a trifling sum awarded where a breach of duty, or an infraction of the plaintiff's right is shown, but no serious loss is proved to have been sustained. Punitive damages are exemplary damages. Special damages are such as arise directly, but not necessarily, or by implication of law, from the act or default complained of. For further definition see subsequent sections of this subject. Unliquidated damages are damages whose amount has not been determined.

To constitute a right to recover damages, the party claiming damages must have sustained a *loss;* the party against whom they are claimed must be chargeable with a wrong; the loss must be the natural and proximate consequence of the wrong. There is no right to damages, properly so called, where there is no loss. Damages are based on the idea of a loss to be compensated, a damage to be made good.[a] This loss, however, need not always be distinct and definite, capable of exact description, or of measurements in dollars and cents. A sufficient loss to sustain an action may appear from the mere nature of the case itself.

The loss must be the *natural and proximate consequence* of the wrong.[b] Or, the "direct and necessary," or, "legal and natural" consequence. It must not be "remote" or "consequential." The loss must be the *natural* consequence. Every man is expected—and may justly be—to foresee the usual and natural consequences of his acts, and for these he may justly be held accountable; but not for consequences that could not have been foreseen.[c] It must also be the *proximate* consequence. Vague and indefinite results, remote and consequential, and, thus, uncertain, are not embraced in the compensation given by damages. It cannot be certainly known that they are attributable to the wrong, or whether they are not rather connected with other causes.[d]

In an action for damages for an injury caused by negligence, the plaintiff must himself appear to have been free from fault; for, if his own negligence in any way contributed directly to produce the injury, he can recover nothing. The law will not attempt to apportion the loss according to the different degrees of negligence of the two parties.[e] Judicial officers are not liable in damages for erroneous decisions.

When a servant is injured through the negligence of a fellow-servant employed in the same enterprise or avocation, the common employer is not liable for damages. The servant in engaging, takes the risk of injury from the negligence of his fellow-servants.[f] But this rule

a-11 Johns. 130; 2 Texas, 460; 11 Pick. 527; 15 Ohio, 726; 3 Sumn. C. C. 192; 4 Mass. C. C. 115. b-2 Greenl. Ev. § 256; Sedgwick Dam. c. 3. c-17 Pick. 78; 3 Texas, 324; 13 Ala. (N. S.) 490; 28 Me. 361; 2 Wis. 427; 1 Sneed, 515; 4 Blackf. 277; 6 Q. B. 928. d-4 Jones, 163; 1 Smith L. Cas. 302-304. e-1 C. & P. 181; 11 East. 60; 7 Me. 51; 1 Iowa, 407; 17 Pick. 284; 2 Met. (Mass.) 615; 3 Barb. 49; 14 Ohio, 364; 3 La. An. 441; Sedgw. Dam. 468. f-4 Met. (Mass.) 49; 6 La. An. 495; 23 Penn. St. 384; 5 N. Y. 493; 15 Ga. 349; 15 Ill. 550; 20 Ohio, 415; 3 Ohio St. 201; 5 Exch. 343.

does not exonerate the master from liability of negligence of a servant in a different employment.

There is no right to damages where there is no *wrong*. It is not necessary that there should be a tort, strictly so called—a wilful wrong, an act involving moral guilt. The wrong may be either a wilful, malicious injury, or one committed through mere motives of interest, as in many cases of conversion of goods, trespasses on land, etc.; or, it may consist of a mere neglect to discharge a duty, with suitable skill or fidelity, as where an officer is held liable for the escape of his prisoner, or a carrier for neglect to deliver goods; or a simple breach of contract, as in case of refusal to deliver goods sold, or to perform services under an agreement; or it may be a wrong of another person for whose act or default a legal liability exists, as where a master is held liable for an injury done by his servant, or apprentice, or a railroad company for an accident resulting from the negligence of their engineer. But there must be something which the law recognizes as a wrong, some breach of a legal duty, some violation of legal right, some default or neglect, some failure in responsibility, sustained by the party claiming damages. For the sufferer by accident, or by the innocent or rightful acts of another, cannot claim indemnity for his misfortune; it is called *damnum absque injuria*—(a loss without a wrong), for which the law gives no remedy.[g] The obligation violated must also be one *owed to the plaintiff*. The neglect of a duty which the plaintiff had no legal right to enforce gives no claim to damages. Thus, where the postmaster of Rochester, New York, was required by law to publish lists of letters uncalled for in the newspaper having the largest circulation, and the proprietors of the "Rochester Daily Democrat" claimed to have the largest circulation, and to be entitled to the advertising, but the postmaster refused to give it to them, it was held that no action would lie against him for the loss of the profits of the advertising. The duty to publish in the paper having the largest circulation was a duty not owed to the publisher of that paper. It was imposed upon the postmaster, not for the benefit of publishers of newspapers, but for the advantage of persons to whom letters were addressed, and they alone had a legal interest to enforce it.[h]

ASSESSMENT of damages is made by the court through its proper officer or clerk, where it is a mere matter of calculation; in other cases it must be done by the jury.

DAMAGE FEASANT are those injuries committed by animals belonging to one person upon the land of another, by feeding, treading down the grass, corn, or other productions of the soil.[i]

DOUBLE OR TREBLE damages are in some cases allowed by statute. In these cases the actual damage is doubled or trebled, and not assessed like double or treble costs.

EXCESSIVE OR INADEQUATE.

Even in that large class of cases in which there is no fixed measure of damages, but they are left to the discretion of the jury, the court has a certain power to review the verdict, and to set it aside if the damages awarded are grossly excessive or unreasonably inadequate. The rule is, however, that a verdict will not be set aside for excessive damages unless the amount is so large as to satisfy the court that the jury have been misled by passion, prejudice, ignorance, or partiality.[j] But this power is very sparingly used; and cases are numerous in which the courts have expressed themselves dissatisfied with the verdict, but have refused to interfere on the ground that the case did not come within this rule.[k] As a general rule, in actions of tort the court will not grant a new trial on the ground of the smallness of damages.[l] But they have power to do so in a proper case; and in a few instances in which the jury have given no redress at all, when some was clearly due, the verdict has been set aside.[m]

In cases where there is a fixed legal rule regulating the measure of damages, it must be stated to the jury upon the trial. The failure to state it correctly is ground of exception. And if the jury disregard the instructions of the court on the subject, their verdict may be set aside. In so far, however, as the verdict is an honest determination of the questions of fact properly within this province, it will not, in general, be disturbed.[n]

EXEMPLARY.

In actions for torts, strictly so called, where gross fraud or actual malice, or deliberate violence, or oppression appears, the jury are not confined to a strict compensation for the plaintiff's loss, but may, in assessing damages, allow a sum as a punishment of the defendant for his wrong committed upon the plaintiff. Such an allowance is termed "smart money," or "exemplary," "vindictive," or "punitive" damages. They are assessed in one sum, with any allowance the jury may think proper to make as compensation for the actual loss sustained; and the whole sum is awarded to the injured party.

The propriety of allowing damages to be given by way of punishment under any circumstances has been strenuously denied in many cases, and the question has given rise to extensive discussion; but the weight of author-

g-15 Ohio, 659; 11 Pick. 527; 11 M. & W. 755; 10 Met. (Mass.) 371; 13 Wend. 261. h-11 Barb. 135; see also 17 Wend. 554; 11 Pick 526. i-3 Bl. Comm 6; Co. Litt. 142, 161; Com. Dig. Pl (3 M. 26.) j-19 Barb. 461; 9 Cush. 228; 16 B. Mon. 577; 22 Conn. 74; 27 Miss. 68; 10 Ga. 37; 20 Id. 428, 6 Rich. 419; 1 Cal. 33, 363; 5 Id. 410; 11 Gratt. 697. k-See 3 Abb. Pr. 104; 5 Id. 272; 22 Barb. 87; 20 Mo. 272; 15 Ark. 345; 6 Texas, 352; 9 Id. 20; 16 Ill. 405; Cowp. 230; 2 Story C. C. 661; 3 Id. 1; 1 Zab. 183; 5 Mass. C. C. 197. l-1 Cal. 450; 2 E. D. Smith, 349; 4 Q. B. 917. m-12 Mod. 150; 2 Str. 940; 24 Eng. L. & Eq. Circumstances must show that the jury have acted under an improper motive n-Sedgw. Dam. 604.

ity is decidedly that such allowance in a suitable case is proper.[o] But they should be carefully denied whenever the defendant is criminally liable to punishment for the wrong done, by indictment and fine, or otherwise.[p]

LIQUIDATED. Where there is an agreement between the parties for the doing or not doing particular acts, the parties may, if they please, estimate beforehand the damages to result from a breach of the agreement, and prescribe in the agreement itself the sum to be paid by either by way of damages for such breach.[q]

The sum named in an agreement as damages to be paid in case of a breach will, in general, be considered as liquidated damages, or as a penalty, according to the intent of the parties. The mere use of the words "penalty" or "liquidated damages" will not be decisive of the question if, on the whole, the instrument discloses a different intent.[r]

Such a stipulation in agreement will be considered as a penalty merely, and not as liquidated damages, in the following cases: Where the parties in the agreement have expressly declared it, or described it as a "penalty," and no other intent is deducible from the instrument;[s] where it is doubtful on the language of the instrument whether the stipulation was intended as a penalty or as liquidated damages;[t] where the agreement was evidently made for the attainment of another object or purpose, to which the stipulation is wholly collateral;[u] where the agreement imposes several distinct duties or obligations of different degrees of importance, and yet the same sum is named as damages for a breach of either indifferently;[v] where the agreement is not under seal, and the damages are capable of being certainly known and estimated;[w] where the instrument provides that a larger sum shall be paid, upon default to pay a lesser sum in the manner prescribed.[x]

The stipulation will be sustained as liquidated damages in the following cases: Where the agreement is of such a nature that the damages are uncertain, and are not capable of being ascertained by any satisfactory and known rule;[y] where, from the tenor of the agreement, or from the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment.[z]

MEASURE OF.

BILLS OF EXCHANGE AND PROMISSORY NOTES.[a] See GENERAL STATUTES.

CARRIERS. Upon a total failure to deliver goods, the carrier is liable for the value of the goods at their place of destination, with interest, deducting the freight.[b] Upon a failure to take the goods at all for transportation, he is liable for the difference between the value at the place of shipment and at the place of destination, less his freight; or, if another conveyance can be found, the difference between the freight agreed on with the defendant, and the sum (if greater) which the shipper would be compelled to pay another carrier.[c] Upon a delay to deliver the goods, the plaintiff is entitled to an indemnity for his loss incurred by the delay, taking into account any fall in the market occurring between the time when the property should have been delivered by the carrier, and the time when it actually was.[d]

See title BAILMENTS, ante.

CONTRACTS. Where a contract prescribes a price to be paid, the compensation recoverable for a part performance will be measured by the contract price if practicable, and not by the actual value of the services or goods, etc., furnished.

Where a vender of real property fails to convey according to his contract, a distinction is taken, in many cases, growing out of the motive of the party in default. If he acted in good faith and supposed he had good title and could convey, the purchaser's damages have been limited to the amount of his advance, if any, interest and expenses of examining the title.[e] But in case of a wilful and fraudulent refusal to convey, the purchaser has been held

[o]-To trace the discussion on this subject consult 13 Ala. (N. S.) 490; 27 Id. 678; 28 Id. 236; 15 Ark. 452; 3 Day, 477; 6 Conn. 508; 7 Id. 274; 10 Id. 384; 15 Id. 225, 267; 4 Ill. 373; 7 Id. 432; 16 Id. 283; 5 Ind. 322; 13 B. Mon. 219; 17 Id. 101; 2 Mart. 257; 7 La. An. 447; 11 Id. 292; 3 Mass. 546; 10 Id. 459; 15 Pick. 297; 21 Id. 378; 4 Cush. 273; 27 Miss. 68; 14 Mo. 104; 21 Id. 289; 10 N. H. 130; 3 Barb. 42, 651; 4 Wend. 113; 1 Abb. Pr. 289; 1 N. Y. 18; 3 Id. 191; 4 Id. 452; 11 Id. 356; Busb. 395; 6 W. & S. 150; 5 Watts, 375; 20 Penn. St. 85, 354; 23 Id. 424, 523; 3 Strobh. 425; 4 Id. 34; 8 Rich. 144; 2 Sneed, 456; 2 Texas, 460; 5 Id. 141; 9 Id. 358; 12 Id. 297; 3 Wis. 424; 4 Id. 67; 1 Cranch. C. C. 187; 1 Wash. C. C. 152; Wall. Jr. C. C. 164; 2 Mas. C. C. 120; 2 Story C. C. 1; 3 Wheat. 546; 10 Pet. 81; 13 How. 363, 447; 16 Id. 480; 2 Wils. 205; 3 Id. 18; 5 Saund. 442; 2 Stark. 282; 5 C. & P. 372; 13 M. & W. 47; 3 Am. Jur. 387; 5 Bost. L. R. 529; 10 Id. 49; 2 Greenl. Ev. § 523; 1 Kent Comm. (10th Ed.) 630, n. [p]-4 Cush. 273; 5 Ind. 322; but compare 6 Texas, 266; 1 Cal 54; 18 Mo. 71; 1 Abb. Pr. 289; Duer, 247; 13 M. & W. 47; 5 Taunt. 442; 2 Stark, 282; 1 Murr. S. C. 15, 317, 428. [q]-1 H. Bl. 232; 2 B. & P. 335, 350; 2 Brown Parl. Cas. 431; 4 Burr. 2225; 2 T. R. 32. [r]-Story Eq. Jur. 1318; 6 B. & C. 224; 6 Bingh. 141; 6 Ired. 186; 15 Me. 273; 2 Ala (N. S.) 425; 8 Mo. 467. [s]-2 B. & P. 340, 350, 360; 1 H. Bl. 227; 1 Camp. 78; 7 Wheat. 14; 1 McMull. 106; 2 Ala. (N. S.) 425; 5 Met. (Mass.) 61; 1 Pick. 451; 4 Id. 179; 3 Johns. Cas. 297; 17 Barb. 260; 24 Vt. 97. [t]-3 C. & P. 240; 6 Humph. 186; 5 Sandf. 192; 24 Vt. 97; 16 Ill. 475. [u]-11 Mass. 488; 15 Id. 488; 1 Brown Ch. 418. [v]-6 Bingh. 141; 5 Bingh. (N. C.) 390; 7 Scott, 364; 5 Sandf. 192; but see 7 Johns. 72; 15 Id. 200; 9 N. Y. 551. [w]-2 Barn. & Ald. 704; 6 Barn. & C. 216; 1 M. & M. 41; 4 Dall. 150; 5 Cow. 144. [x]-5 Sandf. 192, 640; 16 Ill. 400; 14 Ark. 329. [y]-2 T. R. 32; 1 Alc. & N. Ir. 389; 2 Burr. 2225; 10 Ves. Ch. 429; 3 M. & W. 535; 3 C. & P. 240; 8 Mass. 223; 7 Cow. 307; 4 Wend. 468; 5 Sandf. 192; 12 Barb. 137, 366; 18 Id. 336; 14 Ark. 315; 2 Ohio St. 519. [z]-2 Story Eq. Jur. § 1318; 2 Greenl. Ev. 259; 1 Bingh. 302; 7 Conn. 291; 11 N. H. 234; 6 Blackf. 206; 13 Wend. 507; 17 Id. 447; 22 Id. 201; 26 Id. 630; 10 Mass. 459; 7 Met. (Mass.) 583; 2 Ala. (N. S.) 425; 14 Me. 250. [a]-See title "BONDS, NOTES, AND BILLS," and GENERAL STATUTES. [b]-12 S. & R. 186; 8 Johns. 213; 10 Id. 1; 14 Id. 170; 15 Id. 24; 14 Ill. 146; 24 N. H. 297; 1 Cal. 108; 10 La. An. 412; 5 Rich. 462; 9 Id. 465; 17 Mass. 62. [c]-10 Watts, 418; 4 N. Y. 340; 1 Abb. Adm. 119. [d]-12 N. Y. 509; 22 Barb. 278; but see 19 Barb. 36. [e]-2 W. Bl. 1078; 10 B. & C. 416; 86 B. 133; 2 Wend. 399; 4 Denio, 546; 6 Barb. 646; 20 N. Y. 140; 2 Bibb. 415; 1 Litt. 358; 9 Md. 250; 11 Penn. St. 127.

entitled to the value of the land with interest.[f]

SALES. Where the seller of chattels fails to perform his agreement, the measure of damages is the difference between the contract price and the market value of the article at the time and place fixed for delivery.[g] The same rule applies as to the deficiency where there is a part delivery only.[h] Where, however, the purchaser has paid the price in advance, the purchaser is allowed the highest market price up to the time of the trial. Where the purchaser refuses to take and pay for the goods, the seller may sell them fairly, and charge the buyer with the difference between the contract price and the best market price obtainable within a reasonable time after the refusal. Where the goods are delivered and received, but do not correspond in quality with a warranty given, the vendee may recover the difference between the value of the goods delivered and the value they would have had if they had corresponded with the contract.

See GENERAL STATUTES.

MITIGATION of damages is often effected by matters which are no answer to the action itself, but which may often be given in evidence to reduce or diminish the amount of the penalty or punishment.

NOMINAL. Whenever any act injures another's right, and would be evidence in future in favor of a wrong-doer, an action may be obtained for an invasion of the right without proof of any specific injury.[i] And whenever the breach of an agreement, or the invasion of a right, is established, the law infers some damage, and, if none is shown, will award a trifling sum; as, a penny, one cent, six and a quarter cents, etc.[j] Thus, such damages may be awarded in actions for flowing lands;[k] injuries to commons [l] trespass to lands;[m] neglect of official duties, in some cases;[n] breach of contract;[o] and in many other cases where the effect of the suit will be to determine a right.[p]

SMART MONEY. See EXCESSIVE, EXEMPLARY, OR INADEQUATE DAMAGES, above.

UNLIQUIDATED DAMAGES. See LIQUIDATED DAMAGES, above.

Date. See TIME.
Daughter. See DESCENDANTS.
Daughter-in-Law. See DESCENDANTS.
Day. See TIME.
Day-Book. See ACCOUNTS.
Days of Grace. See BONDS, NOTES, AND BILLS.
De Bene Esse. See PRACTICE.
De Facto. See PRACTICE.
De Jure. See PRACTICE.
De Novo. See PRACTICE.
Dead Body. See CRIMINAL LAW.
Dead Born. See BIRTH; MEDICAL LAW.
Deaf and Dumb. See PERSONS.
Deaf, Dumb, and Blind. See PERSONS.

Death. See EVIDENCE; MEDICAL LAW.
Death-bed Deed. See CONVEYANCES, "Wills."
Deceit. See FRAUD.
Decision. See PRACTICE.
Declaration. See PRACTICE.
Declaration of Intention. See ALIEN; PERSONS.
Declaration of War. See MILITARY LAW; WAR.
Declaratory. See STATUTE LAW.
Decree. See PRACTICE.
Dedication. See HIGHWAY: REAL PROPERTY.
Deduction for New. See MARITIME LAW.
Deed. See CONVEYANCES, "Deeds."
Deed Poll. See CONVEYANCES, "Deeds."
Defamation. See SLANDER.
Defeasance. See CONVEYANCES, "Mortgages."
Defect. See PLEADING.
Defence. See PLEADING; PRACTICE; TORTS.
Defendant. See PRACTICE.
Defensive War. See MILITARY LAW; WAR.
Deficit. See ACCOUNTS.
Degrading. See SLANDER.
Del Credere Commission. See AGENCY; AGENTS.
Deliberation. See CONTRACTS.
Delirium Febrile. See MEDICAL LAW.
Delirium Tremens. See MEDICAL LAW.
Delivery. See CONVEYANCES, "Deeds;" MEDICAL LAW.
Delusion. See MEDICAL LAW.
Demand. See CONTRACTS; PRACTICE.
Dementia. See MEDICAL LAW.
Demise. See CONVEYANCES, "Leases."
Demurrage. See BAILMENTS.
Demurrer. See PLEADING; PRACTICE.
Denial. See PLEADING.
Departure. See MERCANTILE LAW; PLEADING.
Deposit. See BAILMENTS.
Deposition. See EVIDENCE.
Deputy. See OFFICE AND OFFICER.
Descent. See HEIRS.
Description. See CONTRACTS.
Desertion. See CRIMINAL LAW; MILITARY LAW.
Desertion (of a Seaman). See MARITIME LAW.
Designation. See CONTRACTS.
Detainer. See PRACTICE; PROPERTY, ETC.
Determination. See AUTHORITY.
Detinet. See PLEADING.
Detinue. See PLEADING.
Detinuit. See PLEADING.
Deviation. See INSURANCE.
Devise. See CONVEYANCES, "Wills."
Devisor. See WILLS.
Digest. See COPYRIGHT.
Diligence. See ACTS.
Dime. See MONEY.
Diplomatic Agent. See INTERNATIONAL LAW.
Direction. See PRACTICE.
Directors. See CORPORATIONS.
Disabling Statutes. See STATUTE LAW.
Disaffirmance. See CONTRACTS.
Discharge. See PRACTICE.
Disclaimer. See PLEADING.
Discontinuance. See PLEADING; PRACTICE.
Discovery. See PLEADING, PRACTICE.
Discredit. See EVIDENCE.
Discrepancy. See CONTRACTS; EVIDENCE.
Discretion. See CRIMINAL LAW; PRACTICE.
Dishonor. See BONDS, NOTES, AND BILLS.
Disjunctive Allegations. See PLEADING.
Disorderly House. See CRIMINAL LAW.
Disseizin. See REAL PROPERTY.
Dissolution. See CONTRACTS; PARTNERSHIP; PRACTICE.
Dissuade. See CRIMINAL LAW.
Distress. See PRACTICE.
Distribution. See PRACTICE.

f-6 B. & C. 31; 1 Exch. 850; 6 Wheat. 109; Hardin. 41; 2 Bibb. 40, 434; 9 Leigh. 111. g-5 N. Y. 537: 12 Id. 41; 3 Mich. 55; 6 McLean C. C. 102, 497; 4 Texas, 289; 12 Ill. 184. h-16 Q. B. 941. i-1 Wms. Saund. 346, *a*; 28 N. H. 438; 13 Conn. 269. j-14 Ill. 301; 4 Denio, 554; Sedg. Dam. 47. k-2 Story C. C. 661; 1 Rawle, 27; 12 Me. 183; 28 N. H. 438. l-2 Fast. 154. m-24 Wend. 188; 2 Texas, 206; see 4 Jones, 139. n-5 Met. (Mass.) 517; 12 Id. 535; 1 Denio, 548; 27 Vt. 563; 23 Id. 306; 12 N. H. 341. o-1 Duer, 363; 2 Hill (N. Y.) 644; 5 Id. 290, 505; 6 Md. 274. p-2 Wils. 414; 12 Ad. & E. 488; 2 Scott (N. R.) 390; 13 Conn. 361; 20 Mo. 603; 28 Me. 505; 19 Miss. 98; 2 La. An. 907; and see, in explanation and limitation, 10 B. & C. 145; 14 C. B. 595; 1 Q. B. 636; 18 Id. 252; 22 Vt. 231; 1 Dutch. 255; 14 B. Mon 330; 5 Ind. 250; 6 Rich. 75.

District. See PRACTICE.
Distringas. See PRACTICE.
Disturbance. See TORTS.
Dividend. See CORPORATIONS.
Divisible. See CONTRACTS; APPORTIONMENT; ENTIRETY.
Divorce. See MARRIAGE.
Docket. See PRACTICE.
Documents. See EVIDENCE.
Dollar. See MONEY.
Domestics. See PERSONS

DOMICIL. See EVIDENCE; DEATH; PRACTICE.

DOMICIL is that place where a man has his true, fixed, and permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.[a]

Domicil may be either national or domestic. In deciding the question of national domicil, the point to be determined will be in which of two or more nationalities a man has his domicil. In deciding the matter of domestic domicil, the question is, in which subdivision of a nation does a person have his domicil. Thus, whether a person is domiciled in England or France would be a question of national domicil; whether in Norfolk or Suffolk county a question of domestic domicil. This distinction is to be kept in mind, since the rules for determining the two domicils, though frequently, are not necessarily the same.[b]

Legal residence, inhabitability, and domicil are generally used as synonymous;[c] but much depends on the connection and purpose.[d] Two things must concur to establish domicil. These two must exist, or must have existed, in combination.[e] There must have been an actual residence.[f] The character of the residence is of no importance;[g] and if it has once existed, mere temporary absence will not destroy it, however long continued;[h] as, in the case of a soldier in the army.[i] And the law favors the presumption of a continuance of domicil.[j] The original domicil continues till it is fairly changed for another,[k] and revives with an intention to return.[l] This principal of revival, however, does not apply where both domicils are domestic.[m] Mere taking up residence is not sufficient, unless there be an intention to abandon the former domicil;[n] nor is intention of constituting domicil alone sufficient, unless accompanied by some acts in furtherance of such intention.[o] A subsequent intent may be grafted on a temporary residence.[p] Removal to a place with an intention of remaining there for an indefinite period, and as a place of fixed present domicil, constitutes domicil, though there be a floating intention to return.[q] Both inhabitantcy and intention are to a great extent matters of fact, and may be gathered from slight indications.[r] The place where a person lives is presumed to be the place of domicil until facts establish the contrary.[s]

Domicil is of three kinds: 1, domicil by birth; 2, domicil by choice, and, 3, domicil by operation of law. The place of birth is the domicil by birth, if at that time it is the domicil of the parents.[t] If the parents are on a journey, the actual domicil of the parents will generally be the place of domicil.[u] Children of ambassadors, and children born on seas, take the domicil of their parents.[v] The domicil of an illegitimate child is that of the mother;[w] of a legitimate child, that of the father.[x] The domicil by birth of a minor continues to be his domicil till changed.[y] Domicil by choice is that domicil which a person of capacity, of his free will, selects to be such. Residence by constraint, which is involuntary by banishment, arrest, or imprisonment, will not work a change of domicil.[z] Domicil is conferred in many cases by operation of law, either expressly or consequentially. Children born in foreign lands of parents who are at the time citizens of the United States, have their domicil of birth in the United States.[a]

The domicil of the husband is that of the wife.[b] A woman on marriage takes the domicil of her husband, and the husband, if entitled to a divorce, may obtain it, though the wife be actually resident in a foreign State.[c] But, if entitled to a divorce, the wife may acquire a separate domicil, which may be in the same jurisdiction The domicil of a widow remains that of her deceased husband until she makes a change.[d] The domicil of the ward

a-Lieber Encyc. Am.; 10 Mass. 188; 11 La. 175; 5 Met. (Mass.) 187; 4 Barb. 505; Wall Jr. C. C. 217; 9 Jred. 99; 1 Texas, 673; 13 Me. 255; 27 Miss. 704; 1 Bosw. 673. b-See 2 Kent Comm. 449; Story Confl. Laws, § 39, *et seq.*; Westlake Priv. Int. L. 15; Wheat. Int. L. 123, *et seq.* c-1 Bradf. Surr. 70; 1 Harring. 383; 1 Spence, 328; 2 Rich. 489; 10 N. H. 452; 3 Wash. C. C. 555; 15 M. & W. 433; 23 Pick. 170; 5 Met. (Mass.) 298; 4 Barb. 505; 7 Gray, 299. d-1 Wend. 43; 5 Pick. 231; 17 Id. 231; 15 Me. 58. e-8 Ala. (N. S.) 159; 4 Barb. 504; 6 How. 163; Story Confl. L. § 44; 17 Pick. 231; 27 Miss. 704; 15 N. H. 137. f-11 La. 175; 5 Met. (Mass.) 587; 20 Johns. 208; 12 La. 190; 1 Binn. 349. g-8 Me. 203; 1 Speer's Eq. 3; 5 Eng. L. & Eq. 52. h-7 Clark & F. Ho. L. 842; 13 Beav. Rolls, 366; 43 Me. 426; 3 Bradf. Surr. 267; 29 Ala. (N. S.) 703; 4 Texas, 187; 3 Me. 455; 8 Id. 103; 10 Pick. 79; 3 N. H. 123; 3 Wash. C. C. 555. i-36 Me. 428; 4 Barb. 522. j-5 Ves. Ch. 750; 5 Madd. Ch. 379; 5 Pick. 370; 1 Ashm. 126; Wall. Jr. C. C. 217; 1 Bosw. 673; 21 Penn. St. 106. k-5 Ves. Ch. 750, 757; 5 Madd. Ch. 232, 370; 10 Pick. 77. Story Confl. L. 481, *a* n.; 8 Ala. (N. S.) 169; 13 Id. 58; 18 Id. 367; 2 Swanst. 232; 1 Texas, 673; 1 Woodb. & M. C. C. 8; 15 Me. 58; Wall. Jr. 11; 10 N. H. 156. l-1 Curt. Eccl. 856; 19 Wend. 11; 8 Cranch, 278; 3 C. Rob. Adm. 12; 3 Wheat. 14; 8 Ala. (N. S.) 159; 3 Rawle, 312; 1 Gall. C. C. 275; 4 Mass. C. C. 308; 8 Wend. 134. m-5 Madd. Ch. 379; Am. L. Cas. 714. n-1 Speer's, 1; 6 M. & W. 511; 5 Me. 143; 10 Mass. 488; 1 Curt. Eccl. 856; 4 Cal. 175; 2 Ohio, 232; 5 Sandf. 44. o-5 Pick. 370; 1 Bosw. 673; 5 Md. 186. p-2 C. Rob. Adm. 322. q-2 B. & P. 228; 3 Hagg. Eccl. 374. r-17 Pick. 231; 4 Cush. 190; 1 Met. (Mass.) 242; 5 Id. 587; 1 Sneed, 63. s-2 B. & P. 228 *n.*; 2 Kent Comm. 532. t-Story Confl. L. § 46; 2 Hagg. Eccl. 405; 5 Texas, 211. See 10 Rich. 38. u-5 Ves. Ch. 750; Westl. Priv. Int. L. 17. v-Story Confl. L. § 48. w-Id. § 45; 35 Me. 411; 8 Cush. 75. See Westl. Priv. Int. L. 19. Where the place of birth is said to be their domicil at common law, Cald. 559. x-2 Hagg. Eccl. 405; 1 Binn. 349. y-1 Binn. 349; 3 Zabr. 394; 8 Blackf. 345. z-Story Confl. L. § 47; 3 Ves. Ch. 198, 202; 11 Conn. 234; 5 Texas, 211; 1 Milw. 191. a-10 Rich. 38. See 26 Barb. 383. b-9 Bligh. Ho. L. 83, 104; 2 Stock. 238; 29 Ala. (N. S.) 719. c-2 Clark & F. Ho. L. 488; 1 Addis, 5, 19; 1 Dowl. 117; 2 Curt. Eccl. 351. See, also, 15 Johns. 121; 1 Dev. & B. 588; 11 Pick. 410; 14 Id. 181; 2 Strobh. Eq. 184. d-Story Confl. L. § 46; 18 Penn. St. 17.

follows that of the guardian,[e] especially where the guardian is a parent.[f] Ambassadors and other foreign ministers retain their domicil in the country to which they belong, and which they represent.[g] This does not apply to consuls and other commercial agents.[h]

A commercial domicil is acquired by maintenance of a commercial establishment in a country, in relation to transactions connected with such establishments.[i]

CHANGE OF DOMICIL. Any person, *sui juris*, may make any *bona fide* change of domicil at any time.[j] And the object of the change does not affect the right, if it be a genuine change with real intention of permanent residence.[k] Children follow the domicil of the father, if the change be made *bona fide*;[l] but there are limitations to this power in the case of alien parents,[m] and of the mother, if a widow;[n] not, however, if she acquires a new domicil by re-marriage.[o] The guardian has the same power over his ward as a parent has over his child.[p] The domicil of a lunatic may be changed with the direction, or with the assent, of his guardian.[q] It may be considered questionable whether the guardian can change the national domicil of his ward.[r] The husband may not change his domicil after committing an offence which entitles the wife to a divorce, so as to deprive her of her remedy;[s] and the wife may not in the like case acquire a new domicil.[t]

DEATH. The presumption of death arises after the absence of a person from his domicil for seven years without having been heard from.[u] See title EVIDENCE, post.

RESIDENCE is a personal presence in a fixed and permanent abode.[v] A residence differs from a domicil, although it is a great matter of importance in determining the place of domicil.[w] Residence and habitancy are usually synonymous.[x] Residence indicates permanency of occupation, as distinct from lodging, or boarding, or temporary occupation, but does not include so much as domicil, which requires an intention combined with residence.[y]

RETURN. See above.

SETTLEMENT, or a residence under such circumstances as to entitle a person to support or assistance in case of becoming a pauper, is obtained in various ways. 1. By birth. 2. By the legal settlement of the father in case of minor children. 3. By marriage. 4. By continued residence. 5. By payment of requisite taxes. 6. By lawful exercise of a public office. 7. By hiring and service for a specified time. 8. By serving an apprenticeship, and perhaps some others which depend upon the statutes of the particular State.[z]

Door. See REAL PROPERTY; HOUSE.
Double Costs. See PRACTICE; COSTS.
Double Eagle. See MONEY.
Double Insurance. See INSURANCE.
Dower. See MARRIAGE; WIFE.
Draw. See REAL PROPERTY.
Drawee. See BONDS, NOTES, AND BILLS.
Drawer. See BONDS, NOTES, AND BILLS.
Drip. See REAL PROPERTY; WATER.
Druggist. See OCCUPATION.
Drunkenness. See MEDICAL LAW.
Due Bill. See MERCANTILE LAW.
Duelling. See CRIMINAL LAW.
Dumb. See PERSONS.
Dumb Bidding. See SALES; AUCTION.
Duplicate. See WRITING.
Duplicity. See PLEADING.
Duress. See ACTS.
Duty. See CONTRACTS, Obligation of.
Dwelling House. See REAL PROPERTY; HOUSE.
Dyspepsia. See MEDICAL LAW.
Eagle. See MONEY.
Easement. See REAL PROPERTY.
Effects. See CONVEYANCES; WILLS.
Ejectment. See PRACTICE.
Election. See CONTRACTS.
Elopement. See MARRIAGE; WIFE.
Embargo. See INTERNATIONAL LAW.
Embezzlement. See CRIMINAL LAW.
Emblements. See LANDLORD AND TENANT PROPERTY, ETC.
Eminent Domain. See REAL PROPERTY.
Emission. See MEDICAL LAW.
Enemy. See INTERNATIONAL LAW
Engross. See CONVEYANCES.
Enlistment. See MILITARY LAW.
Entirety. See CONTRACTS.
Entry. See CRIMINAL LAW; REAL PROPERTY
Envoy. See INTERNATIONAL LAW.
Equality. See CONTRACTS.

EQUITY. See EVIDENCE; LAW; PLEADING; PRACTICE.

EQUITY is natural justice—justice between contending parties. It is a branch of remedial justice which affords relief to suitors in courts of equity.

The difference between the remedial justice of the courts of common law and that of courts of equity is marked and material. That administered by the courts of law is limited by the principles of the common law (which are to a great extent positive and inflexible), and especially by the nature and character of the process and pleadings, and of the judgments which those courts can render, because the pleadings cannot fully present all the matters in controversy, nor can the judgment be adapted to the special exigencies which may exist in particular

e-Story Confl. L. § 506, *n.*; 1 Binn. 349; 5 Ves Ch. 750; 3 Meriv. 67; 9 Mass. 543; 5 Pick. 20. f-Story Confl. L. § 506. g-3 C. Rob. Adm. 13, 27; 4 Id. 26; 4 Beav. Roll. 441. h-1 C. Rob. Adm. 79; Thorne, 445; 1 Barb. 449; Enc. Am. *Domicil.* i-1 Kent. Comm. 82; 2 Id. 11, 12. j-5 Madd. Ch. 379; 5 Pick. 370; 35 Eng. L. & Eq. 532. k-3 Wash. C. C. 546; 5 Mass. C. C. 70; 1 Paine C. C. 594; 2 Sumn. C. C. 251. l-2 Sad. 528; 2 Brown Ch. 500; 6 Madd. Ch. 89; 16 Mass. 52; Ware. Dist. Ct. 464; Story Eq. Jur. 574; 27 Mo. 280. m-10 Ves. Ch. 52; 5 East. 221; 8 Paige Ch. 47; 2 Kent Comm. 226. n-Burge Comm. 38; 30 Ala. (N. S.) 613. See 2 Bradf. Surr. 214. o-Id. 18 Cush 528; 11 Humph. 536. p-5 Pick. 20; 15 Mass. 239; 1 Binn. 349, *n.*; 3 Meriv. 67; 2 Kent Comm. 227. See 18 Ga. 5. q-14 Pick. 181. r-2 Kent Comm. 226 Story Confl. L. § 506. s-14 Pick. 181; 2 Texas, 261. t-10 N H. 61; 9 Me. 140; 17 Conn. 284; 5 Yerg. 203; 2 Mass. 153; 5 Met. 233; 2 Litt. 337; 2 Blackf. 407. See Bishop Marr. & Div. § 730. u-Peake Ev. C. 14, § 1; Starkie Ev. 457, 458; Park. Jus. 433; 1 W. Bl. 404; 1 Stark. 121; 2 Campb. 113; 4 B. & Ald. 422; 4 Wheat. 150, 173; 5 Mass. 305; 18 Johns. 141; 1 Hardin, 479. v-20 Johns. 208; 1 Met. Mass. 251. w-See 13 Mass. 501; 5 Pick. 370; 1 Met. Mass. 251; 2 Gray, 490. 19 Wend. 14; 11 La. 175; 5 Me. 143. x-2 Gray, 490; 2 Kent Comm. (10th Ed.) 574, n. y-19 Me. 293; 2 Kent Comm. (10th Ed.) 576. z-1 Bl. Com. 363; Dougl. 9 6 S. & R. 103, 565; 10 Id. 179.

cases. It is not uncommon, also, for cases to fail in these courts, from the fact that too few or too many persons have been joined as parties, or because the pleadings have not been framed with sufficient technical precision.

The remedial process of courts of equity, on the other hand, admits, and generally requires, that all persons having an interest shall be made parties, and makes large allowances for amendments by summoning and discharging parties after the commencement of suit. The pleadings are usually framed so as to present to the consideration of the court the whole case, with its possible legal rights, and all its equities; that is, all the grounds upon which the suitor is or is not entitled to relief, upon the principles of equity. And its final remedial process may be so varied as to meet the requirements of these equities in cases where the jurisdiction of the courts of equity exists, by "commanding what is right, and prohibiting what is wrong." In other words, its final process is varied so as to enable the courts to do that equitable justice between the parties which the case demands, either by commanding what is to be done, or prohibiting what is threatened to be done.

In many States courts possess both law and equity jurisdiction.

In equity there are certain rules and maxims which are of special importance:

1. "Equity once having jurisdiction" of a subject-matter, because there is no remedy in law, or because the remedy is inadequate, "does not lose the jurisdiction," merely because the courts of law afterwards give the same or similar relief.

2. "Equity follows the law," except in relation to those matters which give a title to equitable relief because the rules of law would operate to sanction fraud or injustice in the particular case.

3. "When there is equal equity the law must prevail." For if one's adversary has an equally equitable case, the complainant has no more title to relief than his adversary; therefore equality is equity.

4. "Equality is equity." Cases of apportionment of money, or of contribution among those benefited or liable, abatement of claims on account of deficiency of the means of payment, etc., etc., are examples.

5. "He who seeks equity must do equity." A party cannot claim judicial interposition for relief unless he will do what it is equitable as a condition precedent to that relief.

6. "Equity considers done that which ought to have been done." Thus, where there is an agreement for the sale of land, and the vendor dies, the land may be treated as money, and the proceeds of the sale, when completed, go to the distributees of personal estate instead of the heir. If the vendee dies before the completion of the purchase, the purchase-money may be treated as land for the benefit of the heir.

The general nature and jurisdiction of equity exists for the following purposes:

1. For the purpose of compelling a discovery from the defendant, respecting the truth of the matters alleged against him, by an appeal to his conscience to speak the truth. The discovery is enforced by requiring an answer to the allegations in the plaintiff's complaint, in order that the plaintiff may use the matters disclosed in the answer as admissions of the defendant, and thus evidence for the plaintiff, either in connection with and in aid of other evidence offered by the plaintiff, or to supply the want of other evidence on his part; or it may be to avoid the expense to which the plaintiff must be put in procuring other evidence to sustain his case.

Where the plaintiff's complaint (otherwise called a bill) prays for relief in the same suit, the statements of the defendant in his answer are considered by the court in forming a judgment upon the whole case; to a certain extent the statements of the defendant in answer to the bill or complaint are evidence for himself also. The discovery which may be required is not only of facts within the knowledge of the defendant, but may also be of deeds and other writings in his possession.

The right to discovery is not unlimited; as, for instance, the defendant is not bound to make a discovery which would subject him to punishment, nor, ordinarily, to discover the titles upon which he relies for his defence; nor is the plaintiff entitled to require the production of all papers which he may desire to look into. The limits of the right deserve careful consideration. The discovery, when had, may be the foundation of equitable relief in the same suit, in which case it may be connected with all the classes of cases in which relief is sought; or it may be for the purpose of being used in some other court, in which case the jurisdiction is designated as an assistant jurisdiction.

2. Where courts of law do not, or did not recognize any right, and therefore could give no remedy, but where courts of equity recognize equitable rights, and of course give equitable relief. This was denominated exclusive jurisdiction. Of this class are: trusts, charities, forfeited and imperfect mortgages, penalties, and forfeitures, imperfect consideration, etc. In most of the cases which fall under this head, courts of law exercise a concurrent jurisdiction.

3. Where the courts of equity administer equitable relief for the infraction of legal rights in cases in which courts of law, recognizing the right, give a remedy according to their principles, modes, and forms, but the remedy is deemed by equity inadequate; this is called concurrent jurisdiction. It embraces fraud, mistake, accident, administration, legacies, contribution, and cases where justice and conscience require the cancellation or reformation of instruments, or the recission, or the specific performance of contracts.

The courts of law relieve against fraud, mistake, and accident where a remedy can be had according to their modes and forms; but there are many cases in which the legal remedy is made equal to the purposes of justice. The modes of investigation and the peculiar remedies of the court of equity are often of the greatest importance in this class of cases. Transfers to defeat or delay creditors and purchasers without notice of an outstanding title come under this head of fraud. The court does not relieve in all cases of accident or mistake.

In many cases the circumstances are such as to require the cancellation or reformation of written instruments, or of specific performance of contracts, instead of damages for the breach of them.

4. Where the court of equity administers the remedy because the relations of the parties are such that there are impediments to a legal remedy, as, for instance, in cases of partnership, joint tenancy, marshalling of assets, and the like. From the nature of a partnership there are impediments to suits at law between the several partners and the partnership in relation to matters involved in the partnership; and impediments of a similar character exist in other cases.

5. Where the forms of proceeding in the courts of law are not deemed adequate to the due investigation of the particulars and details of the case. This class includes accounts, partition, dower, ascertainment of boundaries.

6. Where, from a relation of trust and confidence, or from consanguinity, the parties do not stand on equal ground in their dealings with each other, as, the relations of parent and child, guardian and ward, attorney and client, principal and agent, executor and administrator, legatees and distributees, trustee and *cestui qui* trust, etc.

Cases of this class are sometimes considered under the head of constructive fraud.

7. Where the court grants relief from considerations of public policy, because of the mischief which would result if the court did not interfere. Of this class are marriage brokerage agreements, contracts in restraint of trade, buying and selling public offices, agreements founded on corrupt considerations, usury, gaming, and contracts with expectant heirs.

Cases of this class are sometimes considered under the head of constructive fraud.

8. Where a party, from incapacity to take care of his rights, is under the special care of the court of equity, as infants, idiots, and lunatics, which is exercised through committees or guardians.

9. Where the court recognizes an obligation on the part of a husband to make provision for the support of his wife, or to make a settlement upon her, out of the property which comes to her by inheritance or otherwise. This jurisdiction is not founded upon either trust or fraud, but is originally derived from the maxim "that he who asks equity should do equity."

10. Where the equitable relief appropriate to the case consists in restraining the commission or continuance of some act of which the defendant administered by means of a writ of injunction.

11. Where the court aids in the procuration or preservation of evidence of the rights of a party, to be used, if necessary, in some subsequent proceeding, the court administering no final relief.

PLEADING. A suit in equity is ordinarily instituted by a complaint or petition, called a bill, and the defendant is served with a writ of summons, called a subpœna, requiring him to appear and answer.

The forms of proceedings in equity are such as to bring the rights of all persons interested before the court; and, as a general rule, all persons interested should be made parties to the bill, either as plaintiffs or defendants. There may be amendments of the bill, or a supplemental bill; which is sometimes necessary when the case is beyond the stage for amendment. In case the suit fails by the death of the party, there is a bill of revivor, and after the cause is disposed of there may be a bill of review.

The defence is made by demurrer, plea, or answer. Discovery may be obtained from the plaintiff, and further matter may be introduced by means of a cross bill, brought by the defendant against the plaintiff, in order that it may be considered at the same time.

If the plaintiff elects, he may file a replication to the defendant's answer.

The final process is directed by the decree, which being a special judgment can provide relief according to the nature of the case. This is sometimes by a perpetual injunction.

There may be a bill to execute, or to impeach a decree.

PRACTICE. The rules of evidence, except as to the effect of the answer and the taking of the testimony, are, in general, similar to the rules of evidence in cases of law. But to this there are exceptions.

The answer, if made on oath, is evidence for the defendant so far as it is responsive to the bill for discovery, and as such it prevails, unless it is overcome by something more than what is equivalent to the testimony of one witness. If without oath, it is a mere pleading, and the allegations stand for proof.

If the answer is incomplete or improper, the plaintiff may except to it, and it must be so amended as to be made sufficient and proper. The case may be heard on the bill and answer if the plaintiff so elects, and sets the case down for hearing in that mode.

If the plaintiff desires to controvert any of the statements in the answer, he files a replication by which he denies the truth of the allegations in the answer, and testimony is taken. The testimony was formerly taken upon inter-

rogatories filed in the clerk's office, and propounded by the examiner; this practice is extensively modified. If any of the testimony is improper, there is a motion to suppress it.

The case may be referred to a master to state the accounts between the parties, or to make such other report as the case may require. The examination of parties may be in the master's office. Exceptions may be taken to his report.

The hearing of the case is before the equity judge, who may make interlocutory orders or decrees, and who pronounces the final decree or judgment. There may be a re-hearing, if sufficient cause is shown.

Erasure. See WRITING.
Error. See PRACTICE.
Escape. See CRIMINAL LAW; ARREST.
Escheat. See REAL PROPERTY.
Escrow. See CONVEYANCES.
ESTATE. See PROPERTY, ETC.

ESTATE includes: 1. In its widest sense everything of which real or personal property may consist.[x] 2. In its more limited sense it applies to lands.

ALIENATION. See CONVEYANCES.[y]

BOUNDARIES. See REAL PROPERTY.

CONTINGENT ESTATES depend upon events which may or may not happen; as, an estate limited to a person not in being, or not yet born.[z]

COPARCENARY ESTATES are those where several persons hold as one heir, whether male or female; they have three unities of time, title, and possession, but the interest of the coparceners may be unequal.[a]

CURTESY. Estates by the curtesy are those to which the husband is entitled upon the death of his wife, in the lands and tenements of which she was seized in fee simple or entail during their marriage, provided they have had lawful issue born alive and possibly capable of inheriting her estate.[b] It is the freehold estate for the term of his natural life.[c]

EXECUTED ESTATES are those whereby the present interest passes to and resides in the tenant, not dependent upon any subsequent circumstance or contingency. They are also called estates in possession.[d]

EXECUTORY ESTATES are those interests which depend for their enjoyment upon some subsequent event or contingency, as an executory devise, executory remainder, etc.

FEE SIMPLE ESTATES are those given to one and their heirs absolutely without any end or limit, etc. See CONVEYANCES, ante.

FEE TAIL ESTATE. See CONVEYANCES, ante.

FUTURE ESTATES commence in possession at a future day, either without the intervention of a precedent estate, or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time, thus excluding reversions, which cannot be said to be created at the same time because they are a remnant of the original estate remaining in the grantor.

INHERITANCE—Are those estates which may descend to one's heirs.[e] All freehold estates are estates of inheritance, except estates for life.[f]

INSOLVENT ESTATES are in general the subject of statutory regulation.

JOINTURE is a joint estate limited to both husband and wife.[g] It is a competent livelihood of freehold for the wife of lands and tenements, to take effect, in profit or possession, immediately after the death of the husband, for the life of the wife at least; to make a good jointure the following circumstances must concur: 1. It must take effect, either in possession or profit, immediately from the death of the husband. 2. It must be for the wife's life, or for some greater estate. 3. It must be limited to the wife herself, and not to any other person in trust for her. 4. It must be made in satisfaction for the wife's whole dower, and not of a part of it only. 5. The estate limited to the wife must be expressed or averred to be in satisfaction of her whole dower. 6. It must be made before marriage. A jointure attended with all these circumstances is binding on the widow, and is a complete bar to her dower; or, rather, it prevents the existence of dower. But there are other modes of limiting an estate to a wife which are good jointures, provided the wife accepts them after the death of the husband. She may, however, reject them, and claim her dower.[h]

JOINT TENANCY is the estate which subsists between several persons in any subject of property in equal shares by purchase.[i] The right of survivorship is the distinguishing characteristic of this estate.[j]

LEGAL ESTATES are those the right to which may be enforced in a court of law; they are distinguished from equitable estates, the right to which can be established only in a court of equity.[k]

LIFE ESTATES are freeholds, not of inheritance, but which is held by the tenant for his own life, or the life or lives of others, or for an indefinite period, which may endure for the life or lives of persons in being; and not beyond the period of a life.[l] Where the measure of duration is the tenant's own life it is called an estate "for the tenant's own life." When the measure of duration is the life of another person it is called an estate "*per autre vie*" (for another's life).[m] These estates may be created

x-8 Ves. Ch. 504; 16 Johns. 587; 4 Met. Mass. 178; 3 Cranch. 97. y-Alienation is particularly applied to *absolute conveyances* of real property, 1 N. Y. 290, 294. z-Crabbe Real Prop. § 946. a-1 Washb. R. Prop. 414; 2 Sharsw. Bl. Comm. 188; 4 Kent Comm. 366. b-1 Washb. R. Prop. 128; 2 Crabbe R. Prop. § 1074; Co. Litt. 30 *a;* 2 Sharsw. Bl. Comm. 126; Greenl. Cruise Dig. 153; 4 Kent Comm. 373, n. *a*. c-1 Washb. R. Prop. 127. d-2 Sharsw. Bl. Comm. 162, and vested estates. e-1 Washb. R. Prop. 51; Steph. Comm. 218. f-Crabbe R. Prop. § 945. g-2 Bl. Comm. 137. h-Cruise Dig. Tit. VII; 2 Bl. Comm. 137. i-1 Washb. R. Prop. 406; Williams R. Prop. 112; 1 Bl. Comm. 180. j-Litt. § 280. k-Bouv. Inst. n. 1688. l-1 Washb. R. Prop. 88; Crabbe R. Prop. § 1020; 1 Greenl. Cruise Dig. 102; Co. Litt. 42 *a;* Bracton Lib. 4, Ch. 28, § 207. m-1 Washb. R. Prop. 88; 2 Sharsw. Bl. Comm. 120; Co. Litt. 41 *b;* 4 Kent Comm. 23, 24.

by act of the laws, or of the parties. The chief incidents to estates for life are a right to take therefrom the necessary timber and natural material for fuel, fencing, repairs, and agricultural purposes, and a freedom from injury by a sudden termination or disturbance of the estate. Under-tenants have the same privileges as the original tenant, and acts of the original tenant which would destroy his own claim to these privileges will not affect them.[n] Their right, however, does not, of course, as against the superior owner, extend beyond the life of the original tenant.[o]

PARTICULAR ESTATES are those which are carved out of larger estates, and which precedes a remainder; as, an estate for life to A., remainder to B. in tail. This precedent estate is called the particular estate.[p]

REMAINDER. See REAL PROPERTY.

REVERSION is the residue of an estate left in the grantor to commence in possession after the determination of some particular estate granted out by him.[q] It is the residue of an estate which always continues in him who made a particular grant.[r]

SEIZIN. See CONVEYANCES; REAL PROPERTY.

SEPARATE ESTATES are those which belong to one only of several persons; as, the separate estate of a partner, which does not belong to the partnership.[s] A separate estate of a married woman is that which belongs to her, and over which her husband has no control. It may be either lands or chattels, or both.[t]

SEVERALTY. Estates in severalty are those held by a tenant in his own right only, without any other being joined or connected with him in point of interest during the continuance of his estate.[u]

SUFFERANCE. An estate at sufferance is the interest of a tenant who has come rightfully into possession of lands by permission of the owner, and continues to occupy the same after the period for which he is entitled to hold by such permission.[v] This estate seldom occurs, but is recognized as so far an estate that the landlord must enter before he can bring ejectment against the tenant.[w] If the tenant has personally left the house the landlord may break in the doors,[x] and the modern rule seems to be that the landlord may use force to regain possession, subject only to indictment if any injury is committed against the public peace.[y]

UNITY. In a joint estate there must exist four unities: 1. That of interest, for a joint tenant cannot be entitled to one period of duration or quantity of interest in lands and the other to a different; one cannot be tenant for life, and the other for years. 2. That of titles, and therefore their estates must be created by one and the same act. 3. That of time, for their estates must be vested at one and the same period, as well as by one and the same title; and, 4. That of possession. Hence joint tenants each have an entire possession, as well of every parcel as of the whole.[z]

Co-parceners must have the unities of interest, title, and possession.

Tenancies in common require only the unity of possession.[a]

WILL. Estates strictly at will are of unfrequent occurrence, being generally turned into estates for years, or from year to year, by the decisions of the court or by statute.[b] See SUFFERANCE, above; YEARS, below.

YEARS. Estates for years are interests in lands by virtue of a contract for the possession of them for a definite and limited period of time.[c] Such estates are frequently called terms. The length of time for which the estate is to endure is of no importance in ascertaining its character, unless otherwise declared by statute.[d]

ADMINISTRATION is the management of the estate of an intestate person, under a commission from the proper authority, is called administration. The management of the estate of an intestate, or of a testator who has no executor.[e]

The term is generally applied as denoting the management of an estate by an executor, and also the management of the estates of inebriates, intestates, lunatics, minors, non compotes mentis, spendthrifts, testators, etc., in those cases where guardians and trustees have been appointed by authority of law to take charge of such estates in place of the legal owners.

ADMINISTRATION AD INTERIM. Where any considerable time has elapsed since the decease of the testator or intestate, letters of administration may be granted at once, even where a will is supposed to exist, to continue only till the executor shall prove the will, or some other steps shall be taken to compel its production.[f] See ADMINISTRATION TO COLLECT AND PRESERVE, ETC., below.

AUXILIARY OR ANCILLARY ADMINISTRATION is subordinate to the principal administration, for collecting the estates of foreigners. It is taken out in the country where the assets are locally situate.[g] For the authority of a per-

n-See 19 Penn. St. 323. o-2 Sharsw. Bl. Comm. 122; 1 Rolle Abr. 727; 1 Washb. R. Prop. 88, *et seq.*; 21 Flintoff. R. Prop. 232; 1 Greenl. Cruise Dig. 102, *et seq.* p-2 Bl. Comm. 165; 2 Kent Comm. 226; 16 Viner Abr. 216; Com. Dig. 32; 5 Id. 346. q-2 Sharsw. Bl. Comm. 176; Co. Litt. 22; Crabbe R. Prop. § 2345. r-Plowd. 151; 1 Greenl. Cruise Dig. 817; Co. Litt. 22 *b*, 142 *b*. s-2 Bouv. Inst. n. 1519. t-4 Barb. 407; 1 Const. 452; 2 Bouv. Inst. n. 3996. u-2 Bl. Comm. 179; Cruise Dig. 479, 480, 879; 1 Washb. R. Prop. 112. v-1 Washb. R. Prop. 392; 2 Bl. Comm. 150; Co. Litt. 57, b.; Smith Landl. & T. 217; Crabbe R. Prop. § 1543. w-3 T. R. 292; 8 Id. 403; 1 M. & G. 644. x-1 Bingh. 58; 17 Pick. 263, 266. y-7 T. R. 431; 1 Cush. 482; 7 Met. Mass. 147; 14 Mees. & W. 437; 4 Johns. 150; 1 W. & S. 90; 1 Washb. R. Prop. 390, 396; 7 M. & G. 316; 13 Johns. 235; 13 Pick. 36. z-2 Bl. Comm. 179-182; Co. Litt. 188. a-2 Sharsw. Bl. Comm. 192; 2 Bouv. Inst. nn. 1861-1883. b-1 Washb. R. Prop. 370: 4 Kent Comm. 115; Tudor L. Cas. 14; 4 Rawle, 123; 1 T. R. 159. c-2 Sharsw. Bl. Comm. 140; 2 Crabbe R. Prop. § 1267; Bac. Abr. *Leases;* Wms. R. Prop. 105; 1 Washb. R. Prop. 298; 1 Platt. Leases, 47. d-15 Mass. 439; 1 N. H. 350; 13 S. & R. 60; 4 Kent Comm. 93; see 1 Greenl. Cruise Dig. 252, notes. e-2 Bl. Comm. 494; 1 Wms. Ex. 330. f-Swinb. Pt. 6, § 4; 1 Wms. Ex. 241, 242. g-Kent Comm. 43, *et seq.*; 1 Wms. Ex. Am. Notes; 14 Ala. 829.

sonal representative is strictly limited to the State from which it is derived. Still there are some exceptions to this rule; thus, an executor or administrator, after perfecting his title to personal property of the estate by due proof, and obtaining proper letters, may maintain an action in his own name without describing himself as executor or administrator, for the recovery of damages for any injury done to any of the personal property of the estate, after the decease of the testator or intestate, such action being founded, not upon the title of the deceased, but upon that of his personal representative, as such,[h] and this wherever the goods may be carried, found, or withheld, and whether in his custody or not. So, too, where the title to the property in possession, and even in choses in action of a negotiable nature, becomes perfected under the administration in one state or country, any action requisite to vindicate and enforce such title in any other or foreign state or country may be maintained without recourse to any local administration. But beyond these and similar exceptional cases, the authority of an executor or administrator is limited to the state or country where it is granted.

ADMINISTRATION TO COLLECT AND PRESERVE goods about to perish, is granted where there is no executor or administrator, and is governed entirely by statute which limits and qualifies the administrator's power over them.

ADMINISTRATION DE BONIS NON is granted where a former administrator dies leaving a portion of the estate of a deceased unadministered. The person so appointed has in general the powers of a common administrator.[i] But an administrator de bonis non does not succeed to any special trust reposed in the former representative.[j] Such administrator derives his title from the decedent, and not from the former executor or administrator.[k] His liability is therefore restricted to the goods remaining unadministered.[l]

ADMINISTRATION DURING ABSENCE of the executor, and until he has proven the will, is generally granted when the next of kin (being nominated as executor, or primarily entitled to the administration) is beyond the sea, out of the country or State, lest the goods perish or the debts be lost. But appointment of an administrator temporarily, on account of the non-residence or other cause, that the primary administrative cannot conveniently administer, is not allowable: there should be a general and responsible representative of the estate appointed within the jurisdiction. Still courts of probate appoint administrators and issue letters testamentary to non-residents; but where, for any cause, it is important to institute suits, either in law or equity, against the representative of the estate, it is essential that he should be found in the jurisdiction of the court.

ADMINISTRATION DURING MINORITY is granted when executor, or next of kin, or other party entitled to administer, is a minor. In either case the court is compelled to select some other person, either temporarily or permanently. Such administrator may collect assets, pay debts, sell perishable property, and perform such other acts as require immediate attention. Such administrator has all the authority, for the time being, of a general administrator. He must manage in a prudent manner.[m] He may assent to a legacy, sue and be sued[n] for debts of the deceased, and may retain for his own debt.[o] As the office expires by its own limitation upon the regular representative coming of full age, it is generally proper, in suits for or against such administrator, to allege that the regular representative is under age; and so especially where such administrator is plaintiff, this being a matter specially within his knowledge.[p] He must render his accounts to the probate court the same as any other administrator.[q] Where there are several executors, all under age, the administration during minority will cease upon any one coming of age.[r]

FOREIGN ADMINISTRATION is exercised by virtue of authority properly conferred by a foreign jurisdiction. It is a general rule that letters of administration granted abroad give no authority to sue or be sued in another jurisdiction (with exception above noted), though they may be ground for new probate authority.[s] Hence, where persons are domiciled in one country, as A., and have personal property in another, as B., the authority must be had in B., but exercised according to the laws of A.[t] There is no legal privity between administrators in different States. The principal administrator is to act in the intestate's domicil, and the auxiliary or ancillary administrator is to collect claims and pay debts in the foreign jurisdiction, and pay over the surplus to his principal.[u] It has been held that the probate of a will in a foreign State, if duly authenticated, dispenses with the necessity of taking out new letters,[v] and that possession of property may be taken in a foreign State, but that suit cannot be

h-Cro. Jac. 113. Disposing of bank shares out of the State without taking out new letters of administration, 12 Met. (Mass.) 421; 4 Mason, 16: see 7 Johns. Ch. 45. i-Bac. Abr. *Executors* B.; 1 Rolle Abr. 907; 22 Miss. 47; 27 Ala. 273; 9 Ind. 342; 4 Sneed. 411; 31 Miss. 519; 29 Vt. 170; 11 Md. 412. j-30 Me. 204; 7 Penn. St. 259; 10 Penn. St. 454; see also, 1 Barb. Ch. 565. k-27 Comm. 344. l-He is not responsible for any default, mismanagement, or waste of theirs, 8 Conn. 584; 5 Penn. St. 258. m-By disposing of goods of a perishable nature, as fat cattle, graing, or anythin which may be the worse from keeping. He may also sell goods for the payment of debts, 5 Co. 29 *b.*; 1 Wms. Ex. 427. n-T. Raym. 483. o-Bac. Abr. Leases, I, 7; 1 Wms. Ex. 428, and notes. p-Hob. 251; Cro. Jac. 590; Yelv. 128; 1 Ld. Raym. 409. q-1 Sid. 57; 1 Cas. temp. Leel 15. r-Taller Ex. 101, 102; 4 Burns Eccl. L. 228. s-5 Ves. Ch. 44; 9 Cranch, 151; 12 Wheat. 169; 2 Root, 462; 20 Martin, 232; 1 Dall. 456; 1 Binn. 63; 27 Ala. 273; 9 Tex. 13; 21 Mo. 434; 29 Miss. 127; 4 Rand. 158; 10 Yerg. 283; 5 Me. 261; 35 N. H. 484; 4 McLean C. C. 577; 15 Pet. 1; 13 How. 458. t-Story Confl. L. 23, 447; 15 N. H. 137; 15 Mo. 118; 5 Md. 467; 4 Bradf. Surr. 151, 249. u-2 Met. (Mass.) 114; 3 Hogg Eccl. 199; 6 Humphr. 116; 21 Conn. 577; 19 Penn. St. 476; 3 Day, 74; 1 Blatch. & H. D. C. 309; 23 Miss. 199; 2 Curt. Eccl. 241; 1 Rich. 116. v-5 Ired. 421; 2 B. Mon. 12; 18 Id. 582; 4 Call. 89; 15 Pet. 1; 7 Gill. 95; 12 Vt. 589.

brought without taking out letters in that State.[w]

ADMINISTRATION PENDENTE LITE is granted pending litigation,[x] respecting an alleged will or right of appointment. An officer of the court is appointed to take care of the estate only till the suit terminates.[y] The general duty of such administrator is to represent the estate during the pendency of the litigation, and in the meantime to see that no detriment comes to the goods or effects of the estate.[z] He is merely an agent or officer of the court, and when the litigation is determined he must relinquish his office, and surrender all the estate in his hands to the rightful representative.[a] His authority merely extends to collecting the assets and preserving them, and not to investing or distributing them.[b] He cannot use the money of the estate or invest it, and is not, therefore, liable for interest during the controversy.[c] And for all the purposes of his administration he may maintain suits.

PUBLIC ADMINISTRATION is performed by a public administrator, by virtue of a statute, in those cases where a person dies intestate, leaving any who are entitled to apply for letters of administration.[d]

SPECIAL OR LIMITED ADMINISTRATION is limited either in duration or extent, time or power. The right of a testator to commit distinct portions of the settlement of his estate to different persons, whether in the same or different countries, is not recognized by our courts,[e] though it has been held that a general grant of administration, during the pendency of a contest for proof of a will, is a nullity,[f] and administrations limited to particular effects, or to the performance of a single act, granted.[g]

ADMINISTRATION, WITH WILL ANNEXED, occurs either:[h] 1. Where no executor is appointed by the will.[i] 2. Where an executor pre-deceases the testator.[j] 3. Where for any cause an executor becomes incompetent to discharge the office, or renounces it. 4. Where, after having proven the will, the testator dies before completing the administration. In this latter class of cases the administrator is also administrator *de bonis non*. So, also, where the person named executor is limited to his age of majority, either by the terms of the will or the laws of the State, and has not yet arrived at full age, some one must act as administrator with the will annexed in the meantime. And there are other cases where a vacancy in the office of executor may exist either temporarily or permanently, as where the person named executor is not to act until one year after the death of the testator, etc. In general, the duties of the executor wholly devolve on the administrator with the will annexed, so far as they pertain to the settlement and distribution of the estate; but where there are special trusts devolved upon the executor beyond this, which are of longer duration and more strictly personal, those should be devolved upon a trustee specially appointed for that purpose by the proper authority of court. Such administrator must follow the statute rules of distribution, except when otherwise directed by the will.

JURISDICTION over administrations is vested in courts of both general and limited jurisdiction. The officer authorized to delegate the trust is called judge of probate, ordinary, registrar of wills, surrogate, etc., etc.[k] In some States these courts are of special jurisdiction, as county courts, probate or surrogate courts, etc., while in others the power is vested in the courts of general jurisdiction, as the circuit and superior courts.[l] These courts have no jurisdiction until the death of the testator or intestate has taken place. This is generally brought to their notice in the form of an affidavit. A decree of the court is *prima facie* evidence of such death.[m]

The personal property of a decedent after expenses of last sickness, allowance to widow and minor children, etc., is appropriated to the payment of his debts, so far as required, and, until exhausted, must be first resorted to by creditors. By the general statutes upon the subject the court may grant the administrator power to sell, lease, or mortgage land, when the personal estate of the deceased is not sufficient to pay his debts.[n] Purchasers at such sale get as full title as if they had been distributees; but no warranty can be implied by the administrator's silence.[o] But a fraudulent sale will be annulled by the court.[p]

LIMITATION OF AN ESTATE is the circumscription of the quantity of time comprised in an estate.[q] The definition or circumscription in any conveyance of the interest which the grantee is intended to take.[r] It is used in different senses.

LINE. See REAL ESTATE; BOUNDARIES.

MERGER. When a greater estate and a less meet in one and the same person without any intermediate estate, the less is immediately merged, that is, absorbed in the latter. For example, if there be a tenant for years, and the reversion in fee simple descends to or is purchased by him, the term of years is merged into the inheritance, and no longer exists; but

w-2 Ala. 429; 18 Miss. 607; 2 Sandf. Ch. 173. x-2 P. Wms. Ch. 576, 589. y-2 P. Wms. Ch. 589; 2 Atk. Ch. 286; 2 Cas. temp. Lee, 258; 1 Hagg. Eccl. 313; 26 N. H. 533; 9 Tex. 13; 16 Ga. 13. z-1 Wms. Ex. 433, 434. a-1 Hagg. Eccl. 313. b-1 Ball & Beattie, 191, 192; 1 Ves. Sr. 325; 2 Ves. & B. Ch. 97; 7 Md. 282. c-1 Ball & B. 191. d-3 Bradf. Surr. 151; 4 Id. 252. e-5 Gill & J. 483. f-3 Ired. L. 557. g-6 Verg. 302. A judgment against a special administrator binds the estate, 1 Sneed. 430 h-Plowd. 275, 279, 281. i-4 Mass. 634. j-Willard Ex.; 2 Bradf. Surr. 22. k-See Wms. Ex. 237, and notes; 8 Cranch, 536; 12 Gratt. 85; 1 W. & S. 396; 11 Ohio, 257; 22 Ga. 431; 29 Miss. 127; 2 Gray, 228; 2 Jones, 387. l-See 2 Kent Comm. 410; 9 Dana, 91; 4 Johns. Ch. 552; 4 Md. 1; 11 S. & R. 432; 7 Paige Ch. 112; 1 Green (N. J.) 480; 1 Hill (N. Y.) 130; 5 Miss. 638; 12 Id. 707; 30 Id. 472. m-And puts the burden of disproof on the party pleading in abatement, 3 T. R. 130; 26 Barb. 383; 18 Ohio, 268. Overruling the statements of Greenl. Ev. § 41; 1 Jarm. Wills: 24 Am. note. n-1 Bradf. Surr. 10, 182, 234; 2 Id 50, 122, 157; 29 Ala. (N. S.) 210, 542; 4 Mich. 308; 4 Ind. 468; 18 Ill. 519. o-2 Stockt. 206; 20 Ga. 588; 13 Tex. 322; 30 Miss. 147, 502; 31 Id. 348, 350. p-16 N. Y. 174; 2 Bradf. Surr. 200; see title ASSETS, ante. q-Preston Est. 25. r-Lander's Uses, 4th Ed. 121, *et seq*.

they must be one and the same person, at one and the same time, in one and the same right.[s] The estate in which the merger takes place is not enlarged by the accession of the preceding estate; and the greater or only subsisting estate continues after the merger precisely of the same quantity and extent of ownership as it was before the accession of the estate which is merged, and the lesser estate is extinguished.[t] As a general rule equal estates will not merge in each other; the merger is produced either from the meeting of an estate of higher with an estate of inferior degree, or from the meeting of the particular estate and the immediate reversion in the same person.[u]

SEVERANCE is the destruction of any of the unities of a joint tenancy. It is so called because the estate is no longer a joint tenancy, but is severed. Severance is effected: 1. By alienation of one of the joint tenants, which changes the estate into a tenancy in common. 2. By partition. 3. By purchase or descent of all the shares of the joint tenants so that the whole estate becomes vested in one only.[v]

SURRENDER is the yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder by which a lesser estate is merged in the greater by mutual agreement.[w] It is the deed by which the surrender is made. A surrender is of a nature directly opposite to a release; for as the latter operates by the greater estate descending upon the less, the former is the falling of a less estate into a greater by deed. A surrender immediately divests the estate of the surrenderer and vests it in the surrenderee, even without the assent of the latter.[x] The technical and proper words of this conveyance are "surrender and yield up;" but any form of words by which the intention of the parties is sufficiently manifested will operate as a surrender.[y] The surrender may be express or implied; the latter is when the estate incompatible with the existing estate is accepted or the lessee takes a new lease of the same lands.[z]

TERM is the limitation of an estate; as a term for years, for life, or the like. The word "term" does not merely signify the time specified in the lease, but the estate, also the interest which passes by that lease; and therefore the term may expire during the continuance of the term; as, by surrender, forfeiture, and the like.[a]

TITLE is the means whereby the owner of an estate holds just possession of the same. If bad, it conveys no property. If doubtful, the court will not consider it clear enough to enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but only subject to so much doubt that a purchaser ought not to be compelled to accept it.[b] If it be marketable a court of equity considers it so clear that it will enforce its acceptance by the purchaser.[c]

There are several stages or degrees requisite to form a complete title to lands. The lowest and most imperfect degree of title is the *mere possession*, or actual occupation of the estate without any apparent right to hold or continue such possession. This happens when one man dispossesses another. The next step to a good and perfect title is the *right of possession* which may reside in one man while the actual possession is not in himself but in another; this right of possession is of two kinds: 1. An apparent right of possession, which may be defeated by proving a better; and 2. The actual right of possession, which will stand the test against all occupants.

Title to real property is acquired by either descent or purchase. Title to personal property is acquired: 1. By original acquisition, creation, or occupancy, such as intellectual labor, copyright, and patent property. 2. By transfer by act of the parties, such as by gift, by contract, or by sale; and by transfer by operation of the law, as by forfeiture, succession, marriage, judgment, bankruptcy, insolvency, intestacy.

In general, possession constitutes the title to personal property, because no other means exist by which a knowledge of the fact to whom it belongs can be obtained. A seller of a chattel is not, therefore, required to show the origin of his title; nor, in general, is a purchaser without notice of the claim of the owner, compellable to make restitution; but a purchaser from a tenant for life of personal chattels will not be secure against the claims of those entitled in remainder.[d] Exceptions to the rule that possession is the criterion of title of property are chattels mortgaged, when such mortgage is required by law to be recorded in a public office; bills of sale, under the same requirements, and ships, the title of which can be ascertained by the register.[e]

To convey title, the seller must himself have a title to the property which is the subject of the transfer. But to this general rule there are exceptions. The lawful coin and currency of the United States will pass the property along with the possession. A negotiable instrument, indorsed in blank, is transferable by any person holding it, so as by its delivery to give good title "to any person honestly acquiring it."[f]

Estoppel. See PRACTICE.
Estovers. See LANDLORD AND TENANT.
Estrays. See ANIMALS.
Estrepment. See PRACTICE.

s-2 Bl. Comm. 177; Latch. 153; Poph. 166; 6 Madd. Ch. 119; 1 Johns. Ch. 417; 3 Id. 53; 3 Mass. 172. t-Preston Conv. 7; Washb. R. Prop. u-4 Kent Comm. 98; see Washb. R. Prop.; 3 Preston Conv.; 15 Viner Abr. 361; 10 Vt. 293; 8 Watts, 146. v-Com. Dig. Estates by grant (K. 5); 1 Binn. 175. w-Co. Litt. 337 b. x-Shep. Touchst. 300, 301. y-Perk. § 607; 1 T. R. 441; Com. Dig. Surrender (A.) z-16 Johns. 28; 2 Wils. 26; 1 B. & Ald. 50; 2 Id. 119; 5 Taunt. 518. a-2 Bl. Comm. 145; 8 Pick. 339. b-1 Jac. & W. Ch. 568; 9 Cow. 344. c-1 Jac. & W. Ch. 568; Atk. Tit. II, 26. 5 Taunt. 625; 6 Id. 263; 1 Marsh. 258; see 2 Penn. L. J. 17. d-Cowp. 432; 1 Brown. 274; 2 T. R. 376; 3 Atk. Ch. 44; 3 Ves. & B. 16. e-15 Ves. Ch. 60; 17 Id. 251; 8 Price, 256, 277. f-3 Barnew. & C. 47; 3 Burr. 1516; 5 T. R. 683; 7 Bingh. 284; 7 Taunt. 265, 278, 13 East. 509.

Evasion. See PRACTICE.
Eviction. See REAL PROPERTY.

EVIDENCE. See AFFIDAVITS; BONDS, NOTES, AND BILLS; EQUITY; LAW; PRACTICE.

EVIDENCE is that which tends to prove or disprove any matter in question, or to influence the belief respecting it. Belief is produced by the consideration of something presented to the mind. The matter thus presented, in whatever shape it may come and through whatever material organ it is derived, is evidence.[a] The word evidence in legal acceptation includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.[b] That which is legally submitted to a jury, to enable them to decide upon questions in dispute, or issues, as pointed out by the pleadings, and distinguished from all comment and argument, is termed evidence.[c]

Evidence may be considered with reference to its instruments, the mode of its introduction, its nature, and its object.

The instruments of evidence and mode of their introduction are as follows:

1. JUDICIAL NOTICE OR RECOGNITION. This needs no proof; it is already known and recognized by the court.

2. LAWS. Laws are introduced and proven by printed statute books, or copies from the original rolls, duly exemplified.

3. PERSONAL INSPECTION.

4. PUBLIC DOCUMENTS printed by authority of Congress or the legislature. These are introduced and proven by printed or written copies from the original records, duly exemplified.

5. PUBLIC RECORDS AND COPIES THEREOF, consisting of registers of official transactions made by officers elected or appointed for that purpose. These are introduced and proven by printed copies or by copies from the original records, duly exemplified.

6. RECORDS AND TRANSCRIPTS of proceedings in foreign and domestic courts. These are introduced and proven by copies and transcripts, duly authenticated or exemplified.

7. PRIVATE WRITINGS, as deeds, contracts, wills, etc. These are introduced and proven by the instruments themselves, or copies duly evidenced.

8. TRANSLATIONS. These must be correctly made from the original writing to be introduced in evidence.

TESTIMONY OF WITNESSES is introduced by affidavit, deposition, and oral examination.

The nature or legal character of evidence is as follows:

1. CONCLUSIVE—being such as establishes the fact, and that satisfies the court and jury; that which cannot be controlled or contradicted by any other evidence.

2. PRIMA FACIE—being sufficient, in the absence of evidence to the contrary, to establish a fact.[d]

3. PRIMARY—being the original, the first, the best, and highest degree of evidence of which the case, in its nature, is susceptible.[e]

4. SECONDARY—being such as is admissible when original or primary evidence is lost or destroyed, and which, in such an event, becomes the best evidence.[f]

See COPY; DECLARATION; HEARSAY, below.

The object of evidence is to ascertain the truth between the parties.

It has been discovered by experience that this is done most certainly by the adoption of the following rules:

1. The evidence must be confined to the point in issue.

2. The substance of the issue must be proved; but only the substance is required to be proved.

3. The affirmative of the issue must be proved.

See PROOF, ETC., below.

ACCOUNTS; ACCOUNTS STATED; see title ACCOUNTS, ante.

ACTS; see title ACTS, ante.

ADMISSIONS (concessions or voluntary acknowledgments made by a party, of the existence or truth of certain facts). As distinguished from confessions, the term is applied to civil transactions, and to matters of fact in criminal cases where there is no criminal intent. See post, "CONFESSIONS." As distinguished from consent, an admission may be said to be evidence furnished by the party's own act of his consent at a previous period.

Direct or express admissions are those which are made in direct terms. Implied admissions are those which result from some act, or failure to act, of a party. Incidental admissions are those made in some other connection, or involved in the admission of some other fact.

Admissions may be made by a party to the record, or by one identified in interest with him.[g] Not, however, where the party of record is merely a nominal party, and has no active interest in the suit.[h] They may be made by one of several having a joint interest, so as to be binding upon all.[i] Mere community of interest, as in the case of co-executor,[j] trustees,[k] or co-tenants,[l] is not sufficient. The interest in all cases must have subsisted at the time of making the admissions.[m]

They may be made by any person interested in the subject matter of the suit, though the suit be prosecuted in the name of another person as *cestui que trust*,[n] or indemnifying creditor in an action against the officer.[o] They may be made by a third person, a stranger to the suit, where the issue is substantially upon the

a-Prof. Parker Lect. Med. Jur. b-1 Greenl. Ev. c. 1, § 1. c-1 Stark. Ev. pt. 1, § 1. d-6 Pet. 622, 632; 14 Id. 334. e-3 Bouv. Inst. n. 3055. f-3 Bouv. Inst. n. 3055. g-9 B. & C. 535; 7 T. R. 563; 1 Dall. 65. h-1 Campb. 392; 2 Id. 561; 2 T. R. 763; 3 B. & C. 421; 5 Pet. 580; 5 Wheat. 277; 7 Mass. 131; 9 Ala. (N. S.) 791; 20 Johns. 142; 5 Gill. & J. 134. i-2 Bingh. 306; 8 Id. 309; 8 B. & C. 36; 1 Stark. 488; 2 Pick. 581; 3 Id. 291; 4 Id. 382; 1 M'Cord, 541; 1 Johns. 3; 7 Wend. 441; 4 Conn. 336; 8 Id. 268; 7 Me. 26; 5 Gill. & J. 144; 1 Gall. C. C. 635. j-1 Greenl. Ev. 176; 4 Cow. 493; 16 Johns. 277. k-3 Esp. 101. l-4 Cow. 483; 15 Conn. 1. m-2 Stark. 41; 4 Conn. 544; 14 Mass. 245; 5 Johns. 412; 1 S. & R. 526; 9 Id. 47; 12 Id. 328. n-1 Wils. 257; 1 Bingh. 45, but see 3 Nev. & P. 598; 6 Mann. & G. 261. o-4 East. 584; 7 Carr. & P. 629.

rights of such a person, at a particular time,[i] or who has been expressly referred to for information,[j] or where there is a privity between the ancestor and heir,[k] an assignor or assignee,[l] intestate and administrator.[m] They may be made by an agent so as to bind his principal;[n] so far only, however, as the agent has authority,[o] and not in regard to past transactions.[p] Thus, the admissions of the wife bind the husband so far only as she has authority in the matter,[q] and, so the formal admissions of an attorney bind his client.[r]

Implied admissions may result from assumed character,[s] from conduct,[t] from acquiescence, which is positive in its nature;[u] from possession of documents in some cases.[v]

In civil matters, constraint will not avoid admissions if imposition or fraud were not made use of.

Admissions made in treating for an adjustment cannot be given in evidence where made under faith of a pending treaty.[w]

Judicial admissions,[x] and those which have been acted on by others,[y] and in deeds, as between parties and their privies,[z] are conclusive evidence against the parties making them.

It frequently occurs in practice, that, in order to save expenses as to mere formal proofs, the attorneys on each side consent to admit, reciprocally, certain facts in the cause without calling for proof of them. These are usually reduced to writing, and the attorneys shortly add to this effect, namely: "We agree that the above facts shall, on the trial of this cause, be admitted, and taken as proved on each side;" and signing two copies now called "admissions" in the cause; each attorney takes one.[a]

AFFIDANT. See title AFFIDANTS, ante, and LOST PAPERS, below.

AFFIRMATION. An affirmation is a solemn religious asseveration in the nature of an oath.[b]

Quakers, as a class, and other persons who have conscientious scruples against taking an oath, are allowed to make affirmation in any mode which they may declare to be binding upon their conscience, in confirmation of the truth of the testimony which they are about to give.[c] See OATH, below.

ALIBI. When a person charged with a crime proves that he was at the time alleged in a different place from that in which it was committed, he thus proves an *alibi* (elsewhere), the effect of which is to lay a foundation for the necessary inference that he could not have committed it.[d] This proof is usually made out by the testimony of witnesses, but may be made by writings properly authenticated.

ALIUNDE is from another place, outside or without the will, judgment, etc., evidence *aliunde* may be received to explain an ambiguity in a will,[e] but never to impeach a judgment, for a judgment obtained is valid against the world, unless, of course, it be fraudulent, invalid, non-existent, or satisfied.

BELIEF may be stronger or weaker according to the weight of evidence adduced in favor of the proposition under consideration.[f] The conviction of the mind arises, not from actual perception or knowledge, but by way of inference, or from evidence received or information derived from others.

BEST EVIDENCE is not the *highest* or *strongest* evidence possible, but the best evidence which the nature of the thing to be proved admits; for example, a copy of a deed is not the best evidence, the deed is better.[g]

BILL OF LADING. See title BONDS, NOTES, AND BILLS, ante.

BLANKS. When a blank is left in a written agreement which need not have been reduced to writing, and would have been equally binding, whether written or unwritten, it is presumed in an action for the non-performance of the contract, parol evidence may be admitted to explain the blank. And where a written instrument has been made professedly to record a fact, is produced as evidence of that fact which it purports to record, and a blank appears in a material part, the omission may be supplied by other proof.[h] Hence a blank left in an award may be supplied.[i] But where a creditor signs a deed of composition, leave the amount of his debt in blank, he binds himself to all existing debt.[j]

BONDS, NOTES, AND BILLS. See that title, ante.

BURDEN OF PROOF. The burden of proof is the duty of proving the facts in dispute on an issue raised between the parties in a cause.

Burden of proof is to be distinguished from *prima facie* evidence and *prima facie* case. Generally, when the latter is shown, the duty imposed upon the party having the burden will be satisfied; but it is not necessarily so.[k]

The burden of proof lies upon him who substantially asserts the affirmative of the issue;

i-1 Greenl. Ev. § 181; 2 Stark. 42. j-1 Campb. 366, n.; 3 C. & P. 532. k-5 B. & Ad. 223; 1 Bingh. (N. C.) 430. l-54 Taunt. 16; 2 Pick. 536; 2 Me. 242; 10 Id. 244; 3 Rawle, 437; 2 M'Cord, 241; 17 Conn. 399. m-3 Bingh. (N. C.) 291; 1 Taunt. 141. n-Story Ag. §§ 134–137. o-1 Greenl. Ev. § 114. p-6 M. & W. 58; 11 Q. B. 46; 7 Me. 421; 4 Wend. 394; 7 Harr. & J. 104; 19 Pick. 220; 8 Met. (Mass.) 142. q-1 Esp. 142; 4 Campb. 92; 1 C. & P. 621; 7 T. R. 112. r-7 C. & P. 6; 1 M. & W. 508, and see 2 C. & K. 216; 2 C. B. 608. s-1 B. & Ald. 677; 2 Campb. 513. t-1 Sim. & S. 600; 6 C. & P. 241; 9 B. & C. 78; 9 Watts, 441. u-1 Sumn 314; 4 Fla. 340; 3 Mass. C. C. 81; 2 Vt. 76. v-5 C. & P. 75; 2 Stark. 140; 25 St. Tr. 120. w-7 Bingh. 101; 2 Campb 106; 2 Pick. 290; 4 Id. 374; 13 Ga. 406. x-1 Greenl. Ev. § 205; 2 Campb. 341; 5 Mass. 365; 5 Pick 285. y-3 Rob. (La.) 243; 17 Conn. 355; 13 Jur. 253. z-4 Pet. 1; 6 Id. 611. a-Gresley Eq. Ev. c. 2, p. 38. b-1 Greenl. Ev. § 371. c-1 Atk Ch. 21, 46; Cowp. 340, 389; 1 Leach. Cr Cas. 64; 1 Ry. & M. 77; 6 Mass. 262; 16 Pick. 153; B. N. P. 292; 1 Greenl. Ev. § 371. d-Bracton, 140. e-1 Greenl. Ev. § 291. f-4 S. & R. 137; 1 Greenl. Ev. §§ 7–13. g-Gilb Ev. 15; Stark. Ev. 437; 2 Campb. 605; 3 Id. 236; 1 Esp. 127; 1 Pet. 591; 6 Id. 352; 7 Id. 100. h-1 Phill Ev. 475; 1 Wils. 215; 7 Vt. 522; 6 Id. 411. i-2 Dallas, 180. j-1 B. & Ald. 101 k-6 Cush. 364; 11 Met. 460; 22 Ala. 20; 7 Blackf. 427; 1 Gray, 61; 7 Bost. L. R. 439. l-1 Greenl. Ev. § 74; 7 Eng. L. & Eq; 3 M. & W. 510.

but where the plaintiff grounds his case on negative allegations, he has the burden.[f]

In criminal cases, on a twofold ground that a prosecutor must prove every fact necessary to substantiate his charge against a prisoner, and that the law will presume innocence in the absence of convincing evidence to the contrary, the burden of proof, unless shifted by legislative interference, will fall, in criminal proceedings, on the prosecuting party, though in order to convict he must necessarily have recourse to negative evidence.[g] The burden of proof is throughout on the State to make out the whole case; and when a *prima facie* case is established, the burden of proof is not thereby shifted upon the defendant, and he is not bound to restore himself to that presumption of innocence in which he was at the commencement of the trial.[h]

In general, whenever the law presumes the affirmative, it lies on the party who denies the fact to prove the negative; as when the law raises a presumption as to the continuance of life, the legitimacy of children born in wedlock, or the satisfaction of a debt.

See PROOF OF ISSUE, below.

CHARACTER (opinion generally entertained of a person derived from the common report of the people who are acquainted with him).[i] The moral character of a person in society may be used in proof before a jury in three classes of cases: 1. To afford a presumption that a particular party has not been guilty of a criminal act. 2. To affect the damages in particular cases, where their amount depends on the character and conduct of any individual. 3. To impeach or confirm the veracity of a witness.

OF PARTIES. Where the guilt of an accused party is doubtful, and the character of the supposed agent is involved in question, a presumption of innocence arises from his former conduct in society, as evidenced by his general character; since it is not probable that a person of known probity and humanity would commit a dishonest or outrageous act in the particular instance. But where it is a question of great and atrocious criminality, the commission of the act is so unusual, so out of the ordinary course of things, and beyond common experience—it is so manifest that the offence, if perpetrated, must have been influenced by motives not frequently operating on the human mind—that evidence of character, and of a man's habitual conduct under common circumstances, it must be considered far inferior to what it is in accusations of a lower grade. Against facts strongly proved, good character cannot prevail. It is, therefore, in smaller offences, in such as relate to the actions of daily and common life, as when one is charged with pilfering and stealing, that evidence of a high character for honesty will satisfy a jury that the accused is not likely to yield to so slight a temptation. In such case, where the evidence is doubtful, proof of character may be given with good effect. But still even with regard to the higher crimes, testimony of good character, though of less avail, is competent evidence to the jury, and a species of evidence which the accused has a right to offer. It is the privilege of the accused to put his character in issue, or not. If he does, and offers evidence of a good character, then the prosecution may give evidence to rebut and counteract it. But it is not competent for the government to give in proof the bad character of the defendant, unless he first opens that line of inquiry by evidence of good character.[j]

OF WITNESSES. The party against whom a witness is called may disprove the facts stated by him, or may examine other witnesses as to his general character; but they will not be allowed to speak of particular facts or parts of his conduct.[k] For example, evidence of the general character of a prosecutrix for a rape may be given, as that she was a street-walker; but evidence of specific acts of criminality cannot be admitted.[l] The regular mode of inquiring into the reputation of a witness, is to ask of those introduced for that purpose whether they know the general reputation of the person in question among his neighbors, and what that reputation is. The inquiry must be as to his general reputation where he is best known, or with those among whom he is known, or with those among whom he dwells,[m] and whether from such knowledge he would believe him on his oath.[n] In answer to such evidence against character, the other party may cross-examine the witness as to his means of knowledge, and the grounds of his opinion; or he may attack such witness' general character, or by fresh evidence support the character of his own.[o] A party cannot give evidence to confirm the good character of a witness, unless his general character has been impugned by his antagonist.[p]

See WITNESS, IMPEACHMENT OF, below.

CIRCUMSTANCES. Facts proved are always accompanied by circumstances which more or less influence the mind in forming a judgment. In some instances these circumstances assume the character of irresistible evidence; where, for example, a woman was found dead in a room, with every indication of having met with a violent death, the presence of another person at the scene of action was made manifest by the bloody mark of a *left*

f-1 T. R. 141; 6 Id. 559; 2 M. & S. 395; 5 Id. 206; 1 Campb. 199; 1 C. & P. 220; 5 B. & C. 758; 1 Me. 134; 4 Id. 226; 2 Pick. 103; 4 Id. 341; 5 Rich. 57; 1 Greenl. Ev. § 41. g-1 Tayl. Ev. § 344; 12 Wheat. 460. h-1 Ben. & H. Lead. Cr. Cas. 352; see 9 Met (Mass.) 93; 5 Cush. 296; 2 Gratt. 594; Wright, 20; 5 Yerg. 340; 16 Miss. 401. i-3 S. & R. 336; 3 Mass. 192; 3 Esp. 236. j-Per Show. C. J. 325; see 5 Esp. 13; 1 Campb. 460; 3 Id. 519; 2 Str. 925; 2 St. Tr. 1038; 1 Coxe, 424; 5 S. & R. 352; 2 Bibb. 286; 3 Id. 195; 5 Day, 260; 7 Conn. 116; 14 Ala. 382; 6 Cow. 673; 3 Hawks. 105; 14 Ind. 589. k-B. N. P. 295. l-3 C. & P. 589; and see 17 Conn. 467; 18 Me. 372; 14 Mass. 387; 5 Cox Cr. Cas. 146. m-2 Met. 342; 1 Greenl. Ev. § 461; 20 Ohio, 18. n-4 St. Tr. 693; 4 Esp. 102; but see 1 Greenl. Ev. § 461; 8 Ind. 408. o-2 Stark. 151, 241; Stark. Ev. pt. 4, 1759 1758; 1 Phil. Ev. 229. p-9 Watts, 124.

hand visible on her *left* arm.[f] These points ought to be carefully examined in order to form a correct opinion. The first question is: Is the fact possible? If so, are there any circumstances which render it impossible? If alleged facts are impossible, the witness ought not to be credited. For example: if a man swears that he saw the deceased shoot himself with his own pistol, and, upon examination, the ball which killed him is found too large to enter the pistol, the witness ought not to be credited.[g] So, also, if one swears that another has committed an impossible crime.

COMPETENCY. See CREDIBILITY; WITNESSES, below.

COMMUNICATIONS, CONSULTATIONS, CONFERENCES, CONVERSATIONS, AND THE PROPOSITIONS made at and prior to the contract are no part of the contract, for no parol evidence will be allowed to be given to alter, contradict, or vary a written instrument.[h]

CONCLUSIVE EVIDENCE is that which, while uncontradicted, satisfies the judge or jury. That which cannot be controlled or contradicted by any other evidence. That which establishes the fact, as in the instance of conclusive presumptions. The record of a court of common law jurisdiction is conclusive as to the facts therein stated.[i] Evidence may be conclusive for some purposes, but not for others.

CONCLUSIVE PRESUMPTIONS. See PRESUMPTIONS, below.

CONFESSIONS (voluntary declarations made by a person who has committed a crime or misdemeanor to another, of the agency or participation which he had in the same. An admission or acknowledgment by a prisoner, when arraigned for an offence, that he committed the crime with which he is charged. Judicial confessions are those made before a magistrate, or in court in the due course of legal proceedings. Extra-judicial confessions are those made by the party elsewhere than before a magistrate, or in the open court).

Voluntary confessions are admissible in evidence;[j] but a confession is not admissible in evidence where it is obtained by temporal inducement, by threats, promise, or hope of favor held out to the party in respect of his escape from the charge against him by a person in authority,[k] where there is reason to presume that such person appeared to the party to sanction such threat or inducement;[l] but it is admissible if such inducements proceed from a person not in authority over the prisoner,[m] or if the inducement be spiritual merely;[n] and the temporal inducement must have been held out by the person to whom the confession is made,[o] unless collusion be expected.[p] A confession is admissible, though elicited by questions put to the prisoner by a constable, magistrate, or other person,[q] even though the question assumes the prisoner's guilt, or the confession is obtained by trick or artifice,[r] and although it appears that the prisoner was not warned that what he said would be used against him.[s]

A statement not compulsory, made by a party not at the time a prisoner under a criminal charge, is admissible in evidence against him, although it is made upon oath;[t] otherwise, if the answers are compulsory.[u] A confession may be inferred from the conduct and demeanor of a prisoner when a statement is made in his presence affecting himself,[v] unless such statement is made in the deposition of a witness, or examination of another prisoner before a magistrate.[w]

Where a confession has been obtained, or an inducement held out under circumstances which would render a confession inadmissible, a confession subsequently made is not admissible in evidence; unless from the length of time intervening, from proper warning of the consequences, or from other circumstances, there is reason to presume that the hope or fear which influenced the first confession is dispelled,[x] and the motives proved to have been offered will be presumed to continue, and to have produced the confession, unless the contrary is shown by clear evidence, and the confession will be rejected.[y] Under such circumstances contemporaneous declarations of the party are receivable in evidence, or not, according to the attending circumstances; but any act of the party, though done in consequence of such a confession, is admissible, if it appears from a fact, thereby

f-14 How. St. Tr. 1323. g-1 Starkie Ev. 305. h-1 S. & R. 27, 464; Addis. 361; 2 Dallas, 172; 1 Yeates, 140; 12 Johns. 77: 20 Id. 49; 3 Conn. 9; 11 Mass. 30; 13 Id. 443; 1 Bibb. 271; 4 Id. 473; 3 Marsh, 333; 1 M. & S. 21; 1 Esp. 53; 3 Campb. 57. i-2 Wash. 64; 2 Hen. & M. 55; 6 Conn. 508. j-20 Ga. 60; 12 La. An. 805; 28 Ala. (N. S.) 9; 3 Ind. 552; 30 Miss. 593. k-1 Mood. Cr. Cas. 465; Russ. & R. Cr. Cas. 152, 492; 4 C. & P. 570; 5 Id. 539; 6 Id. 146, 353; 7 Id. 579; 8 Id. 140, 187; 4 Harring. 503; 37 N. H. 175, 196; 5 Fla. 285; 10 Ind. 106; 10 Gratt. 734; see 18 N. Y. 9; 29 Penn. St. 425. l-1 Mood. Cr. Cas. 410; 5 C. & P. 539; 7 Id. 302; 8 Id. 140, 733; 2 Craw. & D. Cas. Ir. 347; 6 Cox Cr. Cas. 243; 2 Carr. & K. 225; 1 Dev. 259. m-1 C. & P. 97, 129; 4 Id. 543; 7 Id. 776; 8 Id. 734; Russ. & R. 153; 1 T. R. Ir. 177; 1 Leach Cr. Cas. 291, 2 Id. 559; 19 Pick. 491; 1 Gray, 461; 1 Strobh. 155: 9 Rich. 428; 14 Gratt. 652; 19 Vt. 116; but see 5 Jones, 432; 32 Miss. 382; 2 Ohio St. 583. n-1 Mood. Cr. Cas. 197; Jebb. Cr. Cas. Ir. 15; 16 Mass. 161; 8 Ohio St. 98. o-Phil. Ev. 430; 4 C. & P. 223; Jebb. Cr. Cas. 15. p-4 C. & P. 550. q-1 Mood. Cr. Cas. 27, 452, 465; Jebb. Cr. Cas. 15; Crawf. & D. Cr. Cas. 115: 2 Id. 152; 5 C. & P. 312; 7 Id. 569, 832; 8 Id. 179, 621; 14 Ark. 556; 19 Id. 156; 23 Ala. (N. S.) 28. r-1 Mood. Cr. Cas. 28; Phil. Ev. 427; 33 Miss. 347; see 8 C. & P. 622. s-8 Mod. 89; 1 C. & P. 261; 5 Id. 312, 318; 6 Id. 179; 7 Id. 487; 9 Id. 124. t-2 Mood. Cr. Cas. 45; 1 C. & K. 657; 2 Stark. 366; 5 C. & P. 530; 9 Id. 240; 1 Mood. & R. Cr. Cas. 297; 7 Ired. 96; 5 Rich. 391; 2 Park. Cr. Cas. 663; see 8 Carr. & P. 250. u-1 Den. Cr. Cas. 236; 4 Campb. 10; 6 C. & P. 161, 177; 15 N. Y. 384; 3 Wis. 823; 2 Park. Cr. Cas. 663. v-5 C. & P. 332; 7 Id. 832; 12 Met. (Mass.) 235; 21 Pick. 515. see 32 Ala. (N. S.) 560. w-1 Mood. Cr. Cas. 347; Mood. & M. 336; 6 C. & P. 164. x-2 Lew. Cr. Cas. 123; 4 C. & P. 225; 5 Id. 318, 535; 6 Id. 404; 1 Wheel. Cr. Cas. 67; 5 Halst. 163; 3 Jones, 443; 5 Rich. 391; 24 Miss. 512. y-1 Dev. 259; 12 Miss. 31; 5 Cush. 605; 18 Conn. 166; 2 Leigh. 701; 32 Ala. (N. S.) 560; 1 Sneed. 75, and see 6 C. & P. 404; 5 Jones, 315; 12 La. An. 895.

and admissible as such: 1. When the fact that the declaration was made is the point in question.[g] 2. Including expressions of bodily feeling where the existence or nature of such feelings is the object of inquiry; as expressions of affection in actions for *crim. con.*;[h] representations by a sick person of the nature, symptoms, and effects of the malady under which he is laboring;[i] in prosecutions for rape, the declarations of the woman forced.[j] 3. In cases of pedigree, including the declarations of deceased persons nearly related to the parties in question;[k] family records.[l] 4. Cases where the declaration may be considered as a part of the *res gestæ*,[m] including the entries made by those whose duty it was to make such entries.[n]

Declarations regarded as secondary evidence or hearsay, and yet admitted in some cases: 1. In matters of general and public interest, common reputation being admissible as to matters of public interest;[o] but reputation amongst those only connected with the place of business in question, in regard to matters of general interest merely,[p] and the matter must be of a *quasi* public nature.[q] 2. In cases of ancient possession, where ancient documents are admitted, if found in a place in which, and under the care of persons with whom such papers might reasonably be expected to be found,[r] if they purport to be a part of the transaction to which they relate.[s] 3. In cases of declarations and entries made against the interest of the party making them, whether made concurrently with the act or subsequently;[t] but such declarations and entries, to be so admitted, must appear or be shown to be against the pecuniary interest of the party making them.[u] 4. Dying declarations made in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations, are admissible[v] if made under a sense of impending death.[w] The declarations may have been made by signs,[x] and in answer to questions.[y] The substance only need be given by the witness,[z] but the declaration must have been complete,[a] and the circumstances under which it was made must be shown to the court.[b]

Declarations to be admissible as original evidence must have been made at the time of doing the act to which they relate.[c]

In order to their admission as secondary evidence, the declarant must be dead,[d] and the declaration must have been made before any controversy arose.[e] It must appear that the declarant was in a condition or situation to know the facts, or that it was his duty to know them.[f]

The declarations of an agent respecting a subject-matter, with regard to which he represents the principal, bind the principal,[g] if made during the continuance of the agency with regard to the transaction then pending;[h] and similar rules extend to partners' declarations.[i]

When more than one person is concerned in the commission of a crime, as in cases of riots, conspiracies, and the like, the declarations of either of the parties, made *while acting in the common design*, are evidence against the whole;[j] but the declarations of one of the rioters, or conspirators, made *after the accomplishment of their object*, and when they no longer acted together, are evidence only against the party making them.[k]

DEMONSTRATION is the highest attainable degree of evidence. It is such certain proof as excludes all possibility of error. It establishes a fact or proposition beyond a possi-

[g]-4 Mass. 702; 5 Id. 444; 9 Johns. 45; 11 Wend. 110; 1 Conn. 387; 2 Campb. 511; 2 B. & Ad. 845; 1 Mood. & R. 2, 8; 9 Bingh. 359; see 1 Phill. Ev. 188; 4 Bingh. (N. C.) 489; 1 Brod. & B. 269. [h]-2 Stark. 191; 1 B. & Ald. 90; 8 Watts, 355; see 4 Esp. 39; 2 C. & P. 22; 7 Id. 198. [i]-6 East. 188; 4 M'Cord, 38; 8 Watts, 355; see 9 C. & P. 275; 7 Cush. 581; 30 Ala. (N. S.) 562; 23 Ga. 17; 27 Mo. 279; 30 Vt. 377. [j]-1 Russ. Cr. 565; 2 Stark. 241; 18 Ohio, 99. [k]-Cowp. 591; 13 Ves. Ch. 140, 514; 2 Bingh. 86; 3 Russ. & M. 147; 2 C. & K. 701; 1 Cr. M. & R. 319; 1 De Gex. & S. 40; 1 How. 231; 4 Rand. 607; 3 Dev. & B. 91; 18 Johns. 37; 2 Conn. 347; 4 N. H. 371. [l]-4 Campb. 401; 8 B. & C. 813; 5 Clark & F. Ho. L. 24; 11 Id. 85; 7 Scott (N. R.) 141; 2 Dall. 116; 1 Penn. St. 381; 8 Johns. 128; and see 11 East. 503; 13 Ves. Ch. 514; 1 Pet. 328; 5 S. & R. 251; 4 Mas. C. C. 268. [m]-36 N. H. 167, 353; 16 Texas, 74; 6 Fla. 13; 41 Me. 149, 432; 20 Ga. 452. [n]-See 1 Greenl. Ev. §§ 115, 123; 1 Smith L. Cas. Hare & W. Ed. 142. [o]-14 East. 329, *n.*; 1 M. & S. 686; 4 Campb. 416; 6 M. & W. 234; 19 Conn. 250. [p]-1 Crompt. M. & R. 929; 3 B. & Ad. 245. [q]-1 East. 357; 14 Id. 329, *n.*; 5 T. R. 121; 10 B. & C. 657; 3 Campb. 288; 1 M. & S. 77; 2 Id. 494; 1 Taunt. 261; 1 M. & W. 416; see WITNESS. [r]-2 Bingh. (N. C.) 183; 1 Dowl. Parl. Cas. 297; 12 M. & W. 205; 8 Q. B. 158; 11 Id. 884; 1 Price, 225; 2 Id. 303; 5 Id. 312; 4 Wheat. 213; 5 Pet. 319; 9 Id. 663; 5 Cow. 221; 7 Wend. 371; 2 Nott. & M'C. 55, 400; 4 Pick. 160. [s]-1 Greenl. Ev. § 144. [t]-1 Taunt. 141; 3 Id. 303; 4 Id. 16; 1 Campb. 367; 3 Id. 457; 2 T. R. 53; 3 Brod. & B. 132; 3 B. & Ad. 893, and see 1 Phill. Ev. 293; Gresley Eq. Ev. 221. [u]-1 C. & P. 276; 11 Clark & F. Ho. L. 85; 10 East. 109; 2 Jac. & W. 789; 3 Bingh. (N. C.) 308, 320. [v]-2 B. & C. 605; 1 Leach Cr. Cas. 267, 378; 2 M. & R. 53; 2 Johns. 31, 35; 15 Id. 286; 1 Meigs. 265; 4 Miss. 665; see 4 C. & P. 233. [w]-2 Leach Cr. Cas. 563; 6 C. & P. 386, 631; 7 Id. 187; 1 Mood. Cr. Cas. 97; 2 Id. 135; 5 Cox Cr. Cas. 318; 11 Ohio, 424; 2 Ark. 229; 3 Cush. 181; 9 Humph. 9. 24. [x]-1 Greenl. Ev. § 161, *b*. [y]-7 C. & P. 238; 2 Leach. Cr. Cas. 563; 3 Leigh. 758. [z]-11 Ohio, 424; 8 Blackf. 101. [a]-3 Leigh. 786. [b]-1 Stark. 521; 3 C. & P. 629; 6 Id. 386; 7 Id. 187; 1 Hawks. 444; 2 Ashm. 4, 169; 2 Gratt. 594; 16 Miss. 401; 2 Hill (N. C.) 619. [c]-3 Conn. 250; 19 Id. 250; 16 Miss. 722; 9 Paige Ch. 611; 3 Ga. 513; 23 Id. 193; 8 Met. (Mass.) 436; 13 Id. 237, 544; 6 Me. 266; 34 Id. 310; 8 N. H. 40; 36 Id. 353; 14 S. & R. 275; 8 Watts, 479; 5 T. & R. 512; 2 Bingh. 99; 9 Id. 349; 1 B. & Ad. 135; and see 1 Met. (Mass.) 242; 3 Id. 199; 4 Fla. 104; 3 Humph. 315; 24 Vt. 363; 21 Conn. 101. For cases of entries in books, see 1 Binn. 234; 8 Watts, 544; 4 S. & R. 3, 5; 9 Id. 285; 13 Mass. 427. [d]-11 Price, 162; 1 Carr. & K. 58; 12 Vt. 178. [e]-13 Ves. Ch. 514; 3 Campb. 444; 4 Id. 401; 10 B. & C. 657; 4 M. & S. 486; 1 Pet. 328. [f]-2 Jac. & W. Ch. 464; 10 East. 109; 15 Id. 32; 9 B. & C. 935; 10 Id. 317; 4 Q. B. 137; 2 Smith L. Cas. Hare & W. Ed. 193, *n.* [g]-Story Ag. §§ 134, 137; 1 Phill. Ev. 381; 2 Q. B. 212; 3 Harr. & J. 299; 20 N. H. 165; 31 Ala. (N. S.) 33; 6 Gray, 450. [h]-8 Bingh. 451; 10 Ves. Ch. 123; 4 Taunt. 519; 5 Wheat. 336; 6 Watts, 487; 8 Id. 39; 14 N. H. 101; 4 Cush. 93; 30 Vt. 29; 11 Rich. 367; 24 Ga. 211; 31 Ala. (N. S.) 33; 7 Gray, 92, 345; 4 E. D. Smith, 165; see 3 Rob. 201; 8 Met. (Mass). 44; 19 Ill. 456. [i]-1 Greenl. Ev. § 112; 31 Ala. (N. S.) 26; 36 N. H. 167. [j]-3 B. & Ald. 566; 1 Stark. 81; 2 Pet. 358; 10 Pick. Mass. 497; 30 Vt. 100; 32 Miss. 405; 9 Cal. 593. [k]-2 Stark. Ev. 235; 2 Russ. Cr. 572; Rosc. Cr. Ev. 324; 1 Ill. 269; 1 Mood. & M. 501; and see 2 C. & P. 232; 7 Gray, 1, 46.

bility of doubt. It shows the contrary position to be absurd or impossible. It is the indubitable evidence of the senses, and of reason.

DEPOSITIONS are written declarations, under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine, or upon written interrogatories. The difference between a deposition and an affidavit, is the requirement of notice in the former.[n]

Depositions were not formerly allowed in common law courts, but were admitted from necessity where the oral testimony of a witness could not be obtained. In courts of equity this is generally the only testimony which is taken. In most States both oral testimony and depositions are used.

In criminal cases depositions cannot be used without the consent of the defendant,[o] who cannot by constitution be deprived of the right of meeting his accusers face to face. Statutory provisions are made in many States for taking depositions by the accused.[o]

The cases in which depositions may be used, the time of taking, before whom taken, notice of taking, forms, directions and proceedings in taking, transmission, opening, exception to, and their introduction as evidence, are the subjects of special statutory regulation in all the various States.

DIRECT EVIDENCE is that means of proof which tends to show the existence of a fact in question without the intervention of the proof of any other fact. Evidence is termed *direct*, which applies immediately to the fact to be proved without any intervening process, as distinguished from *circumstantial*, which applies immediately to collateral facts supposed to have a connection, near or remote, to the fact in controversy.

It is that evidence which, if believed, establishes the truth of the fact in issue, and does not rise from any presumption. Evidence is direct and positive when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses.[p] In one sense there is but little direct or positive proof, or such proof as is acquired by means of one's own senses; all other evidence is presumptive; but in common acceptation, direct and positive evidence is that which is communicated by one who has actual knowledge of the fact.

DISCREDIT. In general a party may discredit a witness called by the opposite party who testifies against him, by proving that his character is such as not to entitle him to credit or confidence, or any other fact which shows he is not entitled to belief. It is clearly settled, also, that the party voluntarily calling a witness, cannot afterwards impeach his character for truth and veracity.[q] But if a party calls a witness who turns out unfavorable he may call another to prove the same point.[r]

See CHARACTER, above; WITNESSES, Impeachment of, below.

DISCREPANCY is material where there is such a difference between a thing alleged and a thing offered in evidence as to show they are not substantially the same; as, when the plaintiff in his declaration for a malicious arrest averred that "the plaintiff in that action did not prosecute his said suit, but therein made default;" and the record was "that the plaintiff obtained a rule to discontinue." A discrepancy is immaterial where it does not materially affect the cause, as where a declaration stated that a deed bore the date in a certain year of our Lord, and the deed was simply dated "March 30, 1701."[s]

DISINTERESTED. See WITNESSES, below.

DOCUMENTS. See PUBLIC DOCUMENTS, below.

DYING. See DECLARATIONS, above.

EFFECT OF EVIDENCE. As a general rule, a judgment rendered by a court of competent jurisdiction directly upon a point in issue, is a bar between the same parties;[t] and privies in blood, as an heir[v] or privies in estate,[w] stand in the same situation as those whom they represent; the verdict and judgment may be used for or against them, and is conclusive. But in order to constitute this bar, and to make a matter *res judicata*, there must be a concurrence of the four conditions following: 1. Identity of the thing sued for;[x] 2. Identity of the cause of action;[y] 3. Identity of persons, and of parties to the action;[z] 4. Identity of the quality in the persons for or against whom the claim is made.[a]

EXAMINATION (Preliminary) is made concerning a criminal offence, of the grounds which constitute the accusation against a person arrested on a criminal charge with a view of discharging the person so arrested, or to secure his appearance for trial by the proper court, and to preserve the evidence relating to the matter. This is accomplished by bringing the person accused, together with witnesses, before the magistrate (usually a justice of the peace), who hears the case for the purposes above stated, taking down in writing the evi-

n-4 Kas. 124. o-3 Greenl. Ev. § 11. p-1 Phill. Ev. 116; 1 Stark. Ev. 19. q-1 Mood. & R. 414; 3 B. & C. 746. r-2 Campb. 556; 2 Stark. 334; 1 Nev. & M. 34; 4 B. & A. 193; 1 Phill. Ev. 229; Roscoe Civ. Ev. 96 s-2 Salk. 658; 19 Johns. 49; 5 Taunt 707; 2 B. & Ald. 301; 8 Miss. 428; 2 McLean C. C. 69; 1 Met. Mass. 59; 21 Pick. 486. t-1 Stark. Ev. 1757; 1 Greenl. Ev. § 469. u-1 Phill. Ev. 242. v-3 Mod. 141. w-1 Ld. Raym. 730; B. N. P. 232. x-5 M. & W. 109; 3 East. 346; 7 Johns. 20; 1 Hen. & M. 449; 1 Dana, 434. y-If, for example, I have claimed a right of way over Blackacre, and a final judgment has been rendered against me, and I afterwards purchase Blackacre, this first decision shall not be a bar to my recovery when I sue as owner of the land, and not for an easement over it, which I claimed as a right appurtenant to my land Whiteacre. 6 Wheat. 109; 2 Gall. C. C. 216; 17 Mass. 237; 2 Leigh. 474; 8 Conn. 268; 1 Nott & M'C. 329; 16 S. & R. 282, 17 Id 319; 3 Pick. 429. z-7 Cranch 271; 1 Wheat 6; 14 S. & R. 435, 4 Mass. 441; 2 Yerg. 10; 5 Me. 410; 8 Gratt. 68; 16 Mo. 168; 12 Ga. 271; 21 Ala. (N. S.) 813; 4 Denio, 302; 23 Barb. 464. This rule is a necessary consequence to the rule of natural justice, *ne inauditus condemnetur*. a-For example, an action by Peter to recover a horse, and a final judgment against him, is no bar to an action by Peter, administrator of Paul, to recover the same horse. 5 Co. 32, b.; 4 T. R. 490; 6 Mann. & G. 164; 4 C. B. 884.

dence of the witnesses, and any statements which the prisoner may see fit to make. If no probable cause of the guilt of the prisoner appears, he is discharged from arrest. If sufficient cause of suspicion appears to warrant putting him on trial, he is committed, or required to give bail or enter into a recognizance to appear at the proper time for trial. The witnesses are also frequently required to recognize for their appearance, though in ordinary cases only their personal recognizance is required. The magistrate certifies the minutes of the evidence which he has taken, and it is delivered or transmitted to the court before whom the trial is to be had. See LEADING QUESTIONS, and WITNESSES, below.

The examination should be taken and completed as soon as the nature of the case will admit.[a] The prisoner must not be put upon oath (except where by statute he is competent to testify, and then only when he voluntarily consents), the witnesses must.[b] The prisoner has no right to the assistance of an attorney, but the privilege is granted in the discretion of the magistrate.[c] The magistrate's return and certificate are conclusive evidence, and exclude parol evidence of what the prisoner said on that occasion with reference to the charge.[d] See CONFESSIONS, above.

EXAMINATION, CROSS. See WITNESSES, below.

EXAMINATION, DIRECT. See WITNESSES, below.

EXAMINATION IN CHIEF. See WITNESSES, below.

EXAMINATION, REDIRECT. See WITNESSES, below.

EXAMINED COPIES, or papers which are copies of records, public books or registers, which have been compared with the originals,[e] are admitted in evidence because of the public inconvenience which would arise if such records, public books, or registers, were removed from place to place, and because any fraud or mistake made in the examined copy would be so easily detected.[f] But in an answer in chancery on which the defendant was indicted for perjury, or where the original must be produced in order to identify the party by proof of handwriting, an examined copy would not be evidence.[g]

See COPIES, above.

EXEMPLIFICATION. See title, AUTHENTICATION, ante.

EXPERTS. Those who are skilled by experience. Witnesses who are admitted to testify on account of their peculiar knowledge of some art or science requisite or of value in settling the point in issue. Such persons are selected by the court or parties in a cause, on account of their knowledge or skill, to examine, estimate, and ascertain, and report their opinions.[h] Persons professionally acquainted with the science or practice in question.[i] Persons conversant with the subject-matter or questions of science, skill, trade, and the like[j] are thus selected, and their opinions received in evidence upon points in issue.

See OPINIONS; WITNESSES, below.

EXTRACTS. In general an extract is not evidence, because the *whole* of the writing may explain the part extracted, so as to give it a different sense; but sometimes extracts from public books are evidence; as extracts from the registers of births, marriages, and burials, kept according to law, when the whole of the matter has been extracted which relates to the cause or matter in issue.

EXTRINSIC EVIDENCE is external evidence, or that which is not contained in the body of an agreement, contract, and the like.

It is a general rule that extrinsic evidence cannot be admitted to contradict, explain, vary, or change the terms of a contract, or of a will, except in a latent ambiguity, or to rebut a resulting trust.[k]

EYE-WITNESS. See WITNESSES, below.

FACTS. Fact is used in distinction from law. Thus in every case to be tried there are facts to be shown to exist to which the law is to be applied. Material facts are facts essential to the right of action or defence. Material facts must be shown to exist. Immaterial facts need not. The existence of facts is generally determined by the jury, but there are many facts of which the courts take cognizance. See title, ACTS, ante; and JUDICIAL RECOGNITION; PRESUMPTION, below.

HANDWRITING. When it is necessary to prove that a certain instrument or name is in the handwriting of a particular person; this is done either by the testimony of a witness, who saw the paper or signature actually written, or by one who has by sufficient means acquired such a knowledge of the general character of the handwriting of the party as will enable him to swear to his belief that the handwriting of the person is the handwriting in question.[l]

The mode of deducing evidence of the authenticity of a written instrument is, by showing the likeness of the handwriting to that of another instrument proved to be that of the party whom it is sought to establish as the author of the instrument in question.[m] At common law, as a general rule, this manner of obtaining evidence was not allowed. There were exceptions to this rule. 1. Where the writings were of such antiquity that living witnesses could not be procured, but were not old enough to prove themselves.[n] 2. Where

a-Cro. Eliz. 829; 1 Hale Pl. Cr. 585; 2 Id. 120. b-1 Phill. Ev. 106. c-2 Dowl. & R. 86; 1 B. & C. 37; Paley Conv. (Dowl. Ed.) 28. d-2 C & K. 223; 5 C. & P. 162; 7 Id. 267; 8 Id. 605; 1 M. & M. 403; 1 Hayw. 112. e-1 Campb 469. f-1 Greenl. Ev. § 91; 1 Starkie Ev. 189-191. g-1 Mood. & R. 189. h-Merlin Répert. i-Strickland Ev. 408. j-Best Ev. § 346. k-14 Johns. 1; 1 Day, 8; 6 Id. 270. l-1 Phill. Ev. 422; Stark. Ev.; 2 Johns. Cas. 211; 5 Johns. 144; 19 Id. 134; 1 Dall. 14, 2 Me. 33; 6 S. & R. 568; 1 N. & M'C 554; 2 Id. 400; Anthon N. P. 77; 4 Gray, 167; 5 Cush 295; 7 Com. Dig. 447; Bac. Abr. Ev. (M.); Dane Abr. Index. m-1 Greenl. Ev. § 578. n-7 East 282. 14 Id. 328; Ry. & M. 143; 8 Wend. 426.

other writings admitted to be genuine were already in the case.[k]

The rule on the subject of admitting documents irrelevant to the matter in issue for the purpose of comparison of handwriting is not settled uniformly.

HEARSAY is the evidence, not of what the witness knows himself, but of what he has heard from others. That kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rests also, in part, on the veracity and competency of some other person.[l]

Such mere recitals or assertions cannot be received in evidence, for many reasons, but principally for the following:[m]

1. That the party making such declarations is not under oath; and,

2. Because the party against whom it operates has no opportunity of cross-examination.[n]

The general rule excluding hearsay evidence does not apply to those declarations to which the party is privy, or to admissions which he himself has made.

The term hearsay evidence applies to written as well as oral matter; but the writing or words are not necessarily hearsay because those of a person not under oath. Thus: information on which one has acted;[o] conversation of a person suspected of insanity;[p] replies to inquiries;[p] general reputation;[q] expressions of feeling;[r] general repute in the family in questions of pedigree;[s] entries made by third persons in the discharge of official duties;[t] entries in a party's shop-book,[u] or other books kept in the regular course of business;[v] and indorsements of partial payments[w] are admissible as original evidence under the circumstances, and for particular purposes.

As a general rule, hearsay reports of a transaction, whether oral or written, are not admissible in evidence.[x] The rule applies to evidence given under oath in a cause between other litigating parties.[y]

Matters relating to public interest, as for example, a claim to a ferry or highway, may be proved by hearsay testimony;[z] but the matter in controversy must be of public interest;[a] the declarations must be those of persons supposed to be dead,[b] and must have been made before the controversy arose.[c] The rule extends to deeds, leases, and other private documents,[d] maps,[e] and verdicts.[f] Ancient documents purporting to be a part of the *res gestæ* are also admissible, although the parties to the suit are not bound.[g]

See DECLARATIONS, above.

IDENTITY of the things in question must be proved in larceny, replevin, and trover.[h] So, too, the identity of articles taken or injured must be proved in all indictments where taking property is the gist of the offence, and in actions of tort for damage to specific property. Many cases occur in which identity must be proved in regard to either persons or things, the question is sometimes one of great practical difficulty, as in case of the death of strangers, reappearance after long absence, and the like.[i]

IMPEACHMENT is proof that a witness who has been examined is unworthy of belief. Every witness is liable to be impeached as to his character for truth; and, if his general character is good, he is presumed at all times to be ready to support it.[j]

See WITNESSES, below.

INADMISSIBLE EVIDENCE. See PAROL EVIDENCE, below.

INCONCLUSIVE EVIDENCE. See PRESUMPTIONS, below.

IN CHIEF. Evidence in chief should be confined to such matters as the pleadings and the opening warrants; and a departure from this rule will be sometimes very inconvenient, if not fatal. Suppose, for example, two assaults have been committed, one in January and one in February, and the plaintiff prove his cause of action to have been the assault in January, he cannot abandon that, and afterwards prove another committed in February, unless the pleadings and openings extend to both.[k] The object of this is, to prevent the plaintiff from introducing in evidence a different case from the one which he had prepared the defendant to expect from the pleadings.

INDICIA. See IDENTITY, above.

INDIRECT EVIDENCE is that which does not prove the fact in question directly, but

[k]-1 Cr. & J. 47; 1 Mood. & R. 133; 5 Ad. & E. 514; 7 C. & P. 548, 595; 2 Me. 33. [l]-1 Phill. Ev. 185. [m]-Id. [n]-2 B. & Ad. 845; 9 Johns. 45. [o]-3 Hagg. Eccl. 574; 2 Ad. & E. 3; 7 Id. 331. [p]-1 Taunt. 364; 8 Bingh. 320; 9 Id. 359; 5 Mass. 444; 11 Wend. 110; 1 Conn. 387; 29 Ga. 718. [q]-2 Esp. 482; 3 Id. 236; 2 Stark. 116; 2 Campb. 512; 33 Ala. (N. S.) 425. [r]-8 Bingh. 376; 8 Watts, 355; 4 M'Cord, 38; 18 Ohio, 99; 7 Cush. 581; 1 Head, 373; see 45 Me. 392. [s]-13 Ves. Ch. 140–514; 3 Russ. & M. 147; 1 Cr. M. & R. 919; 2 C. & K. 701; 15 East. 29; 4 Rand. 607; 3 Dev. & B. 91; 18 Johns. 37; 2 Conn. 347; 6 Cal. 197; 4 N. H. 371; 17 Pet. 213; 1 How. 231; see 28 Vt. 416; see ante DECLARATIONS. [t]-3 B. & Ad. 890; 1 Bingh. (N. C.) 654; 3 Id. 408; 2 Young & C. 249; 4 Q. B. 132; 1 Cr. M. & R. 347; and see 8 Wheat. 326; 15 Mass. 380; 6 Cow. 162; 16 S. & R. 89; 4 Mart. (N. S.) 383; 6 Id. 351; 12 Vt. 178; 15 Conn. 206. [u]-8 Watts, 544; 9 S. & R. 285; 6 W. & S. 350; 4 Mass. 455; 13 Id. 427; 2 Pick. 65; 8 Met. (Mass.) 269; 1 Nott. & McC. 186; 2 M'Cord, 328; 4 Id. 76; 1 Halst. 95; 1 Iowa, 53; 8 Id. 163; 1 Greenl. Ev. §§ 119, 120. [v]-7 C. & P. 720. 10 Ad. & E. 598; 3 Campb. 305; 8 Wheat. 320; 15 Mass. 380; 20 Johns. 168; 2 Wend. 369, 513; 15 Conn. 206. [w]-2 Str. 827; 2 Campb. 321; 4 Pick. 110; 17 Johns. 182; 2 M'Cord, 418. [x]-1 Greenl. Ev. § 124; 9 Ind. 572; 16 N. Y. 381; 5 Iowa, 532; 14 La. An. 830; 6 Wis. 63. [y]-1 East. 373; 2 Id. 54; 3 T. R. 77; 7 Cranch. 296. [z]-1 Stark. 195; 6 M. & W. 234; 1 Maule & S. 679; 1 Cr. M. & R. 9–29; 19 Conn. 250. [a]-2 B. & Ad. 245; 4 Id. 273; 29 Barb. 593; 14 Md. 398; 6 Jones, 459. [b]-11 Price, 162; 1 Carr. & K. 58; 12 Vt. 178. [c]-13 Ves. Ch. 514; 3 Campb. 444; 4 Id. 417. [d]-5 Esp. 60; 10 B. & C. 17; 1 M. & S. 77; 4 Id. 486. [e]-2 Moore & P. 625; 19 Conn. 250. [f]-1 East. 355; Carth. 181; 9 Bingh. 465; 10 Ad. & E. 151; 7 C. & P. 181. [g]-5 T. R. 413, *n.*; 5 Price, 312; 4 Pick. 160; see 2 C. & P. 440; 3 Johns. Cas. 283; 1 Harr. & J. 174; 4 Denio, 201. [h]-4 Bl. Comm. 396. [i]-See Ryan Med. Jur. 301; 1 Beck. Med. Jur. 509; 1 Hall Am. L. Jour. 70; 6 C. & P. 677; 1 Cr. & M. 730; 1 Hagg. Cons. 189; Shelford Marr. & Div. 226; Best Pres. App. Case 4; Wills Circ. Ev. 143, *et seq.* [j]-3 Bouv. Inst. n. 3224, *et seq.* [k]-1 Campb. 473; see also 6 C. & P. 73; 1 Mood & R. 282.

one from which such fact may be presumed. It is inferential evidence as to the truth of a disputed fact, not by testimony of any witness to the fact, but by collateral circumstances ascertained by competent means.[l]

INFERENCES are conclusions drawn from premises established by proof. It is the province of the judge who is to decide upon facts to draw the inference. When the facts are submitted to the court, the judge or judges draw the inference; when they are to be ascertained by a jury, it is their duty to do so. Witnesses are not, as a general rule, permitted to draw an inference and then testify such inference to the court or jury; it is their duty to state the facts simply as they occurred.

Inferences differ from presumptions.

INSCRIPTIONS upon tombstones, rings, and the like, are held to be evidence of pedigree.[m]

See DECLARATIONS; HEARSAY, above.

INTERPRETERS may be sworn to testify (and make translations) whenever necessary.[n] They should be sworn before they translate the testimony of witnesses.[o] A person employed between an attorney and client to act as an interpreter, is considered merely as an organ between them, and cannot be compelled to testify as to what he has acquired in those confidential communications.[p]

INTERROGATORIES. See title EQUITY, ante.

IRRELEVANT EVIDENCE is that which does not support the issue, and which may therefore be excluded.

JUDGES are not allowed to testify to what was made known to them, or took place before them in the hearing of causes.[q] They are not competent witnesses in a cause being tried before them, for, among other reasons, they can hardly be deemed capable of impartially deciding upon the admissibility of their own testimony, or weighing it against that of another.[r]

JUDGES' NOTES—which usually contain a statement of the testimony of witnesses, of documents offered or admitted in evidence, or offers of evidence and whether it was received or rejected, and like matters—are not evidence of what transpired at a former trial, nor can they be read to prove what a deceased witness swore to on such former trial; for they are no part of the record, and he is not officially bound to make them. But in chancery, when a new trial is ordered of an issue sent out of chancery to a court of law, and also, perhaps, where witnesses in a former trial are of an advanced age, an order may be made that, in event of death or inability to attend, their testimony be read from judges' notes.[s]

JUDICIAL NOTICE OR RECOGNITION. There are divers things of which courts take judicial notice, without the introduction of proof by the parties; such as the territorial extent of their jurisdiction, local divisions of their own countries, seats of justice, courts of general jurisdiction, their judges, their seals, their rules and maxims in the administration of justice, their course of proceeding, public acts, laws, etc. If the judge or justice needs information on subjects, he will seek it from such sources as he deems authentic.[t]

All courts, tribunals, and officers, shall take notice of the official signature of any officer of the State, of the United States, or of any State or Territory in the United States.[u]

The several courts of the Commonwealth take judicial notice of all acts and resolutions of the General Assembly.[v]

Although a private act may not be read in evidence, yet if it manifestly appear that it was relied on in the court below, the court of appeals will take judicial notice of it.[w]

LAWS. The existence and the tenor or effect of all foreign laws, beyond the limits of the United States, may be proved by the parol evidence of persons learned in those laws. But if it appear that the law in question is contained in a written statute, the court may reject such parol evidence, unless it be accompanied by a copy of the statute.

The printed laws of the United States, or of any State or Territory, which have been or shall be received in the secretary's (or other authorized) office of this State, and which has been printed under the authority of the United States, of such State or Territory, or a copy thereof, when duly certified by the secretary of such State, may be admitted and received as evidence of such laws.

Any printed volume or pamphlet of laws of any State or Territory, showing on its face that it was published by authority of such State or Territory, is *prima facie* evidence of the laws contained therein.

Every act of the legislature of any one of the States or Territories of the United States, certified by the secretary, and having the seal of the State or Territory affixed thereto, is deemed authentic, and receives full faith and credit when offered in evidence in any court.

The unwritten or common law of any other State, Territory (or foreign government), may be proved as facts by parol evidence.

The books of reports of cases adjudged in their courts will also be admitted in evidence of such law.

Elementary works on law are not admissible in evidence as to what the law is.[x]

Courts are not to take notice, *ex-officio*, of the laws of other States. When a question depends on the laws of a sister State, such laws are a part of the evidence in the case, and, like any other fact, must be proved by him who holds the affirmative.[y]

l-1 Starkie Ev. 15; Wills Circ. Ev. 24; Best Ev. 21, 22, § 27, note; 1 Greenl. Ev. § 13. m-Buller N. P. 233; 1 Cowp. 591; 10 East. 120; 13 Ves. Ch. 145. n-Wright, 157; 4 Mass. 81; 5 Id. 219; 2 Caines, 155. o-Id. p-1 Pet. C. C. 356; 4 Munf. 273; 3 Wend. 337. q-1 Greenl. Ev. § 149. r-2 Martin (N. S.) 312; 2 Cal. 358; see Com. Dig. *Courts* (B 4); Bac. Abr. *Courts* (B.); 1 Kent Comm. 291; Story Const. s-1 Greenl Ev. § 166. t-See 1 Greenl. Ev. *c. u.* u-See STATUTES. v-Id. w-17 B. Mon 47. x-15 C. & P. 73; 2 C. & K. 270. y-13 Ohio, 209.

COPIES OF ANY ACT, LAW, OR RESOLUTION contained in the printed statute-books of the States and Territories of the United States, purporting to be printed by authority, and which are now, or may be hereafter, deposited in the office of the secretary of any State, and required by law to be kept there, certified under the hand and seal of office of such secretary, may be admitted as evidence.

PRINTED COPIES OF THE ORDINANCES, RESOLUTIONS, RULES, ORDERS, and BY-LAWS of any city or incorporated town, published by authority of such city or incorporated town, and manuscript copies of the same, certified under the hand of the proper officer, and having the corporate seal of such city or town affixed thereto, may be received as evidence.

LEADING CASES. See title AUTHORITIES, ante.

LEADING QUESTIONS, or questions which put into the witness's mouth the words to be echoed back, or suggest the answers which the party wishes to get from him,[z] cannot, in general, be put to a witness in his examination in chief.[a] But in an examination in chief, questions may be put to lead the mind of the witness to the subject of inquiry, and they are allowed when it appears the witness wishes to conceal the truth, or to favor the opposite party, or where, from the nature of the case, the mind of the witness cannot be directed to the subject of inquiry without a particular specification of such subject.[x]

In cross-examination, the examiner has generally the right to put leading questions.[b]

See WITNESSES, below.

LOST PAPERS. When agreements, contracts, deeds, wills, and the like have been lost, and it is desired to prove their contents, the party must prove that he has made diligent search, and in good faith exhausted all sources of information accessible to him. For this purpose his own affidavit is sufficient.[c] On being satisfied of this, the court will allow secondary evidence to be given of their contents.

See title AFFIDAVITS, ante.

MANIFEST See CONCLUSIVE EVIDENCE, above.

MEDICAL EVIDENCE is that given by physicans and surgeons in their professional capacity. The evidence of a medical witness is strictly that of an expert.[d] A professional witness should not be permitted to make up an opinion to be given in evidence from what other witnesses say of the facts in the case, because he would thus take the place of the jury as to the credibility of the witness, and also determine what part of the testimony of other witnesses applies to the case, a duty that belongs to the court. "If the symptoms and indications testified to by other witnesses are proved, and if the jury are satisfied of the truth of them, the question is, whether in his (the witness's) opinion, the party was insane, and what is the nature and character of that insanity, and what did they indicate, and what would he (the witness) expect would be the condition of such a person in any supposed circumstance."[e] Under this rule the medical witness passes upon the condition of the person whose condition is at issue. To do it correctly he must hear all the evidence that the jury hears; he must judge as to the relevance of the evidence of others; he must make an application of the facts that legally bear upon the case to it, and reject all others: in short, he is judge and jury in the case.

It is not the province of the expert to draw inferences of fact from the evidence, but simply to disclose his opinion on a known or hypothetical state of facts. For this purpose the counsel on each side put to the physicians such states of fact as they deem warranted by the evidence, and take their opinions thereon. If any of these states of fact are considered proved, then the opinions are admissible to be weighed by the jury, otherwise their opinions are not applicable to the case.[f] The attention of the witness being called to a definite state of facts, constituting a hypothetical case, his opinion is then unembarrassed by any collateral questions or considerations, and the jury, under the instructions of the court, determines how far the facts sustain the hypothetical case, and, consequently, how far the opinion of the witness applies to the case under investigation.[g]

A medical witness is not a privileged witness (unless so made by statute), for where the ends of justice absolutely require a disclosure, a medical witness is not only bound, but may be compelled, to give evidence on all matters that will enlighten the case. If a medical man was to voluntarily reveal these secrets, to be sure he would be guilty of a breach of honor and of great indiscretion; but to give that information which, by the law of the land, he is bound to do, will never be imputed to him any indiscretion whatever.

Medical books are not received in evidence. They are subject to the same rule that applies to scientific and other professional books. Even the elementary works on law are not admissible in evidence as to what the law is.[h] Facts or opinions on the subject of insanity, as on any other subject, cannot be laid down before the jury except by the testimony under oath of persons skilled in such matters. Whether stated in the language of the court or of the counsel in a former case, or cited from books of legal or medical writers, they are still statements of facts, and must be proved on oath, etc.[i]

z-7 S. & R. 171; 4 Wend. 247. a-3 Binn. 130; 6 Id. 483; 1 Phill. Ev. 221; 1 Stark. Ev. 123. x-1 Camph. 43; 1 Stark. 100 b-1 Stark. Ev. 132; 3 Chitty Pr. 892; Rosc. Civ. Ev. 94; 3 Bouv. Inst. n. 3203, 3204. c-1 Atk. Ch. 446; 1 Greenl. Ev. § 340. d-Elwell Malp. & Med. Ev. 275; 10 How. Pr. 289; 2 Conn. 514; 1 Chand. 178; 2 Ohio, 452; 27 N. H. 157; 17 Wend. 136; 4 Denio, 311; 7 Cush. 219; 1 Phill. Ev. 780; Smith L. Cas. e-7 Met. Mass. 505. f-1 Curtis C. C. U. S. *vs.* McGlue; 10 Clark & F. Ho. Lds. 210. g-See Elwell Malp. & Med. Ev. 311. h-5 C. & P. 73; 2 O. & K. 270. i-6 C. & P. 586; Elwell Malp. & Med. Ev. 332.

NATURAL PRESUMPTIONS. See PRESUMPTIVE EVIDENCE, below.

NEWLY-DISCOVERED EVIDENCE will afford ground for a new trial; but courts only interfere with verdicts for this cause under very special circumstances. To entitle the party to relief, certain well-defined conditions are indispensable. It is a rule subject to rare exceptions, and applied perhaps with more stringency in criminal than in civil cases, that the sole object of the new evidence must be to impeach or contradict witnesses sworn on a former trial.[l] It must not merely multiply testimony to any one or more facts already investigated, but must bring to light some new and independent truth of a different character;[j] it must be a point before in issue, and be so material as to impress the court with the belief that if a new trial were granted, the result would probably be different;[k] it must not have been known to the party until after the trial;[l] and the least fault in not procuring and using it at the trial must not be imputable to him.[m]

OATHS. An oath is an outward pledge given by the person taking it, that his attestation, or promise, is made under an immediate sense of his responsibility to God.[n] Before testifying, the witness is sworn to testify to the truth, the whole truth, and nothing but the truth. The mode of administering the oath must be such as may be most consistent with, and binding on the conscience of the witness. It may be varied to conform to the religious belief of the individual, so as to make it binding on his conscience.[o] The form of administering the oath in ordinary cases is substantially that of the old Scotch covenanters, omitting the ceremony of having the Bible open before the witness. The Gospels are not now generally used.[p] The witness stands with head uncovered, and right hand uplifted.

A Jew is sworn on the Pentateuch, or Old Testament, with his head covered;[q] a Mahometan on the Koran;[r] a Gentoo, by touching with his hand the foot of a Brahmin, or priest of his religion; a Brahmin, by touching the hand of another such priest;[s] a Chinaman, by breaking a china saucer;[t] Christians are sworn with their hats off, Jews with their hats on.[u]

The witness may be asked before he is sworn, whether he considers the oath he is about to take as obligatory upon his conscience.[v]

Though a witness be an atheist, or does not express what manner of oath is most binding upon his conscience, yet if the court administer an oath to him he is bound by that oath; for all oaths and affirmations alike subject the party who falsifies them to the pains and penalties of perjury.

In general, the word "oath" includes "affirmation;" and the word "swear" includes "affirm."

ONUS PROBANDI. See PROOF, etc., below.

OPINIONS are inferences or conclusions drawn by a witness as distinguished from facts known to him as facts.

It is the province of the jury to draw inferences and conclusions; and if witnesses were in general allowed to testify what they judge as well as what they know, the verdict would sometimes prove, not the decision of the jury, but that of the witnesses. Hence the rule that, in general, the witness cannot be asked his opinion upon a particular question.[l]

Some confusion in the application of this rule arises from the delicacy of the line which divides that which is to be regarded as matter of observation from that which is matter of judgment founded upon observation. Thus, an unprofessional witness may testify to the fact that a person whom he saw was intoxicated, whether he is able to state all the constituent facts which amount to drunkenness or not.[j] But, on the other hand, insanity or mental incapacity cannot, in general, be proved by the mere assertion of an unprofessional witness.[k] So, handwriting may be proved by being recognized by a witness who has seen other writings of the party in the usual course of business, or who has seen him write.[l] But, on the other hand, the authorship of an anonymous article in a newspaper cannot be proved by one professing to have a knowledge of the author's style.[m]

From necessity, an exception to this rule of excluding opinions is made in questions involving matter of science, art, or trade, where skill and knowledge possessed by a witness, peculiar to the subject, give a value to his opinion above that of any inference which the jury could draw from facts which he might state.[n] Such a witness is termed an expert; and he may give his opinion in evidence.

l-7 Barb. 271; 8 Gratt. 637. j-3 Woodb. & M. 348; 1 Sumn. C. C. 451; 6 Pick. 14; 10 Id. 16; 2 Caines, 129; 8 Johns. 84; 15 Id. 210; 4 Wend. 579; 7 W. & S. 415; 5 Ohio, 375; 11 Id. 147; 4 Halst. 228; 1 Green, 177; 3 Vt. 72; A. K. Marsh, 151; 3 Id. 104. k-Dudl. 85; 3 Humphr. 322. l-3 Story C. C. 1; 2 Sumn. C. C. 19; 2 N. H. 166. m-6 Johns. Ch. 482; 1 Blackf. 367; 5 Halst. 250; 7 Id. 225; 1 Mo. 49; 11 Conn. 15; 10 Me. 218; 20 Id. 246; 14 Vt. 415; 7 Met. Mass. 748; 3 Graham & W. New Tr. 1015–1112. n-Tyler Oaths, 15. It is "a solemn invocation of the vengeance of the Deity upon the witness if he do not declare the whole truth, so far as he knows it." 1 Starkie Ev. 122. "A religious asseveration by which a person renounces the mercy, and imprecates the vengeance of heaven if he does not speak the truth." 2 Leach Cr. Cas. 482. "A religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or, in other words, to punish his perjury, if he shall be guilty of it." 10 Toullier, pp. 343–348. Puffendorf, *b* 4, *c* 2, § 4. o-6 Mass. 262; 16 Pick. 154; 2 Gall. C. C. 246; 3 Park. Cr. Cas. 590; 2 Hawks. (N. Ca.) 458; 7 Ill. 540; Ry. & M. 77. p-1 Leach Cr. Cas. 412, 498; Comp. 390. All oaths must be administered by laying the right hand upon the Holy Bible, or by the uplifted right hand. q-Strange, 821, 1113. r-1 Leach Cr. Cas. 54. s-Wils. 349. t-1 Carr. & M. 248. u-B. N. P. 292; 1 Leach, 412; Cowp. 382; Peake, 155. v-2 B. & B. 284; 1 Greenl. § 371. l-29 N. H. 94; 16 Ill. 513; 18 Ga. 194, 573; 2 Wend. 560; 24 Id. 668; 2 N. Y. 514; 9 Id. 371; 17 Id. 340. j-14 N. Y. 562; 26 Ala. (N. S.) 26. k-17 N. Y. 340; 7 Barb. 314; 13 Texas, 568; and see 25 Ala. (N. S.) 21. l-Peake N. P. 21; 1 Esp. 15, 351; 2 Johns. Cas. 211; 19 Johns. 134. m-How. App. Cas. 187, 202. n-4 Hill, 129; 1 Denio, 281; 3 Ill. 297; 2 N. H. 480; 2 Story C. C. 421.

The unwritten or common law of foreign countries may be proved by the opinion of witnesses possessing professional knowledge.[o] So the degree of hazard of property insured against fire;[p] handwriting;[q] mechanical operations, the proper way of conducting a particular manufacture, and the effect of a certain method;[r] negligence of a navigator, and its effect in producing a collision;[s] sanity;[t] impotency;[u] value of chattels;[v] value of land;[w] value of services;[x] benefit to real property by laying out a street adjacent thereto;[y] survey marks identified as being those made by United States surveyors;[z] and sea-worthiness.[a]

Such opinions are taken with the qualifications necessary to make, as far as possible, the judgment of the jury, and not that of the witness, the final means of determining the issue. Thus opinions of experts are not admissible upon the question of damages;[b] and experts are always confined to opinions within the scope of their professions, and are not allowed to give opinions on things of which the jury can as well judge.[c] A distinction is always observed between a feeble impression and a mere opinion or belief.[d]

ORAL TESTIMONY is spoken testimony—used in contradistinction to written. It is delivered by a witness verbally by word of mouth. See PAROL EVIDENCE, below.

ORIGINALS are single or duplicate. Single when there is but one, duplicate when there are two. In the case of printed documents all the impressions are originals, or in the nature of duplicate originals, and any copy will be primary evidence.[e]

When an original document is not evidence at common law and a copy of such original is made evidence by an act of the legislature, the original is not, therefore, made admissible evidence by implication.[f]

See COPIES, above.

PAROL EVIDENCE is that verbally delivered by the witness, by the living voice, by word of mouth. Parol evidence is inadmissible to contradict a written instrument. As to the cases in which such evidence will not be received or rejected.[g]

PERPETUATING testimony is a practice whose origin may be traced to the canon law.[h] Statutes exist in most States for this purpose. Equity also furnishes means, to a limited extent, for this same purpose.

POSITIVE EVIDENCE is distinguished from circumstantial evidence. It is that which, if believed, establishes the truth or falsehood of the fact in issue, and does not arise from any presumption.

PRESUMPTIONS. See PRESUMPTIVE EVIDENCE, below.

PRESUMPTIVE EVIDENCE is any evidence which is not direct and positive.[i] That which shows the existence of one fact by proof of the existence of another, or others, from which the first may be inferred; because the fact or facts shown have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be proved.

CONCLUSIVE PRESUMPTIONS are inferences which the law makes so peremptorily that it will not allow them to be overturned by any proof, however strong.[j] They are called, also, *absolute* and *irrebuttable* presumptions.

INCONCLUSIVE OR DISPUTABLE PRESUMPTIONS are inferences of law which hold good until they are invalidated by proof of a stronger presumption.[k] They are called, also, *inconclusive* presumptions. Presumptive evidence consists of presumptions of law and presumptions of fact.

PRESUMPTIONS OF FACT are not the subject of fixed rules, but are merely natural presumptions, such as appear, from common experience, to arise from the particular circumstances of any case. Some of these are "founded upon the knowledge of the human character, and of the motives, passions, and feelings by which the mind is usually influenced."[l] They are the conclusions drawn by the mind from the natural connection of the circumstances disclosed in each case, or, in other words, from circumstantial evidence.

Circumstantial evidence is sometimes used as synonymous with presumptive evidence; but presumptive evidence is not necessarily, and in all cases, what is usually understood by circumstantial evidence. The latter is not the evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency from the laws of nature, the usual connection of things, the ordinary transaction of business, etc., to lead the mind to a conclusion that the fact exists which is sought to be established.[m] Presumptive evidence may sometimes be the result, to some extent, of an arbitrary rule—as in the case of the presumption of death, after an absence of seven years without being heard from—derived by analogy

[o]-Story Confl. L. 530; 1 Cranch. 12, 38; 2 Id. 236; 6 Pet. 763; Pet. C. C. 225; 2 Wash. C. C. 1, 175; 2 Wend. 411; 5 Id. 375; 3 Pick. 293; 4 Conn. 517; 6 Id. 486; 4 Bibb. 73; 2 Marsh. 609; 5 Harr. & J. 186; 1 Johns. 385; 3 Id. 105; 14 Mass. 455; 6 Conn. 508; 1 Vt. 336; 15 S. & R. 87; 1 La. 153; 3 Id. 53; 6 Cranch. 274; see also 14 S. & R. 137; 3 N. H. 349; 3 Yeates, 527; 1 Wheeler Cr. Cas. 205; 6 Rand. 704; 2 Russ. Cr. 623; 4 Campb. 155; Russ. & R. 456; 2 Esp. 58; 3 Phill. 449; 1 Eccl. 291. [p]-17 Barb. 111; 2 Zabr. 843. [q]-35 Me. 78; 2 R. I. 319; 25 N. H. 87; 1 Jones, 94, 150; 13 B. Mon. 258. [r]-4 Barb. 614; 19 Id. 338; 3 N. Y. 322. [s]-24 Ala. (N. S.) 21. [t]-1 Add. 244; 12 N. Y. 358; 17 Id. 340. [u]-1 Phill. Eccl. 14. [v]-22 Ala. (N. S.) 370; 11 Cush. 257; 22 Barb. 652, 656; 23 Wend. 354. [w]-11 Cush. 201; 4 Gray, 607; 9 N. Y. 183; compare 4 Ohio St. 583. [x]-15 Barb. 550; 20 Id. 387. [y]-2 Gray, 107. [z]-24 Ala. (N. S.) 390. [a]-Peake's Cas. 25; 10 Bingh. 57, and see 9 Cush. 226. [b]-4 Denio, 311; 3 Hill, 609; 21 Barb. 331; 23 Wend. 425; 2 N. Y. 514. 1 E. D. Smith, 536. [c]-5 Rog. Rec. 26; 4 Wend. 320; 14 Me. 398; 3 Dana, 382; 1 Penn. 161; 2 Halst. 244; 7 Vt. 161; 6 Rand. 704; 4 Yeates, 262; 9 Conn. 102; 3 N. H. 349; 5 Harr. & J. 438; 1 Denio, 281. [d]-3 Ohio St. 406; 19 Wend. 477. [e]-2 Stark. 130; but see 14 S. & R. 200; 2 Bouv. Inst. n. 2001. [f]-2 Campb. 121, n. [g]-See Starkie Ev. Pt. 4, Pl. 995-1055; 1 Phill. Ev. 466, Ch. 10, § 1; Sugd. Vend. 97. [h]-Bockner, n. 4; 8 Touillier, n. 22. [i]-1 Stark. Ev. 3d Ed. 558. [j]-Best, Presumption, 20. [k]-Best, Presumpt. 29; 2 Harr. & McH. 77; 4 Johns. Ch. 287. [l]-Stark. Ev. 27. [m]-See 1 Stark. Ev. 478.

from certain statutes. The jurists and the jury draw conclusions from circumstantial evidence, and find one fact from the existence of other facts shown to them, some of the presumptions being so clear and certain that they have become fixed as rules of law, and others having greater or less weight, according to the circumstances of the case, leaving the matter of fact inquired about in doubt until the proper tribunal to determine the question draws the conclusion.

In giving effect to presumptions of fact, the presumption stands until proof is given of the contrary.[n] This contrary proof may be a conflicting presumption. In such cases the following rules apply: 1. Special presumptions take the place of general ones;[o] 2. Presumptions derived from the ordinary course of nature are stronger than casual presumptions;[p] 3. Presumptions are favored which tend to give validity to acts;[q] 4. The presumption of innocence is favored in law.[r]

Conclusive presumptions are estoppels;[s] solemn admissions of parties; and unsolemn admissions which have been acted on.[t] So, also, that an officer's return is correct as to facts stated therein as between the parties;[u] that an infant under the age of seven years is incapable of committing a felony;[v] that a boy under fourteen is incapable of committing a rape;[w] that the issue of a wife with whom her husband cohabits is legitimate, though her infidelity be proved;[x] that all persons subject to any law which has been duly promulgated, or which derives its validity from general or immemorial custom, are acquainted with its provisions.[y]

Rebuttable presumptions are presumptions that a man is innocent of the commission of a crime;[z] that the possessor of property is its owner;[a] that possession of fruits of crime is guilty possession;[b] that things usually done in the course of trade have been done;[c] that solemn instruments are duly executed;[d] that a person, relation, or state of things once shown to exist continues to exist, as life,[e] a partnership,[f] insanity;[g] that official acts have been properly performed.[h]

PRESUMPTIONS OF LAW are rules which, in certain cases, either forbid or dispense with any ulterior inquiry,[i] inferences or positions established, for the most part, by the common, but occasionally by the statute law, which are obligatory alike on judges and juries.[j] They are adopted from motives of public policy, and are those which arise in certain cases by force of the rules of law, directing an inference to be drawn from proof of the existence of a particular fact or facts. They are conclusive or inconclusive.

Conclusive presumptions are those which admit of no averment or proof to the contrary. Thus, the records of a court, except in some proceedings to amend them, are conclusive evidence of the matter there recorded, being presumed to be rightly made up.

Inconclusive or disputable presumptions of law are those where a fact is presumed to exist, either from the general experience of mankind, or from policy, or from proof of the existence of certain other facts, until something is offered to show the contrary. Thus, the law presumes a man to be sane until the contrary appears, and to be innocent of the commission of a crime until he is proved to be guilty. So, the existence of a person, or of a particular state of things, being shown, the law presumes the person or state of things to continue until something is offered to conflict with that presumption.[k]

PRIMA FACIE EVIDENCE is that which appears to be sufficient proof respecting the matter in question, until something appears to controvert it; but which may be contradicted or controlled. *Prima facie* evidence of fact is, in law, sufficient to establish the fact unless rebutted.[l] For example, when buildings are fired by sparks emitted from a locomotive engine passing along the road, it is *prima facie* evidence of negligence on the part of those who have the charge of it.[m]

The holder of a bill of exchange, or note indorsed in blank, is *prima facie* the owner.

PRIMARY EVIDENCE is the best evidence, or that proof which most certainly exhibits the true state of facts to which it relates.

The non-production of the best evidence, when it can be had, creates a presumption that,

m-1 Cr. M. & R. 895; 2 Harr. & McH. 77; 2 Dall. 22; 4 Johns Ch 287; Fee, "Burden of Proof." o-See 8 B & C 737; 9 Id. 643; 5 Taunt. 326; 1 Marsh. 68. p-1 Carr. & K. 134; 4 B & C. 71; Co. Litt. 373, a. q-Leach Cr. Cas. 412; 5 Esp. 230; 1 Man. & R. 668; 3 Campb. 432; 2 B. & C 814; 7 Id 573; 2 Wheat. 70; 1 South. 148; 3 Monr. 54; 7 Id. 344; 2 Gill & J. 114; 10 Pick. 359; 1 Rawle, 386. r-4 C & P. 116; Russ. & R. Cr. Cas. 61; 10 M. & W. 115. s-See PRACTICE; Estoppels. t-1 Campb. 139; 1 Taunt. 398; 2 T. R. 275; 15 Mass. 82; see 1 Greenl Ev. § 205; see, also, ADMISSIONS. u-15 Mass 82. v-4 Bl. Comm. 23. w-7 C. & P. 582; 8 Id. 736; 9 Id 118. x-3 Carr & P. 215; 1 Sim & S. 153; 5 Clark & F. Ho. L 163; 2 Allen, 453; 3 Id 151. y-4 Bl Comm 27; 1 Co. 177; 2 Id. 3 b.; 6 Id 54 a. z-2 Lew. Cr. Cas 227; see 3 Gray, 465; 19 Bost. L R 615; 3 East 192, 10 Id. 211; 4 B. & C. 247; 5 Id 758; 2 B & Ald 385. a-1 Str. 505; 9 Cush. 150; 21 Barb 333; 35 Me. 139, 150. b-2 C. & P. 359; 7 Id 551; Russ & R. 308; 1 Den. C. R. Cas 595; 3 Dev. & B. 122; 7 Vt 122; 6 Conn. 307; 19 Me 398. c-1 Stark 225; 1 Mann & G. 46; 8 C. B. 827; 7 Q. B. 846; 7 Wend. 198; 9 Id. 323; 9 S. & R. 385; 9 N. H. 519; 10 Mass. 205; 19 Pick. 112; 7 Gill, 34; 45 Me. 516, 550; 15 Conn. 206. d-1 Rob. Eccl. 10; 9 C. & P. 570; 15 Me. 470; 1 Met. (Mass.) 349; 15 Conn. 206. e-2 Rolle, 461; 2 East. 313; 1 Pet. 452; 3 McLean C. C. 390; see 2 Campb. 113; 14 Sim. Ch. 28, 277; 2 Phil. Ch 199; 2 M. & W. 894; 19 Pick. 112; 1 Met. (Mass.) 104; 1 Ga. 538; 11 N. H. 191; 4 Whart 150, 173; 23 Penn. St. 114; 36 Me. 176; 13 Ired. 333; 7 Texas, 178; 1 Penning 167; see DEATH. f-1 Stark. 405. g-3 Brown Ch. 443; 3 Met. (Mass.) 164; 4 Id. 545; 39 N. H. 163; 4 Wash. C. C. 262; 5 Johns. 144; 1 Pet. C. C. 163; 2 Va. Cas. 132; 4 M'Cord, 189. h-1 J. J. Marsh, 447; 14 Johns. 182; 19 Id. 345; 3 N. H. 310; 3 Gill & J. 359; 12 Wheat. 70; 7 Conn. 350. i-1 Greenl. Ev. § 14. j-Best, Presumpt. 17. k-See Best, Presumpt. Ch. ii, and MEDICAL LAW; Death. l-6 Pet. 622, 632; 14 Id 334; see generally; 7 J. J. Marsh, 425; 3 N. H. 484; 7 Ala. 267; 5 Rand. 701; 1 Pick. 332; 1 South. 77; 1 Yeates, 347; 2 Nott. & M'C. 320; 1 Mo 334; 11 Conn. 95; 2 Root, 286; 16 Johns. 66, 136; 1 Bail. 174; 2 A. K. Marsh, 244. m-3 C. B. 229.

if produced, it might operate against the party who declines to produce it.[l]

The rule excludes only that evidence which itself indicates the existence of more original source of information.

The law requires this, and rejects secondary or inferior evidence when it is attempted to be substituted for evidence of a higher or superior nature; for example, when a written contract has been entered into, and the object is to prove what it was, it is requisite to produce the original writing if it is to be attained; and, in that case, no copy or other inferior evidence will be received. This is a rule of policy grounded on a reasonable suspicion that the substitution of inferior for better evidence arises from sinister motives; and an apprehension that the best evidence, if produced, would alter the case to the prejudice of the party. This rule relates, not to the measure and quantity of evidence, but to its quality when compared with some other evidence of superior degree.

Oral evidence cannot be substituted for:

1. Any instrument which the law requires to be in writing; such as records, public documents, official examinations, deeds of conveyance of lands, wills, other than nuncupative, promises to pay the debt of another, and other writings mentioned in the statute of frauds.

2. Any contract which the parties have put in writing. Here the written instrument may be regarded, in some measure, as the ultimate fact to be proved. Thus, where in a suit for the price of labor performed, it appears that the work was commenced under an agreement in writing, the agreement must be produced.

3. Any writing, the existence of which is disputed, and which is material either to the issue between the parties, or to the credit of witnesses, and is not merely a memorandum of some other fact.

The fact that in such cases the writing is in the possession of the adverse party does not change its character; it is still the primary evidence of the contract; and its absence must be accounted for by notice to the other party to produce it, before secondary evidence of its contents can be received.[k]

Exceptions. The contents of any record of a judicial court, and of entries in any other public books or registers, may be proved by an examined copy. This exception extends to all records and entries of a public nature, in books required by law to be kept, and is admitted, because of the inconvenience to the public which the removal of such documents might occasion, especially if they were wanted in two places at the same time; and also, because of the public character of the facts which they contain, and the consequent facility of detection of any fraud or error in the copy.[l]

For the same reasons, and for the strong presumption arising from the undisturbed exercise of a public office, that the appointment is valid, it is not in general necessary to prove the written appointments of officers. All who have acted as such are presumed to have been duly appointed to the office, until the contrary appears.[m]

Where the evidence is the result of voluminous facts, or the inspection of many books and papers, the examination of which could not conveniently take place in court, a witness who has inspected the accounts of parties, may testify to the general balance without producing the accounts;[n] so, also, inscriptions on walls and fixed tables, mural monuments, gravestones, surveyors' marks on boundary trees, etc.[n]

The verbal admission of the contents of a writing, by the party himself, if against his interest, will supersede the necessity of proving it.[o]

As it refers to the *quality* rather than the *quantity* of evidence, it is evident that the fullest proof that every case admits of is not requisite; if, therefore, there are several eye-witnesses to a fact, it may be sufficiently proved by one only.

It is not always requisite when the matter to be proved has been reduced to writing, that the writing should be produced; as, if the narrative of a fact to be proved has been committed to writing, it may be proved by parol evidence. A receipt for the payment of money, for example, will not exclude parol evidence of payment.[o]

Where a document is not itself evidence at common law, and a copy of it is made evidence by statute, the copy alone is evidence, and not the original.[p]

PROOF OF ISSUE.

CONFINING THE EVIDENCE TO THE POINT IN ISSUE. It is a general rule, both in civil and criminal cases, that the *evidence must be confined to the point in issue.* Justice and convenience require the observance of this rule, particularly in criminal cases; for, when a prisoner is charged with an offence, it is of the utmost importance to him that the facts laid before the court or jury should consist exclusively of the transaction which forms the subject of the complaint, information, or indictment against him, and which alone he has come prepared to answer.[q] To this general rule there are several exceptions, and a variety of cases which do not fall within the rule. In general, evidence of collateral facts is not admissible;

[l] 4 Blackf. 241; 2 Id. 228. [j] 1 Greenl Ev. §§ 82, 85-88 [k] "I have always," said Lord Tenterden, "acted almost strictly on the rule, that what is in writing shall only be proved by the writing itself. My experience taught me the extreme danger of relying on the recollection of witnesses, however honest, as to the contents of written instruments; they may be so easily mistaken, that I think the purposes of justice require the strict enforcement of the rule." Id B & B. 287. [l] 1 Greenl Ev. § 91 [m] 1 Greenl Ev. § 92; Id § 83; 1 Show 307; Holt, 284; 1 Salk 281; Carth 220; East. 192; B N. P. 293 [n] 1 Greenl Ev §§ 93-96 [o] 4 Esp 213; and see 7 B & C 611; 1 Camp b 459 3 B. & Ald. 566. [p] 2 Camp b. 121. n. [q] 1 Russ. Cr. 694; 1 Phill. Ev. 166.

but where such a fact is material to the issue joined between the parties it may be given in evidence; as, for example, in order to prove that the acceptor of a bill knew the payee to be a fictitious person, or that the drawer has general authority from him to fill up bills with the name of a fictitious payee, evidence may be given to show that he had accepted similar bills before they could, from their date, have arrived from the place of date.[f]

When special damage sustained by the plaintiff is not stated in the plaintiff's complaint, it is not one of the points in issue, and, therefore, evidence of it cannot be received; yet a damage which is a necessary result from the defendant's breach of contract may be proved, notwithstanding it is not alleged in such complaint.[g]

In general, evidence of the character of either party is inadmissible; yet in some cases such evidence may be given.[h]

When evidence incidentally applies to another person or thing not included in the transaction in question, and with regard to whom or which it is inadmissible, yet if it bear upon the point in issue it will be received.[i]

PROVING THE AFFIRMATIVE OF THE ISSUE. *The affirmative of the issue must be proved.* The general rule with regard to the burden of proving the issue requires that the party who asserts the affirmative should prove it; but this rule ceases to operate the moment the presumption of the law is thrown in the other scale. When the issue is on the legitimacy of a child, therefore, it is incumbent on the party asserting the illegitimacy to prove it.[j]

See BURDEN OF PROOF, above.

PROVING THE SUBSTANCE OF THE ISSUE JOINED. *The substance of the issue joined* between the parties *must be proved.*[k]

—— IN CIVIL ACTIONS. 1. It is a fatal variance in a contract if it appear that a plaintiff who ought to have been joined has been omitted.[l] But it is no variance to omit a person who might have been joined as defendant; because the non-joinder may be remedied by amendment. 2. The consideration of the contract must be proved; but it is not necessary for the plaintiff to set out in his complaint, or prove on the trial, the several parts of a contract consisting of distinct and collateral provisions; it is sufficient to state so much of the contract as contains the entire consideration of the act, and the entire act be done in virtue of such consideration, including the time, manner, and other circumstances of its performance.[m]

It is a general rule of evidence, that if the substance of the issue, or the material facts contested by the pleadings, be established, it is sufficient.

—— IN CRIMINAL ACTIONS, it may be laid down that it is, in general, sufficient to prove what constitutes an offence. It is enough to prove so much of the charge as shows that the defendant has committed a substantive crime therein specified.[n]

PRIVILEGED COMMUNICATIONS. No person is liable, either civilly or criminally, in respect to anything published by him as a member of a legislative body, in the course of his legislative duty. Nor in respect to anything published by him in the course of a judicial proceeding. This privilege extends not only to parties, counsel, witnesses, jurors, and judges in a judicial proceeding, but also to proceedings in legislative bodies, and to all who, in the discharge of public duty or the honest pursuit of private right, are compelled to take part in the administration of justice or in legislation. A fair report of any judicial proceeding or inquiry is also privileged.[o]

PROBABILITY. There is always a strong probability that a man of good moral character, and who has heretofore been upright and truthful, will, when examined as a witness, under oath, tell the truth; and, on the contrary, that a man who has been guilty of perjury will not, under the same circumstances, tell the truth; the former is, therefore, entitled to credit, the latter is not.

PROVING THE ISSUE. See BURDEN OF PROOF; ISSUE, above.

PUBLIC DOCUMENTS. Public documents purporting to be edited or printed by authority of Congress, or the State legislature, or either house thereof, are evidence to the same extent that authenticated copies of the same would be.

QUESTIONS are either general or leading. General questions are those which require the witness to state what he knows, without any suggestion being made to him; as, "Who gave the blow?" A leading question is one which leads the mind of the witness to the answer, or suggests it to him; as, "Did A. give the blow?" or "Is not your name A.?"

REBUTTING. It is a general rule that anything may be given as rebutting evidence which is a direct reply to that produced on the other side,[p] and the proof of circumstances may be offered to rebut the most positive testimony.[q] But there are several rules which exclude all rebutting evidence. A party cannot impeach his own witness, though he may disprove, by other witnesses, matters to which he has testified; nor can he rebut or contradict what a witness has sworn to which was immaterial to the issue.[r] Parties and powers are estopped from contradicting a written instrument by parol proof; but this rule does not apply to strangers.[s] But the parties may prove that before breach the agreement was abandoned, or annulled, by a subsequent agreement not in writing.[t] And when the writing was made by

f-2 H. Bl. 88. g-1 Price, 19. h-See ante, CHARACTER. i-8 Bingh. 376; and see 1 Phill. Ev. 158; 2 East. Pl. Cr. 1035; 2 Leach Cr. Cas. 985; 4 Bos. & P. 92; Russ. & R. Cr. Cas. 376; 2 Yeates, 114; 9 Conn. 47. j-1 Selw. N. P. 709. k-1 Phill. Ev. 190. l-1 Saund. 291, *d*, *n*. m-6 East. 568; 4 B. & Ald. 387. n-2 Campb. 585; 1 Harr. & J. 427. o-Heard Libel & Sl §§ 90, 103, 110. p-2 M'Cord, 161. q-1 Pet. C. C. 235. r-16 Pick. 153; 2 Bail. 118. s-10 Johns. 229. t-4 N. H. 196.

another, as where the logbook stated a desertion, the party affected by it may prove that the entry was false or made by mistake.[u]

RECORDS—COPIES OF RECORDS, Etc.

Judicial and Public Records and Transcripts.

A foreign judgment is the judgment of a foreign tribunal. The various States of the United States are in this respect considered as foreign to each other.

Such judgments may be evidenced by exemplifications under the great seal of the State or country where the judgment is recorded, or under the seal of the court where the judgment remains[v] by *a copy* proved to be a true copy, or by the certificate of an officer authorized by law, which certificate must itself be properly authenticated.[w] The acts of foreign tribunals which are recognized by the law of nations, such as courts of admiralty and the like, are sufficiently authenticated by copies under seal of the tribunal,[x] in the absence of a statute to the contrary.

The records and judicial proceedings of the courts of any State shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief-justice, or presiding magistrate, as the case may be, that said attestation is in due form; and the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are or shall be taken.[y]

All records and exemplifications of office books, which are or may be kept in any public office of any State, not appertaining to a court, shall be proved or admitted in any court, or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with the certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept, or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the State, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of the court, must be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate is given by the governor, the secretary of state, the chancellor, or keeper of the great seal, it shall be under the great seal of the State in which said certificate is made; and the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken.[z]

The provisions of both acts extend to the records, etc., of the Territories.

If the court, whose record is certified, has no seal, this fact should appear, either in the certificate of the clerk or in that of the judge.[a]

Re-examination. See Witnesses, below.

REFRESHING MEMORY. A witness has a right to examine a memorandum or paper which he made in relation to certain facts when the same occurred, in order to refresh his memory; but the paper or memorandum itself is not evidence.[b]

REGISTERS. Although not originally intended for the purposes of evidence, public registers are in general admissible to prove the facts to which they relate. Of these are registers of births, deaths and marriages, etc.

REPUTATION. In general, reputation is evidence to prove a person's character in society; a pedigree.[c] Certain prescriptive or customary rights and obligations; and matters of public notoriety. But as such evidence is in its own nature very weak, it must be supported, when it relates to a right or privilege, by proof of acts of enjoyment of such right or privilege within the period of living memory.[d] Afterwards, evidence of reputation may be given. The fact must be of a public nature; it must be derived from persons likely to know the facts.[e] The facts must be general, and not particular; they must be free from suspicion.[f]

See Character, above; Witnesses, below.

RUMOR. In general, rumor cannot be received in evidence; but when the question is whether such rumor existed, and not its truth or falsehood, then evidence of it may be given.

SECONDARY EVIDENCE is that species of proof which is admissible when the primary evidence cannot be produced, and which becomes by that event the best evidence.[g] But before such evidence can be allowed it must be clearly made to appear that the superior evidence is not to be had. The person who has it must be applied to, whether he be a stranger or the opposite party; in case of a stranger, a subpœna and attachment, when proper, must be taken out and served; in the case of a party, notice to produce such primary

u-4 Mason C. C. 541. v-Gilb. Ev. 26; 1 Greenl. Ev. § 501. w-2 Cranch, 238; 5 Id. 335: 2 Caines, 155: 7 Johns. 514; 8 Mass. 273. x-5 Cranch, 335: 3 Conn. 171. y-Act Congr. May 26, 1790; U. S. Stat. Vol. 2, p. 298, Act Congr. March 27, 1804, § 1; Brightly's Dig. p. 265, § 10. z-Act Congr. March 27, 1804: Id. § 2; Brightly's Dig. p. 265, § 11. a-1 Greenl. Ev. § 506; 2 Martin, 497; 1 Hayw. 395. b-5 Wend. 301; 12 S. & R. 328; 6 Pick. 222; 1 A. K. Marsh, 188; 2 Conn. 213; 1 Const. 336, 373. c-14 Campb. 416; 4 T. R. 356; 1 Sim. & S. Ch. 153. d-1 M. & S. 679; 5 T. R. 32. e-2 Bingh. 86; 9 B. Mon. 88: 4 B. & Ald. 53. f-1 Stark. Ev. 54–65; 1 Phill. Ev. (4 Am. Ed.) 248, *et seq.* g-3 Bouv. Inst. n. 3055; 3 Yeates, 530; see Hearsay; Declaration; Copies.

evidence must be proved before the secondary evidence will be admitted.[h] After proof of due execution of the original, the contents should be proved by a counterpart, if there be one, for this is the next best evidence; and it seems that no evidence of a mere copy is admissible until proof has been given that a counterpart cannot be produced.[i] If there be no counterpart, a copy may be proved in evidence by any witness who knows that it is a copy, from having compared it with the original.[j] But there are no degrees of secondary evidence; and when a party has laid the foundation for such evidence he may prove the contents of a deed by parol, although it appear that an attested copy is in existence.[k] See DECLARATIONS; LOST PAPERS, above.

SUGGESTIONS. See LEADING QUESTIONS; QUESTIONS, above.

TELEGRAMS. Telegraphic communications must be proved in the same manner as other writings, such as letters and contracts are—that is, by the original. If that is lost, it may be proved by copy, or, in default of that being obtainable, by oral testimony.[l] Sometimes the person to whom it is addressed is in the office when it is received; in such case, if it is not reduced to writing, it can only be proved, like other matters resting in parol, by the recollection of the witnesses in whose hearing it was repeated.[m]

TESTS are those things by which to ascertain the truth respecting other things.[n] A paper may be submitted to a jury as a test or standard by which to determine the genuineness of other writings.[o] They are only admissible when no collateral issue can be raised concerning them.[p]

THREATS. When a confession is obtained from a person accused of crime, in consequence of a threat, evidence of such a confession cannot be received, because, being obtained by torture or fear, it comes in so questionable a shape that no credit ought to be given to it.[q] This is the general principle, but what amounts to a threat is not so easily defined. It is proper to observe, however, that the threat must be made by a person having authority over the prisoner, or by another in the presence of such authorized person and not dissented from by the latter.[r]

BY TRANSLATIONS. Whenever any written evidence in a cause is in a language other than the English, a written translation of it in the English language, made by a competent translator, and verified by his affidavit, may be read in evidence instead of the original, if such original be competent evidence.

TRUTH. See AFFIRMATION; OATH, above.

VIVA VOCE. It is said a witness delivers his evidence *viva voce* (with living voice) when he does so in open court; the term is opposed to deposition; it is sometimes opposed to ballot; as, the people vote by a written or printed ballot, but their representatives in legislature vote *viva voce*.

VOIRE DIRE is a preliminary examination of a witness to ascertain whether he is competent; as, where he has an interest in the cause of action, for he might be tempted to perjure himself if he testified when interested.

WEIGHT OF EVIDENCE. In civil causes the preponderance or weight of evidence determines the case in favor of the party possessing it. In criminal causes, proof beyond a reasonable doubt is required; a preponderance of evidence may fall far short of proof, and proof may be of a much lower degree than proof beyond such a doubt, which should be required to warrant the conviction of the accused.

When a verdict has been rendered against the weight of evidence the court may, on this ground, grant a new trial; but the court will exercise this power not merely with a cautious but a strict and sure judgment, before they send the case to a second jury. The general rule, under such circumstances, is, that the verdict, once found, shall stand; and setting aside is the exception. A new trial will be granted on this ground to either party; the evidence, however, is not to be weighed in golden scales.[s]

WITNESSES.

TESTIMONY is the statement made by a witness under oath or affirmation.

A WITNESS is one who testifies to what he knows. One who testifies, under oath, to something which he knows at first hand.[t] A disinterested witness is one who has no interest in the cause or matter in issue. An ear witness is one who attests to things which he heard himself. An eye witness is one who saw the act or fact to which he testifies.

The principal rules relating to witnesses are the same in civil and in criminal cases, and the same in all courts.[u]

The testimony of witnesses is taken in three modes:

1. By affidavits.
2. By deposition.
3. By oral examination.

COMPETENCY OF WITNESSES. All persons, of whatever nation, may be witnesses.[v] But in saying this we must, of course, except such as are excluded by the very definition of the term, and such as cannot qualify himself by taking an oath.[w] Therefore all who cannot understand the nature and obligation of an oath, or whose religious belief is so defective as to nullify and render it nugatory, or who are otherwise disqualified by statute, or otherwise are excluded.

h-7 S. & R. 116; 4 Binn. 295, *n.*; 6 Id. 228, 478; 7 East. 66; 8 Id. 278; 3 B. & Ald. 296. i-6 T. R. 236. j-B. N. P. 254; 1 Keb. 117; 6 Binn. 234; 2 Taunt. 52; 1 Campb. 469; 8 Mass. 273. k-6 C. & P. 208; 8 Id. 389. l-29 Vet. 127; 21 Ill. 591; 37 N. Y. 457; 37 Mass. 682. m-29 Vt. 127. n-7 Penn. St. 428; 6 Whart. 284. o-7 Penn. St. 428; 6 Whart. 284. p-See 14 N. Y. 439; 1 Greenl. Ev. § 581. q-1 Leach Cr. Cas. 263. r-8 C. & P. 733. s-3 Bingh. N. C. 109; Gilp. Dist. Ct. 356; 4 Yeates, 437; 3 Me. 276; 8 Pick. 122; 5 Wend. 595; 7 Id. 380; 2 Va. Cas. 235. t-1 Greenl. Ev. §§ 98, 328. u-3 Greenl. Ev. §§ 249, 402; 2 Ves. Ch. 41; 17 Mass. 303; 4 Monr. 20, 157; 2 Ohio, 16; 3 Id. 272. v-Bac. Abr. Ev. (A) Jac. L. Dist. Ev. w-5 Mas. C. C. 18.

Atheists. Such as are insensible to the obligation of an oath, from defect of religious sentiment or belief, are incompetent. Atheists, and persons disbelieving in any system of divine rewards and punishment, are of this class. It is reckoned sufficient qualification, in this particular, if one believe in a God, that he will reward and punish us according to our deserts. It is enough to believe that such punishment visits us in this world only.[u] It would seem to be sufficient to believe in such punishment as for perjury only, if, indeed, it be supposable that a man might believe thus much without extending his faith to any general system of rewards and punishments.[v] The oath may be administered in any form whatever, and with any ceremonies whatever, that will bind the conscience of the witness.[w]

Grand jurors, and persons present before a grand jury,[x] are not permitted to testify to the proceedings had before that body.[y]

Husband and wife are excluded from giving testimony for or against each other when either is a party to the suit or interested.

This rule is founded partly on their identity of interest, and partly, perhaps chiefly, on the policy of the law which aims to protect the confidence between man and wife that is essential to the ties of the marriage relation, and, through that, the good order of society. Whether or not the disability may be removed by consent of the other is a matter of dispute.[z] Some exceptions to this rule[a] are admitted out of necessity for the protection of husband and wife against each other, and for the sake of public justice.[b]

Idiots, lunatics, intoxicated persons, and generally those who labor under such privation or imbecility of mind that they cannot understand the nature and obligation of an oath. The competency of such is restored with the recovery or acquisition[c] of this power. And so a lunatic in a lucid interval may testify.[d] Persons deaf and dumb from their birth are presumed to come within this principle of exclusion until the contrary be shown.[e] A person in a state of intoxication cannot be admitted as a witness.[f]

Infants so young as to be unable to appreciate the nature and binding quality of an oath are incompetent. A child under the age of fourteen is presumed to be incapable until capacity be shown. But the law fixes no limit of age which will of itself exclude; a child five years old has been admitted to testify.[g] A person over fourteen years of age is presumed competent to testify.[h]

Interpreters. A person employed between an attorney and client, to act as an interpreter, is considered merely as an organ between them, and is not bound to testify as to what he has acquired in those confidential communications.[i]

Judges are not allowed to testify to what was made known to them, or took place before them in the hearing of causes.[j]

Persons in possession of secrets of state, or matters the disclosure of which would be prejudicial to the public interest, are not allowed to testify thereto.[k]

Parties to the record are not competent witnesses for themselves or their co-suitors. Nor are they compellable to testify for the adverse party, but they are competent to do so; although one of several co-suitors cannot thus become a witness for the adversary without the consent of his associates. Regard is had not merely to the nominal party to the record, but also to the real party in interest; the former will not be allowed to testify for the adverse side without the consent of the latter.[l]

By the statutes of many States all parties in interest may, subject to some restrictions, testify in their own or any other person's behalf in any action or proceeding.

A party to a suit who is made a witness by statute is to become such under the same requisitions and restrictions as any other witness. He must be of sane mind, of sound memory, of suitable age, willing to be sworn, and capable of taking an oath.[m] The law which renders the parties to a suit competent and compellable to give evidence has not altered the rule of law which requires the execution of attested instruments to be proved by the subscribing witness.[n]

When a party to the action is made a witness by his adversary, he is entitled to be paid witness-fees, as a condition to creating it his duty to attend and be sworn as one who is not a party to the action.[o]

The party who calls his adversary as a witness thereby represents him as worthy of credit, and cannot afterward impeach him by showing that either his general character for truth is bad, or that he has made previous contradictory statements.[p] But he may prove a fact to be otherwise than his adversary has testified,[q] and he may do this by proving admissions of such adversary.[r] And the testimony of a party may be controverted

[u]-1 Greenl. Ev. § 369; 5 Mas. C. C. 18; 14 Mass. 184; 26 Penn. St. 274; 1 Swanst. 44; 16 Ohio, 121; 7 Conn. 66. [v]-See OATH, above. [w]-1 Greenl Ev. § 371; 1 Atk. Ch. 21; Willes, 538. [x]-1 Greenl. Ev. § 252. [y]-1 Phill. Ev. 177-184; and Cow. & H. Notes, *m*, 154-157. [z]-1 Ves. Ch. 49; 1 Wheat. Cr. Cas. 479; 4 T. R. 679; 3 C. & P. 558; 1 Greenl. Ev. § 340. [a]-1 Greenl. Ev. § 343. [b]-Bac. Abr. Ev. (A); 1 Greenl. Ev. §§ 334-347; 1 Phill. Ev 69-81; C. & H. Notes, 53-74; Starkie Ev. Pt. 4, 703-715; 1 Ves. Ch. 49; 1 J. & S. 563; R. & M. Cr. Cas. 253. [c]-10 Johns. 362; 28 Conn. 177; 16 Vt. 474; 7 Wheat. 453; 2 Leach Cr. Cas. 482. [d]-1 Greenl. Ev. § 365. [e]-Id § 366; see 1 Leach Cr. Cas. 455; 3 C. & P. 127; 8 Conn. 93; 14 Mass. 207; 5 Blackf. 295. [f]-15 S. & R. 235; see Ray. Med. Jur. *c.* 22, §§ 300-311; 16 Johns. 143. [g]-1 Greenl. Ev. § 367; 1 Phill. Ev. with Cowen & H. Notes, 3d Ed. 4; 3 C. & P. 598; 1 Mood. Cr. Cas. 86; 10 Mass. 225; 16 Johns. 143. [h]-20 Ind. 44. [i]-1 Pet. C. C. 356; 4 Munf. 273; 3 Wend. 337. [j]-1 Greenl. Ev. § 249. [k]-Id. §§ 250-252 (A.) [l]-See 1 Greenl. Ev. 329-364. [m]-13 Vt. 370; see 30 Barb. 338; 50 Id. 379; 47 Id. 419; 3 Murph. L. & Eq. 314. [n]-17 Jur. 559; 22 L. Jour. (N. S.) Ex. 319; 19 E. L. & E. 359, and see 1 E. D. Smith, 153; 28 Barb. 484; 21 Id. 158. [o]-1 Bosw. 655; 7 Ab. 74; 1 Rob. 607; 1 Bosw. 614; 2 Sandf. 669. [p]-23 Barb. 444. [q]-Id.; 3 E. D. Smith, 275; 10 U. Can. Q. B. 321; 2 Code R. 143. [r]-23 Barb. 444; 3 E. D. Smith, 275; 10 U. Can. Q. B. 321; 2 Code R. 143.

or impeached in the same manner as any other witness.[v]

Defendants cannot testify for themselves unless allowed by statute. But where a material witness for the defendant is indicted jointly with the defendant, and no evidence is given against him, he will be acquitted at once, and may be a witness for the other defendant.[w]

EXAMINATION OF WITNESSES. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact, or act upon it; the testimony being heard by the jury or tribunal from the lips of the witness.

Examinations of witnesses are had *viva voce*, by questions and answers.

On motion, in civil and criminal cases, witnesses will generally be excluded from the court room while others are undergoing examination in the same case; this, however, is not a matter of right, but within the discretion of the court.[x]

Witnesses are required to testify from their own knowledge and recollection, yet they are permitted to refresh their memory by reference, while on the stand, to papers written at or very near the time of the transaction in question—even though they were not written by themselves, and though the writing in itself would be inadmissible in evidence.[y]

Being once in attendance, a witness may, in general, be compelled to answer all questions which may legally be put to him.[z] Yet there are exceptions to this rule. He is not compellable where the answer would have a tendency to expose him to a penal liability, or any kind of punishment, or to a criminal charge.[a] But the court decides as to the tendency of the answer, and will instruct the witness as to his privilege.[b] The question whether an answer would have this tendency is to be determined by the oath of the witness.[c] And, in point of fact, out of the necessity of the case, it is a matter which the witness may be said practically to decide for himself. The witness may answer if he chooses; and if he do answer after having been advised of his privileges, he must answer in full; and his answer may be used in evidence against him for all purposes.[d] Whether a witness be compellable to answer to his own degradation or infamy is questionable; but a witness cannot refuse to testify simply because his answer would *tend* to disgrace him; it must be seen to have that effect certainly and directly.[e] He cannot refuse to give testimony which is material and relevant to the issue, for the reason that it would disgrace him;[f] but he may refuse where the question (being put on cross-examination) is not relevant and material, and does not in any way affect the credit of the witness.[g] Whether a witness, when a question is put on the cross-examination which is not relevant and material to the issue, yet goes to affect his credit, will be protected in refusing to answer simply on the ground that his answer would have a direct and certain effect to disgrace him, is a matter not clearly agreed upon. There is good reason to hold that a witness should be compelled to answer in such a case.[h] But the whole matter is one that is largely subject to the discretion of the courts.[i] And there seems no doubt that a witness is in no case competent to allege his own turpitude, or give evidence which involves his own infamy or impeaches his most solemn acts, if he be otherwise qualified to testify.[j]

Cross-examination. After a witness has been examined in chief, the other party has a right to cross-examine him.[k]

One of the principal objects of the cross-examination of a witness is to ascertain the full extent of his knowledge as to the facts to which he testifies. It is certainly one of the most efficacious tests which the law has devised for the discovery of the truth; and greater latitude is allowed in the manner of putting questions, and a witness may be so led as to bring him directly on the point as to the answer; but not to go to the length of putting into the witness' mouth the very words which he is to answer,[l] or echo back again. Leading questions, however, are allowed upon cross-examination. Nor are the rules against questions not relevant and material to the issue always enforced upon cross-examination—a stage of the trial at which great latitude in the form and subject-matter of questions is generally allowed, in order that juries may be fully apprised of "the situation of the witness with respect to the subject of litigation, his interest, his motives, his inclination, and prejudices, his means of obtaining correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used those means, his powers of discernment, memory, and description."[m] Yet witnesses cannot be cross-examined as to collateral and irrelevant matters for the purpose of contradicting them by other evidence.[n] Their testimony as to such matters is always conclusive against the party questioning. "If, by an unfortunate or unskilful question put on cross-examination, a fact be extracted which need not have been evidence upon an examination in chief, then it becomes evidence against the party so cross-

v-8 Abb. 302; 30 Barb. 338. w-Holt. N. P. 275; 9 C. & P. 83. x-1 Stark. 1733; 1 Greenl. Ev. § 432; 2 Phill. Ev. 395; 4 Carr. & P. 585; 7 Id. 632; 2 Swanst. 1237; 3 Wis. 214. y-1 Greenl. Ev. §§ 436–440; 2 Phill. Ev. 411–416; 2 Cow. & H. notes n. 337; 1 Stark. Ev. 128; 20 Pick. 441; 2 C. & P. 275; 10 N. H. 544. z-See ante. a-1 Greenl. Ev. §§ 451, 453; 2 Phill. Ev. 417. b-2 Phill. Ev. 417; 4 Cush. 594; 1 Denio, 319. c-17 Jur. 393. d-1 Greenl. Ev. §§ 451, 453; 1 Stark. Ev. 144; 2 Phill. Ev. 425; 4 Wend. 252; 11 Cush. 437; 12 Vt. 491; 20 N. H. 450. e-1 Greenl. Ev. § 454; 1 M. & M. 108; 4 Wend. 250; 2 Ired. 346. f-1 Greenl. Ev. § 456. g-1 Greenl. Ev. § 458; 3 Campb. 519; 13 N. H. 92; 1 Gray 108. h-1 Greenl. Ev. § 459; 1 Stark. Ev. 144–147; 2 Phill. Ev. 421–431; 1 Carr. & P. 85; 2 Swanst. 216; 2 Campb. 637; 3 Yeates, 429. i-1 Greenl. Ev. §§ 431, 449. j-Starkie Ev. 1737. k-See 25 Wend. 651; 3 Sumn. 104. 108; 1 Greenl. § 554. l-Per Eyre C. J. 24; St. Tr. Ph. 284; 24 How. St. Tr. 755. m-1 Greenl. Ev. §§ 446 449; Stark. Ev. 449. n-1 Greenl. Ev. § 449.

examining.[o] The cross-examination of a witness is a matter depending much upon the discretion of the court, which will sometimes permit one to cross-examine his own witness when he appears to be in the interest of the adverse party.[p]

A cross-examination as to matters not admissible in evidence entitles the party producing the witness to re-examine him as to those matters.[q]

Inquiry may be made in regard to collateral facts in the discretion of the judge,[r] but not merely for the purpose of contradicting the witness by other evidence.[s] Irrelevant questions cannot be allowed; but if answered, cannot be contradicted.[t]

A witness who has not been sworn cannot be cross-examined;[u] but if sworn, he may be cross-examined, though no question has been asked him in chief.[v]

Direct examination. The course of examination is, first, a direct examination by the party producing the witness; then, if desired, a cross-examination by the adverse party, and a re-examination by the party producing.[w] As to the direct examination the general rule is, that leading questions[x] (*i. e.*, such as suggest the answer expected or desired) cannot be put to a witness by the party producing him;[y] but in an examination in chief leading questions may be put to direct the witness' attention to the subject of inquiry;[z] or, where he seems to be hostile to the party producing him; or, in the adverse party's interest; or, unwilling to give evidence;[a] or wishes to conceal the truth, or favor the opposite party; or where, from the nature of the case, the mind of the witness cannot be directed to the subject of inquiry without a particular specification of such subject.[b]

Re-examination. The right of re-examination extends to all topics upon which the witness has been cross-examined; but the witness cannot, at this stage, be questioned as to any new facts unconnected with the subject of the cross-examination, and not tending to explain it.[c] But in civil cases the court will allow the plaintiff's counsel, after he has closed his case, to recall a witness to prove a point omitted in the first instance.[d]

If a witness' character has been attacked in cross-examination, the plaintiff may prove a general good character.[e] See CHARACTER, above.

The mode of determining the credibility of witnesses is the same in civil and criminal cases.[f]

Impeachment of Witnesses. Impeachment is an allegation, supported by proof, that a witness who has been examined is unworthy of credit. Every witness is liable to be impeached as to his character for truth; and if his general character is good, he is presumed at all times to be ready to support it.[g]

A party cannot impeach the credit of his own witness; but he is sometimes, in cases of hardship, permitted to contradict it by other testimony.[h]

The credit of an adversary's witness may be impeached by cross-examination, or by general evidence affecting his reputation for veracity (but not by evidence of particular facts, which otherwise are irrelevant and immaterial); and by evidence of his having said or done something before which is inconsistent with his evidence at the trial; also, of course, he may be contradicted by other testimony.[i] Generally, where proof is to be offered that a witness has said or done something inconsistent with his evidence, a foundation must first be laid, and an opportunity for explanation offered, by asking the witness himself whether he has not said or done what it is proposed to prove, specifying particulars of time, place, and person.[j] These rules apply to depositions, unless the inconsistent statements were made after the depositions were taken.[k]

A witness assailed on a point of general bad character is sometimes sustained by a cross-examination of witnesses to character, to show their improper motives, or the unsatisfactory grounds of their alleged knowledge; or he may be sustained by the testimony of witnesses who will swear that his general character is good.[l]

A witness assailed by proof of former inconsistent statements may be corroborated by proof of other statements, consistent with his testimony in court;[m] whether the statement thus used in corroboration was on oath or not is not material.[n]

Evidence of general good character may be offered to support a witness, whenever his credit is impeached, either by general evidence affecting his character, or on cross-examination.[o] See title CHARACTER.

WRITINGS.

Private writings, as deeds, contracts, wills, etc., are generally admissible in evidence.

o-1 Stark. Ev. 144; 2 Phill. Ev. 398, 429. p-1 Stark. Ev. 132; 1 Greenl. Ev. § 447; 2 Phill. Ev. 403, 406, 407. q-3 Ad. & E. 554; 17 Texas, 417. r-7 C. & P. 389: 5 Wend. 305. s-1 Stark. Ev. 164: 7 East. 108: 2 Lew. Cr. Cas. 154, 156; 7 C. & P. 789; 2 Campb. 637: 16 Pick. 157; 8 Me. 42; 2 Gall. C. C. 51; and see 3 C. & P. 75; 1 Exch. 91; 7 Clark & F. Ho. L. 122; 16 Pick. 157; 4 Denio, 502; 7 Wend. 57; 2 Ired. 346; 14 Pet. 461. t-7 East. 109; 2 Stark. 157; 2 Campb. 637; 1 Greenl. 449; 5 Md. 376; 2 Sw. & Tr. 170; 12 Ind. 324. u-1 Phill. Ev. 260; 2 Stark. 473. v-1 Phill. Ev. 260; 2 Stark. 473; 1 Esp. 74. w-1 Stark. Ev. 123, 129, 150. x-A question which puts into the witness' mouth the words to be echoed back, or plainly suggests the answer which the party wishes to get from him 7 S. & R. 171; 4 Wend. 247. In that case the examiner is said to *lead* him to the answer. It is not easy to determine what is or what is not a leading question. y-3 Binn. 130: 6 Id. 483; 1 Phill. Ev. 221; 1 Stark. Ev. 123; 1 Greenl. Ev. § 434; 1 Stark. 81; 2 Id. 128. z-1 Stark. 81; 1 Campb 43. a-1 Greenl. Ev. § 435; R. & M. 126. b-1 Campb. 43; 1 Stark. 100. c-1 Stark. Ev. 150; 2 Phill. Ev. 407; 1 Greenl. Ev. §§ 442, 443. d-1 C. & P. 418; 4 Esp. 67. e-3 Campb. 519. f-9 Ind. 106. g-3 Bouv. Inst. n. 3224, *et seq.* h-1 Stark. Ev. 147; 1 Greenl. Ev. §§ 442, 443. i-Stark. Ev. pt. iv, 1753; 1 Greenl. Ev. §§ 401, 402. j-1 Greenl. Ev. § 462; 2 Phill. Ev. 433; 2 Cow. & H. Note, n, 390; 5 Blackf. 217; 6 Id. 496; 7 Id 186; 8 Id. 148; 8 Ind. 314; 9 Id. 264; 4 Id. 194; 20 Ohio, 87. k-3 Jones L. 428. l-4 Comst. 493. m-4 Blackf. 395; 4 Ind. 222; 6 Id. 502. n-Bac. Abr. *Ev.* (F.); 4 Ind 222.

There is no difference in evidence between sealed and unsealed writings; and every writing not sealed has the same force and effect that it would have if sealed.

Proof of handwriting is made by the testimony of a witness who saw the paper or signature actually written, or one who has by sufficient means acquired such a knowledge of the general character of the handwriting of the party as will enable him to swear to his belief that the handwriting of the person is the handwriting in question.[o]

An instrument in writing must be proved by at least one subscribing witness.[p] If there be none, by competent proof that the signature of the person whose name is undersigned is genuine.[q] A knowledge of a party's handwriting may be derived from a fixed correspondence between the parties, and by letters,[r] and where the witness has directed letters to the parties and received answers,[s] and by a clerk employed to inspect franks.[t] The opinions of persons accustomed to the examination of handwriting, of the genuineness of a signature, by comparing it with papers in the party's handwriting, already filed in the case, may be permitted.[u] Proof of the death of the attesting witness;[v] or his insanity;[w] his residence beyond the jurisdiction of the court; that his name is unknown; or that he cannot be found after diligent inquiry; in all these cases the execution of the instrument may be proved by other evidence.[x]

If the adverse party, pending the cause, agrees to admit the execution, other proof is not necessary.[y]

Ex Parte. See PRACTICE.
Ex Post Facto. See LAW.
Examined Copy. See EVIDENCE.
Exceptions. See CONTRACTS; PRACTICE.
Exchange. See BONDS, NOTES AND BILLS; MERCANTILE LAW.
Exclusive. See TIME.
Excuse. See PRACTICE.
Execute. See CONVEYANCES.
Executed Consideration. See CONTRACTS; CONSIDERATION.
Execution. See PRACTICE.
Executive. See OFFICE AND OFFICERS.
Executor. See ESTATES; PERSONS.
Exemplary. See DAMAGES.
Exemption. See EXECUTION; PRACTICE.
Exhibit. See PRACTICE.
Expatriation. See CITIZEN.
Experts. See EVIDENCE.
Extinguishment. See CONTRACTS.
Extortion. See CRIMINAL LAW.
Extract. See COPYRIGHT.
Eye Witness. See EVIDENCE; WITNESSES.
Facts. See EVIDENCE.
Factors. See BAILMENTS.
False Imprisonment. See IMPRISONMENT.
False Pretences. See CRIMINAL LAW.
Falsehood. See FRAUD.
Family. See PERSONS; RELATIONS.
Farmer. See OCCUPATION.
Farrier. See OCCUPATION.
Father. See PERSONS; RELATIONS.
Fathom. See WEIGHTS AND MEASURES.
Fault. See CONTRACTS.
Fear. See CRIMINAL LAW.

o-1 Phill. Ev. 442; Starkie Ev.: 2 Johns. Cas. 211; 5 Johns. 144, 19 Id. 134; 1 Dall. 14; 2 Me. 33; 6 S. & R. 568; 1 Nott & M'C. 554; 2 Id. 400; Anth. N. P. 77; 4 Gray, 167; 5 Cush. 295; 7 Com. Dig. 447; Bac. Abr. *Evidence* (M) Dane Abr. Index. p-4 Johns. 641; 1 Johns. Cas. 330; 2 East. 250. q-12 Shepl. 254; 25 Wend. 259; 3 Ohio, 42; 6 Hill, 303; B. N. P. 264; 1 P. Wms. 471. r-1 Bl. 384; 1 Ph. Ev. 467; 2 C. & P. 21. s-R. & M. 190. t-2 Ph. Ev. 714. u-19 Ohio, 426. v-7 T. R. 265; 12 Mod. 607. w-3 Campb. 283; 9 Ves. 381. x-1 Greenl. 572; 1 Ph. Ev. 455: 6 East. 84; 2 East. 183; 1 Stark. 90. y-Co. Litt. 357, *b*.

Fee Simple. See CONVEYANCES; DEEDS.
Fee Tail. See CONVEYANCES; DEEDS.
Feloniously. See CRIMINAL LAW.
Felony. See CRIMINAL LAW.
Female. See PERSONS.
Fence. See REAL PROPERTY.
Feræ Naturæ. See ANIMALS.
Ferry. See HIGHWAYS.
Fieri Facias. See PRACTICE.
Figures. See CONTRACTS; PRACTICE.
Final Decree. See PRACTICE; JUDGMENT.
Final Judgment. See PRACTICE; JUDGMENT.
Final Process. See PRACTICE; PROCESS.
Firm. See PARTNERSHIP.
Fish. See ANIMALS.
Fishery. See REAL PROPERTY; WATER.
Fixing Bail. See PRACTICE.
Fixtures. See LANDLORD AND TENANT.
Flag. See INTERNATIONAL LAW.
Flight. See CRIMINAL LAW.
Fœticide. See MEDICAL LAW.
Fœtus. See MEDICAL LAW.
Foot. See WEIGHTS AND MEASURES.
Forcible Entry or Detainer. See PRACTICE.
Foreclosure. See PRACTICE.
Foreign. See PRACTICE.
Foreign Attachment. See PRACTICE.
Foreign Judgment. See PRACTICE.
Foreign Laws. See LAWS.
Forfeiture. See CONTRACTS; CRIMINAL LAW.
Forgery. See CRIMINAL LAW.
Form. See PRACTICE.
Formality. See CONTRACTS.
Former Recovery. See PRACTICE; JUDGMENT.
Fortuitous Event. See ACCIDENT.
Forwarding Merchants. See AGENTS; BAILMENTS.
Franchise. See CORPORATIONS.

FRAUD. See AGENCY; CONTRACTS; CONVEYANCES, ETC.

FRAUD is the unlawful appropriation of another's property with knowledge, by design, and without criminal intent. Fraud is sometimes used as a term synonymous with "covin," "collusion," and deceit, but improperly so. "Covin" is a secret contrivance between two or more persons to defraud and prejudice another of his rights. "Collusion" is an agreement between two or more persons to defraud another under the forms of law, or to accomplish an illegal purpose. Deceit is a fraudulent contrivance by words or acts to deceive a third person, who, relying thereupon, without carelessness or neglect of his own, sustains damage thereby.[a] Actual or positive fraud includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent, cheat, or deceive another.[b] For instance, the misrepresentation by word or deed of material facts, by which one exercising reasonable discretion and confidence is misled to his injury, whether the misrepresentation was known to be false, or only not known to be true, or even made altogether innocently; the suppression of material facts which one party is legally or equitably bound to disclose to another; all cases of unconscientious advantage in bargains obtained by imposition, circumvention, surprise, and undue influence over persons in general, and especially

z-Co. Litt. 357, *b*. a-1 Story Eq. Jur. § 186.

over those who are by reason of age, infirmity, idiocy, lunacy, drunkenness, or other incapacity unable to take due care of and protect their own rights and interests; bargains of such an unconscionable nature and of such gross inequality as naturally lead to the presumption of fraud, imposition or undue influence, when the decree of the court can place the parties *in statu quo;* cases of surprise and sudden action without due deliberation of which one party takes advantage; fraudulent awards, with intent to do injustice; fraudulent prevention of acts to be done for the benefit of others under false statements or false promises; frauds in relation to trusts of a secret or special nature; frauds in verdicts, judgments, decrees, and other judicial proceedings, and frauds upon creditors and other persons standing upon a like equity, are cases of actual fraud.[c] Legal or constructive fraud includes such contracts or acts as, though not originating in any actual design or contrivance to perpetrate a fraud, yet by their tendency to deceive or mislead others, or to violate private or public confidence, are prohibited by law. Thus, for instance, contracts against some general public policy or fixed artificial policy of the law; cases arising from some peculiar confidential or fiduciary relation between the parties where advantage is taken of that relation by the person in whom the trust or confidence is reposed, or by third persons; agreements and other acts of parties which operate virtually to delay, defraud, and deceive creditors; purchases of property, with full notice of the legal or equitable title of other persons to the same property (the purchaser becoming by construction *particeps criminis* with the fraudulent grantor).[d]

To constitute fraud: 1. It must be such an appropriation as is not permitted by law. 2. It must be with knowledge that the property is another's, and with a design to deprive him of it. 3. It is not itself a crime, for want of a criminal intent, though it may become such in cases provided by law.[e]

Fraud, in its ordinary application to contracts, includes any trick or artifice employed by one person to induce another to fall into or detain him in an error; so that he may take an agreement contrary to his interest; and it may consist in misrepresenting or concealing material facts, and may be effected by words or by actions. While, on the one hand, courts have aimed to repress the practice of fraud; on the other, they require that before relieving a party from a contract on the ground of fraud, that it should be made to appear that on entering into such a contract he exercised a due degree of caution.[f] A misrepresentation as to a fact, the truth or falsehood of which the other party has an opportunity of ascertaining, or the concealment of a matter which a person of ordinary sense, vigilance, or skill might discover, does not in law constitute fraud. Misrepresentation as to the legal effect of an agreement does not avoid it as against a party whom such misrepresentation has induced to enter into it, every man being presumed to know the legal effect of an instrument which he signs, or of an act which he performs. An intention to violate, entertained at the time of entering into a contract, but not afterwards carried into effect, does not vitiate the contract.[g] But when one person misrepresents or conceals a material fact which is peculiarly within his own knowledge, or, if it be also within the reach of the other party, is a device to induce him to refrain from inquiry and is shown that the concealment or other deception was practised with respect to the particular transaction, such transaction will be void on the ground of fraud.[h] And even the concealment of a matter which may disable a party from performing the contract is a fraud.[i]

EFFECT OF FRAUD. Fraud when sufficiently proved and ascertained, avoids a contract (specialty or transaction), *ab initio*, whether the fraud be intended to operate against one of the contracting parties, or against third parties, or against the public,[j] and this though the fraud does not appear on its face.[k] 1. The fraud must be material to the contract or transaction which is to be avoided on account of it; for if it relate to another matter, or to this only in a trivial and unimportant way, it affords no ground for the action of the court. Thus a misrepresentation by the vendor of a horse, as to the place where he bought it, is not such a material fraud as will avoid the sale of the horse.[l] 2. It must relate distinctly and directly to this contract; and it must affect its very essence and substance.[m] 3. The fraud must work an actual injury. If it be only an intended fraud, which is never carried into effect, or if all be done that was intended, but the expected consequences do not result from it, the law cannot recognize it.[n] And if there be a fraud, and it be actually injurious, the injured party can recover only the damage directly attributable to the fraud,[o] and not an increase of this damage caused by his own indiscretion or mistake in relation to it;[p] and if no damage be caused by the fraud, no action lies.[q] 4. And it must appear that the injured party not only did in fact rely upon the fraudulent statement,[r] but had a right to rely upon it in full belief of its truth; for otherwise it was his

c-1 Story Eq. Jur. *c.* 6. d-1 Story Eq. Jur. *c.* 7. e-Liverm. Pen. L. 739. f-*Vigilantibus non dormientibus succurrunt leges*—The laws assist the vigilant, not the careless. Tayl. L. Gloss. g-Per Tindal, C. J.; 2 Scott, 588, 594; 4 Barn. & C. 506, 512; Per Parke, B.; 4 M. & W. 115, 122. h-6 Clark & F. Ho. L. 232; Com. Contr. 38; Per Tindal, C. J.; 3 Mann. & G. 446, 450. i-9 B. & C. 387; Per Littledale, J. j-1 Fonblanque Eq. (3d Ed.) 66, *n.;* 6th Ed. 122, and notes; Newl. Contr. 150; 1 W. Bl. 465; Dougl. 450; 3 Burr. 1909; 3 Ves. & B. Ch. 42; 3 Chitty C. L. 155, 306, 698; 1 Sch. & L. 209; Verplank Contr. *passim.;* Domat. L. Civ. p. 1, 1, 4 t, 6, § 3, *n.* 2. k-3 T. R. 418; 2 Starkie Ev. 586; 3 Chitty Contr. 81, 222. l-5 Dow. 159; 1 Barb. 471. m-4 Scott N. R. 13; 3 Mann. & G. 446; 1 Exch. 798. n-4 M. & W. 115; 15 C. B. 207; 29 Eng. L. & Eq. 261; 15 C. B. 597; 29 Eng. L. & Eq. 290; 25 Penn. St. 413; 55 Id. 504. o-12 East. 632; 9 Ired. 507; 5 Cush. 23. p-5 C. & P. 363. q-2 Mass. 112; 25 Me. 243; 11 Vt. 615; 1 Dev. 69. r-11 Wend. 374; 4 Ga. 95.

own fault or folly, and he cannot ask the law to relieve him from the consequences.[s] Where a party is obliged to rely upon the statements of another, and not only may but should repose peculiar confidence in him, this is in the nature of a special trust, and the law is very jealous of a betrayal of this trust and visits it with great severity. So all transactions with feeble persons, whether they are so from age, sickness, or infirmity of mind, are carefully watched.[t] On the other hand, if the statement be false in fact, and injurious because false, if it were believed to be true by the party making it, it is not a fraud on his part.[u] If the statement be in fact false, and be uttered for a fraudulent purpose, which is in fact accomplished, it has the whole effect of fraud in annulling the contract, although the person uttering the statement did not know it to be false, but believed it to be true.[v] If the falsehood be known to the party making the statement, malice or self-interest will be inferred.[w]

The fraud of an agent, by a misrepresentation which is embodied in the contract to which his agency relates, avoids the contract. But the party committing the fraud cannot in any case himself avoid the contract on the ground of fraud.[x]

In general, concealment is not in law so great an offence as misrepresentation. Concealment to be actionable must of course be of such facts as the party is bound to communicate.[y] A false representation, in order to have the full effect of fraud, must relate to a substantial matter of fact, and not merely to a matter which rests in opinion, or estimate or judgment.[z] Men differ in opinion; and if any one relies on mere opinion, instead of ascertaining facts, it is his own folly.

Misrepresentation need not be made by the party whom it benefits, in order to constitute a fraud against him. And it is for this reason that if A. trust B. upon the fraudulent recommendation of C., A. is not left to his action for damages against C. *for the deceit*, but the fraud of C. invalidates the contract between A. and B., and gives A. the same right to retake the goods as if the fraud had proceeded directly from B. himself.[a] It may be his by adoption.[b] A principal may commit a fraud by an agent; or may even be affected by the fraud of his agent, although personally honest.[c]

Material misrepresentations, which go to the substance of a contract, avoid that contract, whether they are caused by mistake, and occur wholly without fault, or are designed and fraudulent.[d] This principle is carried so far, that if one acquires property by a purchase founded upon his misrepresentations, especially if they are not only false but fraudulent, he acquires no right in the property, but the seller may retake it in the same manner as if it had been stolen; that is, with all reasonable necessary force.[e] The obtaining goods under false pretences, under color of purchasing them, or otherwise, does not change the property.[f] Where a sale is fraudulently procured by the vendee, he may be sued by the vendor, before the expiration of the credit agreed on to be given.[g]

A fraudulent party cannot himself assert his fraud, and claim as his right any advantages resulting from it; for no man can be permitted to found any rights upon his own wrong;[h] and if both parties are in fault the law will not interfere between them: and this is so, if both parties be actually fraudulent, although the beginning, and the greater fraud, may be on one side or the other.[i]

The fraud may be proved by parol evidence, or any circumstances, however contrary to apparent facts or statements in the written instrument.[j] This rule does not contravene the general one against the admissibility of parol testimony against written, as the effect and result of such evidence is, that the instrument never had any operation; and on grounds of policy and necessity this rule may be supported.[k] The mode of proving fraud must depend upon the facts of each particular case.

Fraud gives no action in any case without damage,[l] and in matters of contract it is merely a defence; it cannot in any case constitute a new contract.[m] It is essentially *ad hominem*[n] (to the interests or passions of the party).

STATUTE OF FRAUDS. No action shall be brought in any of the following cases, (unless made in writing and signed by the party to be charged thereby, or by some person thereunto by him legally authorized):

1. To charge an executor or administrator, upon any special promise, to answer damages out of his own estate; or,

2. To charge any person, upon any special promise, to answer for the debt, default, or miscarriage of another; or,

3. To charge any person, upon any agree-

s-13 S. & Marsh. 363; 5 How. (Miss.) 165; 7 Blackf. 102; 4 B. & C. 506; 8 Blackf. 277; 5 Hill, 303; 2 Bibb. 602; 2 Ired. 32; 1 Dev. 69; 34 Penn. St. 365. t-2 Johns. Ch. 238; 1 Knapp, 77. u-5 Q. B. 820; 2 East. 92; 1 C. B. 951; 8 Exch. 725; 20 Eng. L. & Ex. 470; 14 M. & W. 651; 1 Met. 1; 4 Id. 151; 7 Cranch. 69; 8 Johns. 25; 1 Smith (Ind.) 102; 1 Carter, 178; 1 Harring. (Del.) 131; 6 Barr, 316; 13 How. 198; 7 Vt. 67; 11 How. Pr. 242, 254; 1 Holt, 387; 2 Man. & G. 475. v-11 M. & W. 401. w-12 Met. 549; 9 Q. B. 197; 6 Barr, 310. x-Chitty Contr. 590, and cases cited. y-3 Eng. L. & Eq. 17; 3 Conn. 413; 5 Ala. 596; 1 Yeates, 307; 5 Penn. St. 467; 8 N. H. 463; 16 Me. 30; 1 Strobh. 220; 1 Dev. 351; 18 Johns. 403; 6 Humph. 36. z-5 Blackf. 18; 3 Bulstr. 94; 18 Me. 418; 7 Scott, 341; 1 Simmons, 89; 6 Scott, 540; 3 B. & C. 623. a-21 Vt. 129. b-3 Sumner, 8; 10 S. & Marsh. 169; 2 Barr, 105; 2 Ellis & B. 476; 20 Eng. L. & Eq. 129; 5 Bing. N. C. 97; 3 Scam. 170; 17 Ohio, 16. c-21 Vt. 129, and cases therein reviewed. d-3 Mo. 477; 4 How. (Miss.) 435; 4 Scam. 569; Coxe, 48; 1 Woodb. & M. 90; Id. 342; 2 Id. 246; 3 Story, 700; 4 B. Mon. 601. e-18 Vt. 504. f-7 Taunt. 59; 6 Mod. 114. g-1 Esp. 430; 2 Id. 523. h-9 B. & C. 532; 5 Mass. 116; 19 Me. 281; 2 Harring. (Del.) 198; 6 Q. B. 166; 18 Me. 231; Cro. J. 270; 2 B. & A. 367; 1 W. Bl. 363. i-1 McLean, 460; 1 Ohio St. 262; 20 Wend. 24; 1 Fairf. 71; 27 Miss. 13. j-B. N. P. 172; 2 B. & A. 370. k-3 B. & C. 623. l-3 T. R. 56. m-7 Ves. Ch. 211; 2 Miles, 299. n-4 T. R. 337, 338.

ment or promise, made in consideration of marriage; or,

4. Upon any contract for the sale of lands, or,

5. Upon any agreement that is not to be performed within one year from the making thereof, unless the promise, contract or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized; excepting, however, leases not exceeding the term of three years.[o]

The consideration of any such promise, contract, or agreement, need not set forth in such writing, but may be proved.[p]

No action shall be maintained, to charge any person by reason of any representation made concerning the character, conduct, credit, ability, trade, or dealings of any other person, unless such representation be made in writing, and signed by the party to be charged thereby, or by some person thereunto by him legally authorized.[q]

It is obvious that the general purpose of the above section is to permit no party to bind himself except by a written promise signed by him; because this will secure an exact statement and the best evidence of the terms and conditions of the promise.[r]

What is a sufficient signing.—A substantial signing of the agreement is sufficient, although it is not literal and formal.[s] Hence if the agreement be not itself signed, but a letter alluding to and acknowledging the agreement is signed, this is sufficient.[t] It is not, however, enough that the agreement be written by the party himself, unless he also signs it.[u] If, however, he writes his name in any part of the agreement, it may be taken as his signature;[v] but not otherwise.[w] Where one is in the habit of using instruments with his name printed in them, this will be his signature.[x] And so if he writes it in pencil.[y] The agreement need not be signed by both parties, but only by him who is to be charged by it;[z] and he is estopped from denying the execution of the instrument on the ground that it wants the signature of the other party. The signature may be made by an agent,[a] but the agency must be an agency for this purpose.[b] The agent may be authorized by parol.[c]

The agreement must contain all that belongs essentially to the agreement,[d] and more than this is not needed; nor can parol evidence be received to supply anything which is wanting in the writing, to make it the written agreement on which the parties rely.[e] The form of the agreement must be adequately expressive of the intent and obligation of the parties. It may be upon one or many pieces of paper; provided that the several pieces are so connected by mutual reference or otherwise that there can be no uncertainty as to the meaning and effect of them all, when taken together and viewed as a whole;[f] but this connection of several parts cannot be established by extrinsic evidence.[g] The written agreement must be certain.[h] If the contract be in its nature entire, and in one part it satisfies the statute, and in others it does not, then it is altogether void.[i] But if these parts are severable, then it may be good in part and void in part.[j]

"*To answer for the debt, default, or miscarriage of another person.*" This clause covers all guarantees, and is of great importance in reference to them. Its general effect is to make it necessary that all collateral promises should be in writing; and only when the promise is distinctly collateral is it within this clause of the statute. In the absence of evidence showing distinctly that a promise is collateral, it will be treated as an original promise.[k] Nor is it then material whether the promise is made before or after the delivery of the goods.[l]

There must be some one who owes the debt directly. There must exist an original liability, as the foundation for the collateral liability, and one of these liabilities must be entirely distinct from the other. If, therefore, the creditor trusted to one of the parties more than to the other, but did in fact trust to one together with the other, it is not within the statute. The party *for* whom the promise has been made must be liable *to* whom it is made; and it is equally necessary that he continue liable after making the promise; that is, the promise of the party undertaking must not have the effect, prior to its performance, of discharging the party originally liable. In order to bring a promise within this clause of the statute, it

o-29 Car. II, Ch. 3, § 4. p-Id. p. 351, § 2. q-Id. § 6. r-Brown Stat. Frauds, § 346. s-3 Atkins, 503. t-3 Bro. Ch. 161, 318; 2 B. & P. 238; 5 Esp. 190; 1 Campb. 513; 3 Taunt. 169; 3 Beav. 469; 5 Exch. 907; 6 Cow. 445; 1 Gray, 409; Cheves, 68; 8 Ala. 546; 1 Bing. 9. u-1 P. Wms. 770; 3 Merriw. 2; 12 J. B. Moore, 216; 10 Ohio, 399; 4 Scott (N. R.) 486; 3 Johns. 399; 7 Minn. 368. v-1 Rus. & M. 625; 2 M. & W. 653; 12 Johns. 102; 14 Id. 484; 3 Merriw. 53; 13 Mass. 87; 1 Esp. 190; 2 B. & P. 238. w-1 Cox, 219; 3 Pick. 83; 10 Jur. 789. x-3 Esp. 180; 2 B. & P. 238; 2 M. & S. 286. y-12 Johns. 102; 14 Id. 484; 2 Speers, 292; 1 Strobh. Eq. 347; 5 B. & C. 234. z-Vin. Abr. tit. C. and A. (I.) pl. 17; 7 Ves. 265; 9 Id. 351; 2 Jac. & W. 426; 2 Bing. (N. C.) 735; 6 East. 307; 3 Taunt. 169; 2 M. & S. 286; 3 Johns. Cas. 60; 14 Johns. 484; 16 Wend. 460; 7 Blackf. 452; 13 Mass. 87; 2 Nott. & M'Cord, 207; 3 Greenl. 409; 4 Russ. 298; 5 Sanf. 101. a-19 Pick. 502; 6 Foster, 327; 12 Simons, 28; 2 Chitty, 205; 1 N. H. 284; 13 M. & W. 743; 5 Bing. (N. C.) 603; 3 Merriw. 237; 1 Young. & J. 387. b-4 Bing. 722. c-1 Sch. & L. 22; 9 Ves. 250; 10 Id. 292; 7 Scott, 769; 2 Eq. Cas. Abr. 50, pl. 26; Vin. Abr. C. & A. (H.) pl. 45; 10 Paige, 386; 5 Hill, 107; 1 Seld. 229; 4 Greenl. 258; 1 Humph. 268. d-Prec. in Ch. 560; 11 Ves. 550; 1 Atkins, 12; 1 P. Wms. 618; 3 Exch. 692; 5 Id. 625; 1 Johns. Ch. 273; 3 Johns. 399; 4 Cush. 497; 13 Met. 385; 2 Gilman, 614; 7 Porter, 73; 13 Johns. 297; 6 Blackf. 21. e-14 How. 446. f-4 Exch. 623; 3 Bro. Ch. 318; 2 B. & P. 238; 3 Ves. 696; 5 Id. 308; 3 Ves. & B. 187; 3 Taunt. 169; 15 Vt. 685; Cheves, 68; 6 H. L. Cas. 238. g-1 Sch. & L. 22; 1 Ves. 326; 15 Vt. 685; 1 Johns. Ch. 273. h-13 Johns. 297; Id. 508; 10 Conn. 192. i-2 Anstr. 420; Id. 425, n.; 7 T. R. 201; 3 C. B. 766; 2 Ventr. 223; 7 A. & E. 49; 10 B. & C. 664; 18 C. B. 587; 15 Pick. 159; 6 Cush. 508; 13 Wend. 53. j-3 B. & C. 357; 2 Cromp. & H. 94. k-20 Vt. 205; 11 A. & E. 438. l-2 T. R. 80; 3 Doug. 132; McMullan, 372; 18 Me. 324; 36 Id. 113; 6 Foster, 249; 13 Vt. 631.

must be made to a party to whom the person undertaken for is liable. The statute applies only to promises made to the persons to whom another is already, or is to become answerable; it must be a promise to be answerable for a debt of, or a default in some duty by that other person *towards the promisee*. A promise, therefore, by A. to B. to pay a debt due from B. to C. is not within the statute.[m]

Whenever the main purpose and object of the promisor is not to answer for another, but to subserve some purpose of his own, his promise is not within the statute.[n] If one of several persons, who are liable jointly or severally for the payment of the same debt, promises the creditor to pay the debt, this is not a case within the statute; for although the performance of the promise will have the effect of discharging the others, it is to be presumed that the thing in contemplation of the promisor was his own discharge.[o] This clause of the statute does not embrace cases in which the liability to pay the debt of another arises by operation of law, out of some transaction between the parties, without the aid of any *special promise*. Thus, if A., who is indebted to B., sends money to C. to pay the debt, and C. accepts the trust, he thereby becomes liable to B. for the debt of A.[p] The words "debt, default, or miscarriage," extend to a liability for a mere tort.[q]

"*No action shall be brought upon any contract for the sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless*," *etc.* These words are very general, and intended to have a wide operation; but they have been somewhat controlled by construction. Thus, if the question be whether a contract for the sale of growing crops be a contract or sale of "any interest concerning lands," it seems to be answered in conformity with the intention of the parties. If grain be reaped and stacked, or stored in barns, it becomes a chattel. If it be growing when sold, yet if the sale contemplates its severance when grown, and delivery of it then, distinct from the land, it is in the contemplation of the parties a mere chattel, and is therefore so in the view of the law, so far as this statute is concerned.[r] So, growing grass, growing trees, or fruits. A promise to pay for improvements on land is only a promise to pay for work and labor, or materials, and not for an interest in lands, and therefore need not be in writing.[s] And a contract for the sale of removable fixtures is not within the statute.[t] A mere license to use land, as to stack hay or grain upon it for a time, is not an interest in lands within the statute.[u] But any contract, of which the effect is to give one party an easement on the land of another, is within the statute.[v]

"*No action shall be maintained upon any agreement that is not to be performed within the space of one year from the making thereof, unless*," *etc.* An executory promise capable of entire performance within one year is not within this clause of the statute. The decision of this question does not seem to depend entirely upon the understanding or intention of the parties. They may contemplate as probable a much longer continuance of the contract, or a suspension of it, and a revival after a longer period; it may itself be liable to such continuance and revival; and it may in this way be protracted so far that it is not in fact performed within a year; but if, when made, it was in reality capable of a full and *bona fide* performance within a year, without the intervention of extraordinary circumstances, then it is to be considered as not within the statute. There are three classes of cases arising under this clause of the statute: 1. Where *by the express agreement of the parties* the performance of the contract is not to be completed within one year. These cases are clearly within the statute.[w] 2. Where it is evident *from the subject-matter of the contract* that the parties had in contemplation a longer period than one year as the time for its performance. These cases are within the statute.[x] 3. Where the time for the performance of the contract is made to depend upon some contingency, which may or may not happen within one year. These cases do not come within the statute.[y]

Fraudulent Conveyance. See CONVEYANCES.

Freight. See BAILMENTS; CARRIERS; MARITIME LAW.

Fugitive from Justice. See CRIMINAL LAW; INTERNATIONAL LAW.

Full Age. See PERSONS.

Furniture. See PERSONAL PROPERTY.

Further Assurance. See CONVEYANCES; DEEDS.

Future Estate. See ESTATES.

Gallon. See WEIGHTS AND MEASURES.

Gaol. See CRIMINAL LAW; PRISON.

Garden. See REAL PROPERTY: HOUSE.

Garnishment. See PRACTICE; ATTACHMENT.

m-11 Ad. & Ell. 438; 13 Mees. & Wels. 561; 22 Conn. 317; 2 Denio, 45; 16 Barb. 645; 6 Cush. 549; 1 Gray, 391; 5 Allen, 370; 1 Ga. 294; 4 Wend. 657; 1 Bing. (N. C.) 103; 5 Hill, 483. n-3 Met. 396; 1 Gray, 391. o-2 East. 325; 14 Ala. 611; 5 Mod. 205; Comb. 362; 11 Gratt. 636; 1 Wils. 305. p-2 Sandf. 331; 1 Conn. 519; 3 Id. 272; 3 Burr. 1886; 2 East. 325; 6 M. & S. 204; 4 Bing. 264. q-2 B. & Ald. 613; 2 Day, 457. r-1 Met. 313; 4 M. & W. 347; 8 Met. 34; 3 Ohio St. 438; 5 Md. 41; 9 B. & C. 561; 4 M. & W. 343; 5 B. & C. 829; 1 Young. & Jar. 396; 1 Denio, 350; 1 Barb. 542; 2 Id. 613; 1 L. Raym. 182; 1 B. & P. 397; 2 Id. 452; 6 East. 602; 11 Id. 362; 2 Johns. 421, *n.* (*a*); 9 Cowen, 39; 20 Mo. 457; 2 M. & S. 205; 2 Taunt. 38; 3 B. & C. 357; 2 Brod. & B. 99; 13 East. 249; 1 Cromp. & M. 89; 7 Greenl. 447. s-5 Johns. 272; 11 Id. 145; 7 Cowen, 263; 8 Rich. Law, 335. t-3 Day, 476; 1 Cromp. M. & R. 266. u-2 M. & W. 248; 20 Ala. 412; 15 Wend 380; 1 Met. 313; 11 Id. 251; 11 Ill. 157; 5 Barb. 379; 10 Id. 496; 18 Id. 347; 4 Sandf. Ch. 72. v-23 Conn. 214; C. B. 1856, Eng. L. & Eq. 252. w-1 B. & Ald. 722; 1 Cromp. M. & R. 20; 9 B. & C. 392; 7 Cowen, 263; 2 N. H. 515; 11 Vt. 428; 1 Id. 69; 10 Id. 338; 5 Mo. 46; 13 Wend. 307; 5 Id. 204; 3 Hill, 130; Gray, 131; 4 Scott (N. R.) 77; 2 C. B. 835; 8 Met. 59; 31 Me. 555; 1 Denio, 602; 2 Barb. Ch. 221; 2 Harring. (Del.) 27; 9 B. & C. 392; 18 Pick. 569; 12 Conn. 455; 15 Me. 201; 15 Wend. 336. y-11 East. 142; 20 Me. 119; 10 Johns. 244; 3 Burr. 1278; 19 Pick. 364. z-Skin. 353; 3 Burr. 1278; 4 Bing. 40; 11 Met. 411; 18 Mo. 88; 3 Exch. 632; 4 B. Mon. 415; 16 East. 150; 2 C. B. 808; 1 H. & N. 81; 10 Wend. 426; 22 Pick. 97; 19 Id. 364; 7 Met. 46; 4 Md. 476; 20 Conn. 495; 4 Dana, 437; 31 Vt. 168; 2 Sanf. Ch. 91.

Gate. See REAL PROPERTY; FENCE; TURNPIKE.
Gauger. See OFFICE AND OFFICER.
General Issue. See PLEADING.

GIFTS. See CONVEYANCES, "Wills;" SALES.

A GIFT is a voluntary conveyance; that is, a conveyance that is not founded on the consideration of money or blood; a transfer of the title to property to one who receives it without paying for it.[a] The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person without any consideration. Gifts *inter vivos* are gifts made from one or more persons, without any prospect of immediate death, to one or more others. Gifts *causa mortis* are gifts made in prospect of death.

BETWEEN LIVING PERSONS.

This is a contract which takes place by the mutual consent of the giver, who divests himself of the thing given in order to transmit the title of it to the donee gratuitously, and the donee, who accepts and acquires the legal title to it. This gift takes place when the giver is not in any immediate apprehension of death, which distinguishes it from a gift *mortis causa*.[b] Gifts *inter vivos* have no reference to the future, and go into immediate and absolute effect. Delivery is essential; without actual possession the title does not pass. A mere intention or naked promise to give, without some act to pass the property, is not a gift. There exists repentance (the *locus pœnitentiæ*) so long as the gift is complete and left imperfect in the mode of making it.[c]

The subject of the gift must be certain; and there must be the mutual consent and concurrent will of both parties. Delivery must be according to the nature of the thing. It will have to be an actual delivery, so far as the subject is capable of delivery. If the thing be not capable of actual delivery, there must be some act equivalent to it. The donor must part not only with the possession, but with the dominion. If the thing given be a chose in action, the law requires an assignment or some equivalent instrument, and the transfer must be executed.[d]

When the gift is perfect by delivery and acceptance, it is then irrevocable unless it is prejudicial to creditors, or the donor was under legal incapacity, or was circumvented by fraud. If a man intending to give a jewel to another say to him, "Here, I give you my ring with the ruby in it," etc., and with his own hand delivers it to the party, this will be a good gift notwithstanding the gift bear any other jewel, being delivered by the party himself to the person to whom given.[e] Where a father bought a ticket in a lottery, which he declared he gave to his infant daughter E., and wrote her name upon it, and after the ticket had drawn a prize he declared that he had given the ticket to his child E. and that the prize money was hers: this was held sufficient for a jury to infer all the formality requisite to a valid gift and that the title in the money was complete and vested in E.[f]

IN PROSPECT OF DEATH.

This is a gift made by a person in sickness, who, apprehending his dissolution near, delivers, or causes to be delivered, the possession of any personal goods to keep as his own in case of the donor's decease.[g] It differs from a legacy, inasmuch as it does not require proof in the court of probate.[h] And no assent is required from the executor to perfect the donee's title.[i] It differs from a gift *inter vivos*, because it is ambulatory and revocable during the donor's life, because it may be made to the wife of the donor, and because it is liable for his debts. To constitute a good gift *mortis causa*: 1. The thing given must be personal property;[j] a bond,[k] bank notes,[l] and a check offered for payment during the life of the donor will be so considered.[m] Not so a promissory note of the sick man made in his last illness.[n] 2. The gift must be made by the donor in peril of death, and to take effect only in case the giver die.[o] 3. There must be an actual delivery of the subject to or for the donee, in cases where such delivery can be made,[p] but such delivery can be made to a third person for the use of the donee.[q]

A gift *causa mortis* does not require the executor's assent,[r] is revocable by the donor during his life[s] by recovery[t] or resumption of possession,[u] but not by a subsequent will,[v] but may be satisfied by a subsequent legacy.[w] It may be of any amount of property.[x]

Such gifts are liable for the testator's debts.[y]

Gill. See WEIGHTS AND MEASURES.
Gist. See PLEADING.
Good Will. See CONTRACTS; SALE.
Goods and Chattels. See CONVEYANCES, "Wills."
Government. See INTERNATIONAL LAW.
Grain. See EMBLEMENTS; WEIGHTS AND MEASURES.
Grand Jury. See PRACTICE.
Grand Larceny. See CRIMINAL LAW.
Grandchildren. See PERSONS; RELATIONS.
Grandfather. See PERSONS; RELATIONS.
Grandmother. See PERSONS; RELATIONS.
Grant. See CONVEYANCES; REAL PROPERTY.
Grant, Bargain, and Sell. See CONVEYANCES.
Grantee. See CONVEYANCES.
Grantor. See CONVEYANCES.
Gross Adventure. See MARITIME LAW.
Gross Average. See MARITIME LAW.
Ground-rent. See CONVEYANCES; REAL PROPERTY.

a-Vicat. b-1 Bouv. Inst. *n.* 712; see also Cooper Inst. *n.* 474, 475: U. S. Dig. Tit. Gift. c-7 Johns. 26. d-1 Swanst. Ch. 436; 1 Dev. 309. e-Bac. Max. f-See 10 Johns. 293. g-2 Bl. Comm. 514. h-2 Str. 777; see 1 Bligh. (N. S.) 531. i-2 Ves. Ch. 120; 1 Sim. & S. Ch. 245. j-3 Binn. 370. k-Id.: 3 Madd. Ch. 184. l-23 Penn. St. 59; 2 Brown Ch. 612. m-4 Brown Ch. 286. n-5 B. & C. 501; 14 Pick. 204; 3 Barb. Ch. 76; 8 Barb. 94; 21 Vt. 238; see 24 Pick. 201; 33 N. H. 520; 18 Conn. 410; 11 Md. 424; 4 Cush. 87. o-3 Binn. 370; 4 Burn. Eccl. L. 110. p-3 Binn. 370; 2 Ves. Ch. 120; 2 Gill. & J. 268; 4 Gratt. 472; 31 Me. 422; 14 Barb. 243; 7 Eng. L. & Eq. 134; see 9 Ves. Ch. 1; 7 Taunt. 224. q-3 Binn. 370. r-2 Ves. Ch. 120. s-2 Bradf. Surr. 339; 27 Me. 196; 3 Wood. & M. C. C. 519; 34 N. H. 439. t-3 Macn. & G. 664; Wms. Ex. 651. u-7 Taunt. 233; 2 Ves. Sen. Ch. 433. v-Prec. Ch. 300. w-1 Ves. Sen. Ch. 314; and see 1 Ired. Ch. 130. x-24 Vt. 591. y-1 Phill. Ch. 406; see 18 Ala. (N. S.) 27.

Growing Crops. See EMBLEMENTS; PERSONAL PROPERTY.
Guarantee. See BONDS, NOTES, AND BILLS; CONTRACTS, "Payment."
Guarantor. See BONDS, NOTES, AND BILLS; CONTRACTS, "Payment."
Guaranty. See BONDS, NOTES, AND BILLS; CONTRACTS, "Payment."
Guardian. See PERSONS.
Guardian ad Litem. See PERSONS.
Guerilla. See MILITARY LAW.
Guest. See BAILMENTS; INNKEEPERS.
Guilty. See PLEADING.
Habeas Corpus. See PRACTICE.
Habendum. See CONVEYANCES.
Habitation. See DOMICIL; REAL PROPERTY, "House."
Half-blood. See PERSONS; RELATIONS.
Half-blood—Brother—Sister. See PERSONS; RELATIONS.
Half-cent—Dime—Dollar—Eagle. See MONEY.
Hallucination. See MEDICAL LAW.
Handwriting. See EVIDENCE; WRITING.
Harbor. See REAL PROPERTY; WATER.
Haven. See REAL PROPERTY; WATER.
Hawker. See SALES.
Hazardous Contract. See CONTRACTS; INSURANCE.
Head. See REAL PROPERTY; WATER.
Head of a Family. See PERSONS.
Health. See MEDICAL LAW.
Hearsay Evidence. See EVIDENCE.
Heifer. See ANIMALS.
Heirs. See CONVEYANCES.
Hermaphrodites. See MEDICAL LAW.
High Seas. See REAL PROPERTY; WATER.
Highwater Mark. See REAL PROPERTY; WATER.
Highways. See REAL PROPERTY.
His Excellency. See OFFICE AND OFFICERS.
His Honor. See OFFICE AND OFFICERS.
Holder. See BONDS, NOTES, AND BILLS.
Holding Over. See LANDLORD AND TENANT.
Homestead. See REAL PROPERTY.
Homicide. See CRIMINAL LAW.
Horses. See ANIMALS; BAILMENTS; INNKEEPERS.
Hour. See TIME.
House. See REAL PROPERTY; HOUSE.
House-breaking. See CRIMINAL LAW.
Household. See PERSONS.
Household Furniture. See CONVEYANCES, "Wills;" PERSONAL PROPERTY.
Household Stuff. See CONVEYANCES, "Wills;" PERSONAL PROPERTY.
Householder. See PERSONS, "Head of a Family."
Housekeeper. See PERSONS, "Head of a Family."
Hunger. See MEDICAL LAW.
Hunting. See ANIMALS.
Husband. See MARRIAGE.
Idem Sonans. See PLEADING.
Identity. See EVIDENCE.
Idiocy. See MEDICAL LAW.
Idiots. See PERSONS.

IGNORANCE. See ACTS; EVIDENCE; LAW.

IGNORANCE OF FACT is the want of knowledge as to the fact in question. It would be an error resulting from ignorance of fact, if a man believed a certain woman to be unmarried and free, when in fact she was a married woman; but if he were to marry her under that belief he would not be criminally responsible.[a] Ignorance of the laws of a foreign government, or of another State, is ignorance of fact.[b] Ignorance of fact excuses; ignorance of law does not excuse.[c]

IGNORANCE OF LAW is the want of knowledge of those laws which it is our duty to understand, and which every man is presumed to know. Thus, for example, the law forbids any one marrying a woman whose husband is living; if any man, then, imagined he could marry such a woman he would be ignorant of the law; and if he married her he would commit an error as to a matter of law, and in doing this would be presumed to know the law respecting bigamy, and that he knew that he was committing, and that he intended to commit, the offence of bigamy; and this is true in regard to all offences.

Every man may acquire a knowledge of the laws that have been promulgated; and a neglect to become acquainted with them is voluntary ignorance.[d]

Illiterate. See CONTRACTS; SIGNATURE; WRITING.
Illusion. See MEDICAL LAW.
Imbecility. See MEDICAL LAW.
Immaterial Averment. See PLEADING.
Immigration. See DOMICIL.
Immoral Consideration. See CONTRACTS, "Consideration."
Immorality. See CRIMINAL LAW.
Immovables. See PROPERTY.
Impairing Obligation, etc. See CONTRACTS.
Impanel. See PRACTICE.
Imparlance. See PRACTICE.
Impeachment. See EVIDENCE, "Witnesses."
Impertinent. See PLEADING; PRACTICE.
Implements. See PRACTICE.
Implication. See PRACTICE.
Impotence. See MEDICAL LAW.
Imprisonment. See CONTRACTS, "Coercion," "Compulsion," "Duress;" PRACTICE, "Arrest."
In Chief. See EVIDENCE.
In Custodia Legis. See PROPERTY, ETC.
In Re. See PRACTICE.
In Rem. See PRACTICE.
In Terrorum. See CONVEYANCES, "Wills."
In Testimony Whereof. See ACKNOWLEDGMENTS.
In Witness Whereof. See CONVEYANCES.
Inadequacy. See CONTRACTS; CONVEYANCES.
Incapacity. See CONTRACTS.
Incendiary. See CRIMINAL LAW.
Inception. See CONVEYANCES, "Wills."
Incest. See CRIMINAL LAW.
Incident. See REAL PROPERTY.
Incompatibility. See OFFICE AND OFFICERS.
Incompetency. See EVIDENCE, "Witnesses."
Incorporeal Hereditaments. See REAL PROPERTY.
Incumbrances. See CONVEYANCES; MORTGAGES; REAL PROPERTY.
Indemnity. See BONDS OR OBLIGATIONS; CONTRACTS.
Indenture. See CONVEYANCES, "Deeds."
Indian. See PERSONS.
Indictment. See PRACTICE.
Indirect Evidence. See EVIDENCE.
Indorsement. See title BONDS, NOTES, AND BILLS.
Inducement. See CONTRACTS, "Consideration."
Indulgence. See CONTRACTS; SURETYSHIP.
Inevitable Accident. See ACCIDENT.
Infamy. See CRIMINAL LAW.
Infant. See PERSONS.
Infanticide. See MEDICAL LAW.
Inference. See EVIDENCE, "Experts," "Presumptive Evidence."
Infidel. See EVIDENCE, "Witnesses."
Information. See PRACTICE.

[a] 6 Allen, 591. [b] 9 Pick. 112; see, for the difference between ignorance of law and ignorance of fact, 9 Pick. 92. [c] 1 Co. 177; 4 Bouv. Inst. n. 3828; Brown Max. (3d Lond. Ed.) 231; 1 Foubl. Eq. (4th Ed.) 119, n.; 8 Wend. 267, 284; 18 Id. 586, 588; 6 Paige, 189, 195; 1 Edw. Ch. 467, 472; 1 Story Eq. Jur. § 111. [d] Doct. & Stu. 1, 46; Plowd. 343.

Informer. See CRIMINAL LAW.
Infringement. See COPYRIGHTS; PATENTS.
Inhabitant. See DOMICIL.
Inheritance. See REAL PROPERTY.
Initial. See NAME.
Injunction. See PRACTICE.
Injuries. See TORTS.
Inmate. See REAL PROPERTY, "Dwelling."
Inns. See BAILMENTS.
Innkeepers. See BAILMENTS.
Inquest. See INQUISITION; MEDICAL LAW, "Death."
Innuendo. See PLEADING.
Inquisition. See PRACTICE.
Insanity. See MEDICAL LAW.
Insolvency. See ESTATES.
Inspection. See PRACTICE.
Instalments. See CONTRACTS, "Payments," "Performance."
Instanter. See TIME.
Instructions. See PRACTICE.
Insurable Interest. See INSURANCE.

INSURANCE. See BAILMENTS.

INSURANCE is a contract whereby, for an agreed premium, one party undertakes to indemnify another against loss on a specified subject by specified perils. The party agreeing to make the indemnity is usually called the insurer or underwriter; the party to receive the indemnity is called the insured or assured; the agreed consideration is called the premium; the written contract is called the policy; the events insured against are termed risks or perils; and the subject, right, or interest to be protected is denominated the insurable interest.[a] Insurance against accidents to travellers is confined to risks in travel, etc. Insurance against fire on land to buildings and all species of property, real or personal, that is subject to destruction or direct damage by fire. Insurance on lives is, in general, upon human life, but is also made upon the lives of domestic animals or such as are in possession of the insured. Insurance on risks in carriage and navigation is upon vessels and other navigable craft, freight, cargo, and liens on either by bottomry, respondentia, mortgage for commissions or otherwise, and on profits. Companies who issue policies of insurance are incorporated, and are either stock companies, mutual companies, or a mixture of the two. In a stock company the members or stockholders pay in a certain capital which is liable for the contracts of the company. In a mutual company the members are themselves the parties insured; in other words, all the members contribute premiums to the fund which is liable to each member for loss, according to the terms of the contract. In the mixed class certain members, who may or may not be insured, contribute a certain amount of the capital, for which they hold certificates or shares, and are entitled to interest on the same at a stipulated rate, or to an agreed share of the surplus receipts, after payment of losses and expenses to be estimated at certain periods.

The business of insurance companies is usually transacted through agencies. The agent for effecting insurance may be such either by appointment, or the recognition of his acts done as such.[b] He may be agent for either of the parties to the policy, or for distinct purposes, or for both.[c] An insurance agency may be more or less extensive according to the express or implied stipulations and understanding between him and his principals. It may be for filling up and issuing policies signed in blank by his principals; for transmitting applications to his principals, filled up by himself as their agent, or that of the applicant; for receiving and transmitting premiums; for adjusting and settling losses; or granting liberties and making new stipulations; or for any one or more of these purposes.[d] Notice to an agent of matters within his commission is notice to the company.[e]

AGREEMENT FOR INSURANCE. An agreement containing specific stipulations is often made in short terms preliminary to the filling out and delivery of an insurance policy. Such an agreement, specifying the rate of the premium, the subject, and risk, and amount to be insured in general terms, and being assented to by the parties, is binding.[f] Though it is usually in writing, it may nevertheless be by parol, or by parol acceptance of a written proposal.[g] It must be in such form or expression that the parties, subject, and risk can be thereby distinctly known, either by being specified or by references so that it can be definitely reduced to writing.[h] Such an agreement must have an express or implied reference to some form of policy. To be valid it must be on a legal interest against legal risks.[i] When the agreement is by a communication between parties at a distance, an offer by either will be binding upon both on a despatch by the other of his acceptance within a reasonable or the prescribed time, and prior to this offer having been countermanded.[j]

See APPLICATIONS, ETC., below.

APPLICATIONS AND REPRESENTATIONS FOR INSURANCE. The preliminary statement made by a party applying for an insurance on life, or against fire, is called the application. It generally consists of written answers to interrogatories proposed by the company applied to respecting the proposed subject. It corresponds to the "representations" preliminary to maritime insurance. It is usually referred to expressly in the policy as being the basis or a part of the contract, and this reference is in effect a warranty of the truth of the statements.[k] An oral misrepresentation of a material fact will defeat a policy on life, or against fire, no less than in maritime insurance, on the ground

a-1 Phillips Ins. §§ 1-5. b-2 Phill. Ins. § 1848; 4 Cow. 645. c-16 T. B. Monr. 252; 2 Barb. 68. d-2 Phill. Ins. Ch. 23, §§ 1-3; 2 Dutch. 268; 6 Gray, 497; 7 Id. 261; 25 Barb. 497; 18 N. Y. 376; 19 Id. 305; 25 Conn. 55, 465, 542; 26 Id. 42; 12 La. 122; 37 N. H. 35; 12 Md. 348; 1 Grant Cas. 472; 23 Penn. St. 50, 72; 26 Id. 50. e-16 Barb. 159; 1 Eng. L. & Eq. 140; 6 Gray, 14. f-1 Phill. Ins. Ch. § 3; 2 Curt. C. C. 277; 19 N. Y. 305. g-2 Curt. C. C. 524; 19 How. 318; 31 Ala. 711. h-1 Phill. Ins. §§ 6-14, *et seq.*; 2 Parsons Marit. L. 19; 19 N. Y. 305. i-1 Phill. Ins. Ch. 3, § 2; Id. Ch. 10; 19 N. Y. 184. j-1 Phill. Ins. §§ 17, 21; 27 Penn. St. 263. k-Phill. Ins. Ch. 7, 15, 16.

of fraud.[k] Insurance against fire and on life rests upon the same general conditions of good faith as maritime insurance; but in the first two classes the contract is usually based mainly upon statements by the applicant in his written replies to the numerous inquiries expressly referred to in the policy, which answers are thus made express warranties, and must, accordingly, be strictly true, whether their being so is or is not material to the risk; the inquiries are intended to cover all material circumstances, subject, however, to the principle, applicable to all contracts, that fraud by either party will exonerate the other from his obligations, if he so elects.[l]

See MISREPRESENTATION, below.

INSURANCE POLICIES. A policy of insurance is the contract or instrument whereby insurance is made by the insurer or underwriter in favor of the person insured, expressed, implied, or intended, against some risk, peril or contingency in reference to some subject. It is usually against accident or fire, on a life, or marine. An interest policy is one when the party insured has a real substantial assignable interest in the thing insured. An open policy is one on which the value is to be proved by the party insured.[m] Also, one in which an aggregate amount is expressed in the body of the policy, and the specific amounts and subjects are to be indorsed from time to time.[n] A valued policy is one where a value has been set on the goods or ship insured, and the value inserted in the policy in the nature of liquidated damages. In such a policy the value of the subject is expressly agreed, or is, as between the parties, the amount insured. A wager policy is a pretended insurance founded on an ideal risk, when the insured has no interest in the thing insured, and can, therefore, sustain no loss by the happening of any of the misfortunes insured against. Such policies are strongly reprobated.[o]

Every policy, whether accident, fire, life, or marine, specifies or imports parties, and specifies the subject or interest intended to be insured, the premium on the consideration, and the amount insured, the risks or perils for which indemnity is stipulated, and the period of the risk, or the terminus from whence and where to.

Blanks. If a blank is left in a policy of insurance for the name of the place of destination of a ship, it will avoid the policy.[p]

A date is necessary to the validity of a policy of insurance; but where there are separate underwriters, each sets down the date of his own signing, as this constitutes a separate contract.[q]

The duration of the risk under a marine insurance, or one on inland navigation, is either from one geographical terminus to another, or for a specified time; that of an accident or life policy is either for days, weeks, months, a term of years, or for life; that of a fire policy is for a specified time.

It is a leading principle as to the construction of a policy of insurance, that its distinguishing character as a contract is to be favored by the law.[r] Records and documents expressly referred to in the policy are, in effect, for the purpose of reference, a part of the policy or contract of insurance.[s]

A policy may take effect on actual or constructive delivery, and may be retrospective where neither party knows the prior circumstances.[t]

In marine insurance the contract has necessarily more implied reference to customs and usages than most other contracts; or, in other words, the larger proportion of the stipulations are not specifically expressed in the instrument.[u] Thence it has been thought to be an imperfect, obscure and confused instrument.[v] But the difficulty in giving a practical construction seems to arise more from the complication of the circumstances necessarily involved, than from any remediable defects in its provisions or phraseology. New provisions are needed from time to time to adapt the contract to new circumstances.

A mistake in filling up a policy may be corrected by order of a court of equity or of equity jurisdiction or powers.[w]

Policies of insurance are liberally construed.[x]

ABANDONMENT is a term used only in reference to risks in navigation; but the principle is applicable to fire insurance where there are remnants, and sometimes, also, under stipulations in life policies in favor of creditors.[y] The object of abandonment being to recover the whole value of the subject of the insurance it is requisite only where the subject itself, or the remains of it, or claims on account of it, survive the peril which is the occasion of the loss.[z]

k-Phill. Ins. § 650. l-1 Phill. Ins. Ch. 7, §§ 15, 16; 5 Hill, 188; 2 Hall, 632; 7 Barb. 570; 2 Denio, 75; 10 Pick. 535; 6 Gray, 288; 6 Cush. 42, 449; 2 Rob. 266; 24 Penn. St. 320; 3 Md. 341; 2 Ohio, 452; 21 Conn. 19; 6 Humphr. 176; 6 McLean C. C. 324; 8 How. 235; 1 W. Bl. 325; 6 Taunt. 186; 8 B. & C. 586; 2 M. & W. 505; 5 Bingh. 533; 3 C. & P. 353; 2 M. & R. 328. m-1 Phill. Ins. §§ 4, 6, 7, 27, 439, 948, 1178. n-12 La. An. 259; 19 N. Y. 305; 6 Gray, 214. o-3 Kent Comm. 225. p Malloy, b. 2, Ch. 7, § 14; Park. Ins. 22; Weskett Ins. 42. q-Marshall Ins. 336; 2 Parsons Marit. L. 27. r-1 Phill. Ins. Ch. 1, § 13; 8 N. Y. 351; 18 Id. 385; 8 Cush. 393; 9 Id. 479; 10 Id. 356; 17 Penn. St. 253; 19 Id. 45; 23 Id. 262; 32 Id. 381; 29 Eng. L. & Eq. 111, 215; 33 Id. 514; 2 Duer, 419, 554; 3 Id. 435; 5 Id. 517, 594; 14 Barb. 383; 2 Id. 635; 16 Mo. 98; 22 Id. 82; 22 Conn. 235; 13 B. Mon. 311; 16 Id. 242; 3 Ind. 23; 11 Id. 171; 28 N. H. 234; 29 Id. 182; 6 Curt. C. C. 322, 610; 37 Me. 137; 4 Zabr. 447; 18 Ill. 553; 4 R. I. 159; 5 Id. 426; 6 Gray, 214, 257; 7 Id. 261; 8 Ohio, 458. s-1 Phill. Ev. §§ 70–74; 22 Conn. 235; 37 Me. 137; 20 Barb. 468; 23 Penn. St. 50; 23 Eng. L. & Eq. 514; 2 N. H. 551; 33 Id. 203; 10 Cush. 337. t-1 Phill. Ins. Ch. 11, § 1; 1 Ind. 196; 27 Penn. St. 268; 42 Me. 259; 25 Conn. 207; 17 N. Y. 415; 2 Dutch. 268; 5 Gray, 52. u-1 Phill. Ins. § 119. v-1 Phill. Ins. § 6, n. 3; 1 East. 579; 5 Cranch. 342; 1 Burr. 347. w-1 Phill. Ins. § 117; 5 B. & P. 322; 2 Caines, 339; 1 Wash. C. C. 415; 1 Ves. Sr. 317, 456; 2 Cranch. 441; 2 Johns. 330; 1 Ark. 545; 1 Paige Ch. 278; 2 Curt. C. C. 277. x-1 Phill. Ins. § 6; 1 Binn. 98; 19 Penn. St. 45; 23 Id. 262; 32 Id. 351; 2 Barb. 623; 14 Id. 383; 2 Duer, 556; 5 Id. 594; 8 Id. 351; 13 Id. 89; 13 B. Mon. 311; 16 Id. 242; 3 Ind. 23; 11 Id. 171; 1 R. I. 38, 426; 27 Ala. (N. S.) 77; 33 Me. 242; 37 Id. 137; 38 Id. 414; 9 Cush. 479; 10 Id. 337; 2 Gray, 297; 6 Id. 214; 7 Id. 261; 19 N. H. 580; 29 Id. 132; 4 Zabr. 447; 22 Mo. 82; 27 Id. 152; 18 Id. 553; 8 Ohio St. 458; 22 Conn. 235; 2 Curt. C. C. 322; 29 Eng. L. & Eq. 111; 33 Id. 514. y-2 Phill. Ins. §§ 1490, 1514, 1515; 3 Kent. Comm. 265; 16 Ohio St. 200. z-2 Phill. Ins. §§ 1507, 1516; 36 Eng. L. & Eq. 198.

In such case the assured must elect, immediately upon receiving intelligence of a loss, whether to abandon to the company—he cannot delay for the purpose of speculating on the state of the markets.[a] The right to abandon is waived by commencing full repairs, but not by temporary repairs;[b] but is not lost by reason of the enhancement of the loss through the mere negligence or mistakes of the master of the vessel, or of the crew, but it is too late to abandon after the arrival in specie at the port of destination. An inexpedient or unnecessary sale of the subject by the master does not strengthen the right.[c]

Abandonment may be made upon information entitled to credit, but if made speculatively, upon conjecture, it is void; and it must be made without delay after reasonable reliable information of loss is received; otherwise the right will be waived, the assured not being permitted to wait in order to speculate upon the state of the markets.[d] In the absence of any stipulation on the subject no particular form of abandonment is required; it may be in writing or oral; in express terms or by obvious implication; but it must be absolute and unconditional and the ground for it must be stated.[e] Acceptance may cure a defect in abandonment, but is not necessary to its validity.[f] Nor is the underwriter obliged to accept or decline; he may, however, waive it.[g] But it is not subject to be defeated by subsequent events.[h] And the subject must be transferred free of incumbrance except expense for salvage.[i]

See SALVAGE; TOTAL LOSS, below.

Acceptance of abandonment in insurance is in effect an acknowledgment of its sufficiency, and perfects the right of the assured to recover for a total loss if the cause of loss and circumstances have been truly made known. No particular form of acceptance is necessary, and the underwriter is not obliged to say whether he accepts.[j] An acceptance may be a constructive one, as, by taking possession of an abandoned ship to repair it without authority to do so,[k] or by retaining such possession an unreasonable time, under a stipulation authorizing the underwriter to take such possession.[l]

ADJUSTMENT (determining the amount of loss).[x] There is no specific form essentially requisite to an adjustment. To render it binding, it must be intended and understood by the parties to a policy to be absolute and final. It may be made by indorsement on the policy, or by payment of the loss, or the acceptance of an abandonment.[m] If there is fraud by either party to an adjustment it does not bind the other.[n] If one party is led into a material mistake of fact by fault of the other, the adjustment will not bind him.[o] The amount of the loss is governed by that of the insurable interest, so far as it is covered by the insurance.

See ABANDONMENT, above; INSURABLE INTEREST, below.

AMOUNT COVERED—AMOUNT OF LOSS.

THE AMOUNT COVERED or insured is limited by that specified in the policy to be insured, and this limit may be applied to an identical subject only, as a ship, a building, a life, etc.; or to successive subjects, as successive cargoes on the same ship, or successive parcels of goods transmitted on a certain canal or railroad during a specified period; and it may be also limited by the terms of the contract to a certain proportion, as a quarter, half, etc., of the value of the subject or interest on which the insurance is made.[p]

THE AMOUNT OF LOSS is the diminution, destruction, or defeat of the value of, or of the charge upon the insured subject by the direct consequence of the risk insured against, according to the value of the policy or the contribution for loss, so far as the value is covered by the insurance.[q]

DEVIATIONS, or variations from risks described in the policy from a necessity which is not inexcusably incurred, does not forfeit the insurance;[r] as to seek an intermediate port for repairs necessary for the prosecution of the voyage;[s] changing the course to avoid disaster;[t] delay in order to succor those distressed at sea;[x] damage merely in defence against hostile attacks.[u]

Change of risk in insurance against fire, so as to render the insured subject, or its surroundings, or the use made of it different from those specified in the application, will discharge the underwriters.[v] A change of risk under a life policy, in contravention of its express provisions, will defeat it in like manner.[w] Though such a policy does not appear to have any implied condition other than those relative to fraud common to all contracts.

The effect of a deviation in all kinds of insurance is to discharge the underwriters or insurers, whether the risk is thereby enhanced or not; and the doctrine applies to lake and river navigation as well as that of the ocean.[y]

INSURABLE INTEREST. It is essential to the contract of insurance, as distinguished from a wager, that the assured should have a legally recognizable interest in the

a-2 Phill. Ins. § 1667. b-2 Phill. Ins. § 1540, 1541. c-2 Phill. Ins. §§ 1547, 1555, 1570, 1571. d-2 Phill. Ins. § 1666, *et seq.* e-2 Phill. Ins. §§ 1678, 1679, *et seq.*; 1 Curt. C. C. 148. f-2 Phill. Ins. § 1689. g-2 Phill. Ins. § 1698. h-2 Phill. Ins. § 1704; 6 Rich. Eq. 146. i-1 Gray, 154. j-2 Phill. Ins. § 1689. k-2 Curt. C. C. 322. l-16 Ill. 235. x-2 Phill. Ev. §§ 1814, 1815. m-2 Phill. Ev. § 1815; 4 Burr. 1966; 1 Campb. 134, 274; 4 Taunt. 725; 13 La. 13; 4 Met. (Mass.) 270; 22 Pick. 191. n-2 Phill. Ins. § 1316; 2 Johns. Cas. 233; 3 Campb. 319. o-2 Phill. Ins. § 1817; 2 East. 469; 2 Johns. 157; 8 Id. 334; 4 Id. 331; 9 Id. 405; 2 Johns. Cas. 233. p-2 Phill. Ins. Ch. 14, §§ 1, 2; 10 Ill. 235; 16 B. Mon. 242; 2 Dutch. 11; 6 Gray, 574; 7 Id. 246; 13 La. An. 246; 34 Me. 487; 39 Eng. L. & Eq. 228. q-2 Phill. Ins. Ch. 15, 16, 17; Parsons Mar. L. Ch. 10, § 1, Ch. 11, 12; 9 Cush. 415; 1 Gray, 371; 26 N. H. 389; 31 Id. 238; 5 Duer, 1; 1 Dutch. 506; 6 Ohio St. 200; 5 R. I. 426; 2 Md. 217; 7 E. & B. 172. r-1 Phill. Ins. § 1018. s-1 Phill. Ins. § 1019. t-1 Phill. Ins. § 1023. x-1 Phill. Ins. § 1027; 6 East. 54; 2 Cranch. 240, 258; 2 Wash. C. C. 80; 1 Sumn. C. C. 328. u-1 Phill. Ins. § 1030. v-1 Phill. Ins. § 1036; 17 Barb. 11; 2 N. Y. 210; 7 Cush. 175; 8 Id. 583; 6 Gray, 185; 19 Penn. St. 45; 13 B. Mon. 282; 23 Mo. 453; 4 Zabr. 447; 1 Dutch. 54; 4 Wis. 80. w-1 Phill. Ins. § 1039. y-1 Phill. Ins. § 987.

insured subject, the pecuniary value of which may be appreciated and computed and valued. It is not requisite that the insured party should have an absolute property in the insured subject, or that the subject or interest should be one that can be exclusively possessed, or be transferable in trade or assignment. The subject or interest must, however, be such that it may be destroyed, lost, damaged, diminished, or intercepted by the risks insured against. The interests usually insured are those of the owner in any species of property, of mortgagor, mortgagee, holder of bottomry or respondentia bond, of an agent, consignee, lessee, factor, carrier, bailee, or party having a lien, or entitled to a rent or income, or being liable to a loss depending upon certain contingencies, or having a certainty or probability of a profit or pecuniary benefit depending on the insured subject.[y] The certainty or probability, direct or incidental, of pecuniary benefit by the living, or pecuniary loss or damage to any one by the decease of another, gives an insurable interest in his life.[z]

The amount of insurable interest is the value of the insured subject as agreed by the policy, or its market value, or the pecuniary loss to which the assured is liable by the risks insured against, though the insured subject—for example, life or health—has not a market value.[a]

LOSS is the destruction of or damage to the insured subject by the perils insured against according to the express provisions and construction of the contract of insurance. These accidents, or misfortunes, or perils, as they are sually denominated, are all distinctly enumerated in the policy; and no loss, however great or unforeseen, can be a loss within the policy unless it be the direct and immediate consequence of one or more of these perils.[b] Loss under a life policy is simply the death of the subject by a cause, the risk of which is not expressly excepted in the policy, and when the loss is not fraudulent, as when one insured, who insures the life of another for his own benefit, procures the death. Loss in insurance against fire must, under the usual form of the policy, be the partial or total destruction or damage of the thing insured against fire. In maritime insurance, in which loss by fire is one of the risks usually included, the loss insured against may be absolutely or constructively told, or a partial or general average loss, or a particular average.

Partial losses are sometimes called average losses, because they are often in the nature of those losses which are the subject of average contributions; they are distinguished into general and particular averages. Total losses in maritime insurance are absolutely such when the entire thing perishes or becomes of no value. Constructively, a loss may become total where the value remaining is of such a small amount that the whole may be surrendered. See ADJUSTMENT, above.

MEASURE OF DAMAGES. In cases of loss of goods which have been insured from maritime dangers when the adjustment is made, the damages are settled by valuing the property, not according to prime cost, but at the price at which it may be sold at the time of selling the average.[c] See ADJUSTMENT, above.

MEMORANDUM. A clause in a policy limiting the liability of the insurer is called a memorandum. Policies of insurance on risks of transportation by water generally contain exceptions of all liability from loss on certain articles other than total, or for contributions for general average, and for liability for particular average on certain other articles supposed to be perishable, or specially liable to damage under specified rates, or each varying from three to twenty per cent., and for any loss, whatever, under three or five per cent. Some seventy or eighty articles are subject to these exceptions of particular average in the divers forms of policy in use in different localities.[d] These exceptions were formerly introduced under a "MEMORANDUM," or "N. B.," and hence have been called "memorandum articles," and the body of exception the "memorandum." The list of articles and rates of exceptions vary much in different places, and from time to time at the same place.[e]

PART OWNERS. See INSURABLE INTEREST, above.

POLICY. See INTRODUCTION, above.

PREMIUM is the consideration for a contract of insurance. A policy of insurance always expresses the consideration, called the premium, which is a certain amount, or a certain rate upon the value of the risk, paid wholly in cash, or partly so and partly by promissory note (called a premium note, and collaterally secured by a stipulation in the policy for its being forfeited by its non-payment) or otherwise.[f] By the charters of mutual fire insurance companies the insured building is usually subject to a lien from the premium.[g] The premium may be payable by service rendered.[h] In life insurance the premium is usually payable periodically,[i] and the continuance of the risk is usually made to depend upon the due payment of a periodical premium.[j] So far as the agreed risk is not given in amount or time under a marine policy, the whole, or a proportional, stipulated, or customary part of the premium is either not payable, or, if paid, is to be returned unless otherwise agreed.[k]

REPRESENTATIONS. See APPLICATIONS, ETC., above.

y-1 Phill. Ins. Ch. 3; 11 Eng. L. & Eq. 2; 28 Id. 312; 34 Id. 116; 48 Id. 292; 5 N. Y. 151; 19 Id. 184; 11 Penn. St. 429; 10 Cush. 37; 6 Gray, 192; 2 Md. 111; 13 B. Mon. 311; 16 Id. 242; 5 Sneed. 139. z-1 Phill. Ins. Ch. 3, § 14; 10 Cush. 244; 22 Penn. 65; 27 Id. 268; 23 Conn. 244; 22 Barb.; 28 Mo. 383; 28 Eng. L. & Eq. 510. a-2 Phill. Ins. Ch. 14; 13 Barb. 206; 7 N. Y. 530; 13 Id. 31; 24 N. H. 234; 2 Parsons Marit. L. Ch. 2, § 2. b-Marshall Ins. 1, Ch. 12. c-Marshall Ins. b. 1, Ch. 14, § 2, p. 621. d-1 Phill. Ins. § 54, n. e-19 N. Y. 272. f-2 Parsons Marit. L. 182. g-1 Phill. Ins. Ch. 6; 19 Miss. 53; 21 How. 35. h-5 Ind. 96. i-18 Barb. 541. j-2 Dutch. 268. k-2 Phill. Ins. Ch. 22; Parsons Marit. L. 185; 16 Barb. 280; 7 Gray, 246.

RISKS AND PERILS. The risk or peril in an accident policy is the injury or death; in a life policy, is death; under a fire policy, destruction or damage by fire; under a marine policy, by perils of the seas, usually including fire; and under a policy upon subjects at risk in lake, river or canal navigation, by perils of the same.

Under a marine insurance the risks are from a certain place to a certain other, or from one date to another. The perils usually insured against as "perils of the seas" are: fire, lightning, winds, waves, rocks, shoals, and collisions; and also the perils of hostile capture, piracy, theft, arrest, barratry (seizing and running away with the vessel, negligence, mutiny, etc.), and jettisons (casting the goods away, from necessity, whereby they sink and are lost).[l] But a distinction is made between the extraordinary action of perils of the seas, from which insurers or underwriters are liable, and wear and tear, and deterioration by decay, for which they are not liable.[m] Perils of lakes, rivers, etc., are analogous to those of the seas.[n]

Insurers or underwriters are not liable for loss occasioned by the gross misconduct of the assured, or imputable to him; but if a vessel is seaworthy, with suitable officers and crew, underwriters are liable for loss, though occasioned through the mistakes or want of assiduity and vigilance of the officers or men.[o] Underwriters are not answerable for loss directly attributable to the qualifications of the insured subject independently of the specified risks,[p] or for loss distinctly occasioned by the fraudulent or gross negligence of the party insured.

Insurance against illegal risks, such as trading with the enemy, the slave trade, piratical cruisers, and illegal kinds of business, is void.[q]

Policies usually contain express exceptions of some risks besides those impliedly excepted. These may be in maritime insurance, contraband and illicit interloping trade, violation of blockade, mobs and civil commotions; in fire policies, loss on jewelry, paintings, sculpture, by hazardous trade, etc.; in life policies, loss by suicide, risks in certain climates or localities, and in certain hazardous employments, without express permission.[r] See AVERAGE; LOSS, above.

SALVAGE. See MARITIME LAW.

TOTAL LOSS in marine insurance is either the absolute destruction of the insured subject by the direct action of the perils insured against, or a constructive—sometimes called technical—total loss, in which the party insured is deprived of the possession of the subject, still subsisting in specie, or where there may be remnants of it, or claims subsisting on account of it, and the assured by the express terms or legal construction of the policy has the right to recover its value from the underwriters, so far as, and at the rate of which it is insured, on abandonment and assignment of the still-subsisting subject, or remnants or claims arising out of it.[s]

A constructive total loss may be by capture; seizure by unlawful violence, as piracy,[t] or damage to ship or goods over half the value at the time and place of loss,[u] or a loss of the voyage;[v] though the ship or goods may survive in specie, but so as not to be fit for use in the same character for the same service or purpose;[w] or by jettison;[x] or by necessity to sell on account of the action and effect of the peril insured against;[y] or by loss of insured freight consequent on the loss of cargo or ship.[z] There may be a claim for a total loss in addition to a partial loss.[a] A total loss of the ship is not necessarily such of cargo,[b] nor is submersion necessarily a total loss;[c] nor is temporary delay of the voyage.[d]

A constructive total loss, and an abandonment thereupon of the ship, is a constructive total loss of freight; and a constructive total loss and abandonment of cargo has a like effect as to commissions or profits thereon; and the validity of the abandonment will depend upon the actual facts at the time of the abandonment, as the same may subsequently prove to have been.[e]

VALUATION. See ESTIMATED VALUE, above.

WARRANTY in insurance is a stipulation or agreement on the part of the insured party, in the nature of a condition. It is express when the stipulation is introduced into the written contract by agreement of the parties. It is implied when it naturally results from the nature of the contract; as, that the ship shall be seaworthy when she sails on the voyage insured.

An express warranty must be strictly complied with, and the assured is not permitted to allege, in excuse for non-compliance, that the risk was not thereby affected, since the parties have agreed that the stipulated fact or act shall be the basis of the contract,[f] unless compliance is rendered illegal by a subsequent statute.[g]

The most frequent express warranties in maritime policies are, the time of sailing, and, in time of hostilities, the national character of the insured subject and neutral insignia and conduct. In fire and life policies warranties are quite numerous, comprehending all the facts

l-1 Phill Ins. § 1099, *et seq.* m-1 Phill. Ins. § 1105. n-1 Phill. Ins. § 1099. o-1 Phill. Ins. § 1049. p-1 Phill. Ins. Ch. 13, § 5. q-1 Phill. Ins. §§ 210, 691. r-1 Phill. Ins. §§ 55, 63, 64. s-2 Phill. Ins. Ch. 17: 2 Johns. 286. t-1 Phill. Ins. § 1106: 2 Eng. L. & Eq. 85. u-2 Phill. Ins. § 1608; 1 Curt. C. C. 148; 9 Cush. 415; 5 Denio, 342; 6 Id. 282; 19 Ala. (N. S.) 108; 1 Johns. Cas. 141; 6 Johns. 219. v-1 Phill. Ins. §§ 1601, 1606, 1619; 4 Me. 431; 24 Miss. 461; 19 N. Y. 272; 1 Mart. 221. w-2 Phill. Ins. § 1605: 2 Caines Cas. 324; Valin. Tom. 2, tit. Ass. a 46. x-2 Phill. Ins. §§ 1616, 1617; 1 Caines, 196. y-2 Phill. Ins. § 1623; 5 Gray, 154; 1 Cranch. 202. z-2 Phill. Ins. §§ 1642, 1645; 18 Johns. 208. a-2 Phill. Ins. § 1743; 17 How. 595. b-2 Phill. Ins. §§ 1601, *et seq.*, 1622; 3 Binn. 287. c-2 Phill. Ins. § 1607; 7 East. 38. d-2 Phill. Ins. §§ 1618; 5 B. & Ald. 597. e-2 Phill. Ins. § 1630, *et seq.*; 3 Johns. Cas. 93. f-Bouv. Inst. Index; 1 Phill. Ins. § 755. g-1 Phill. Ins. § 769.

stated by the applicant in his application when incorporated, as it usually is, into the policy, and expressly contracted by reference thereto. In fire insurance express reference is often made to the charter of the company; specially so in mutual companies, and, in such companies, to rules and regulations, and conditions indorsed upon the policy.[z] A policy of insurance, no less than any other contract, is subject to the condition of fraud.

Intention. See CONTRACTS; CRIMINAL LAW.
Inter Partes. See CONVEYANCES.

INTEREST. See CONTRACTS.

INTEREST is the compensation which is paid by the borrower of money to the lender for its use, and, generally, by a debtor to his creditor in recompense for his detention of the debt. It is a payment for the use of money.

ALLOWANCE OF INTEREST. The contractor who has expressly or impliedly undertaken to pay interest is, of course, bound to do so. Executors,[a] administrators,[b] assignees of bankrupts or insolvents,[c] guardians,[d] and trustees[e] who have kept money an unreasonable length of time,[f] and have made, or might have made, it productive,[g] are chargeable with interest.

The lender upon an express or implied contract for interest is entitled to receive and enforce its payment. Executors, administrators, etc., are, in some cases, allowed interest for advances made by them on account of the estates under their charge.[h] The rule has been extended to trustees,[i] and compound interest even allowed them.[j]

EXPRESS CONTRACTS. When the debtor expressly undertakes to pay interest, he or his personal representatives having assets are bound to pay it. But if a party has accepted the principal, it has been determined that he cannot recover interest in a separate action.[k]

IMPLIED CONTRACTS where, from the course of dealings between the parties, a promise to pay is implied, the debtor is bound to pay.[l] So, also, on an *account* stated, or other liquidated sum, whenever the debtor knows precisely what he is to pay, and when he is to pay it[m] on an unsettled claim, after a demand of payment.[n] But interest is not due for unliquidated damages, or on a running account, where the items are all on one side, unless otherwise agreed upon;[o] on the arrears of an annuity secured by a specialty,[p] or given in lieu of dower;[q] on *bills and notes*, if payable at a future day certain, after due;[r] if payable on demand, after demand made.[s] Where the terms of a promissory note are that it shall be payable by instalments, and on the failure of any instalment, the whole is to become due; interest on the whole becomes payable from the first default.[t] Where, by the terms of a bond or a promissory note, interest is to be paid annually, and the principal at a distant day, the interest may be recovered before the principal is due. On a *deposit* by a purchaser, which he is entitled to recover back, paid either to a principal or an auctioneer. For *goods* sold and delivered after the customary or stipulated term of credit has expired;[w] if there be no credit, then from the time of sale.[x] On *judgment* debts,[y] from the rendition of judgment.[z] On judgment affirmed in a higher court.[a] On *money* obtained by fraud, or where it has been wrongfully detained.[b] For whoever receives money not his own, and detains it from the owner unlawfully, must pay interest therefor. Hence, a public officer, retaining money wrongfully, is chargeable with interest during the time of such wrongful detainer.[c] So, an agent, unreasonably neglecting to inform his principal of receipt of money, is liable for the interest from the time when he should have communicated such information.[d] But an agent is not generally liable for interest on funds in his hands, unless he uses them, or is in default in accounting for them.[e] On money paid by mistake, or recovered on a void execution.[f] On money lent or laid out for another's use.[g] On money had and received after demand.[h] On purchase money which has lain dead, where the vendor cannot make a title.[i] On purchase-money remaining in the purchaser's hands to

z-1 Phill. Ins. §§ 28, 63, 64. a-12 Conn. 350; 7 S. & R. 264. b-4 Gill. & J. 453; 35 Miss. 321. c-2 W. & S. 557. d-29 Ga. 82; 14 La. An. 764. e-1 Pick. 528; 10 Gill. & J. 175; 15 Md. 75; 29 Ga. 82; 11 Cal. 71. f-18 Pick. 1; 1 Ashm. 305; 29 Ga. 82. g-4 Gill. & J. 453; 1 Pick. 530. h-10 Pick. 77; 6 Halst. 44; see 9 Mass. 37. i-1 Binn. 488. j-16 Mass. 228. k-1 Esp. N. P. 110; 3 Johns. 220; see 1 Campb. 50; 1 Dall. 315; Stark. Ev. pt. 4, 787; 45 Me. 542; 9 Ohio St. 452. l-1 Campb 50; 3 Brown Ch. 436; Kirb. 207; 2 Wend. 501; 4 Id. 483; 2 Penning. 548; 33 Ala. (N. S.) 459; 8 Iowa, 163. m-2 W. Bl. 761; 3 Wils. 205; 2 Ves. Ch. 365; 8 Brown Parl. Cas. 561; 2 Burr. 1085; 5 Esp. 114; 2 Com. Contr. 207; 1 Hayw. 173; 2 Cox, 219; 12 Johns. 156; 20 N. Y. 463; 13 Ind. 475; 8 Fla. 161; 15 Johns. 409, 124; 3 Caines, 226, 234; 2 M'Cord, 406. n-12 N. H. 474; 2 Gallis. 45; 22 Pick. 291; 2 Cush. 475; 1 Kern. 406. o-1 Dall. 265; 2 Wend. 501; 4 Cow. 496; 5 Id. 187; 6 Id. 193; 5 Vt. 177; 1 Speers, 209; 1 Rice, 21; 2 Blackf. 313; 1 Bibb. 443; 20 Ark. 410. p-14 Vin. Abr. 458, pe. 8; 3 Atk. Ch. 579; 9 Watts, 530. q-1 Harring. 106; 3 W. & S. 437. r-3 Dev. & B. 70; 5 Humph. 406; 19 Ark. 690; 13 Mo. 252. s-Bunb. 119; 6 Mod. 138; 1 Str. Ch. 649; 2 Ld. Raym. 733; 2 Burr. 1081; 5 Ves. Ch. 533; 15 S. & R. 264; 1 M'Cord, 370; 6 Dana, 70; 1 Hempst. C. C. 155; 18 Ala. (N. S.) 300; see 4 Ark. 210. t-4 Esp. 147. u-1 Binn. 165; 2 Mass. 568; 3 Id. 221; see 2 Parsons' Notes and B. 391, *et seq.* v-Sugden Vend. 327; 3 Campb. 258; 5 Taunt. 625; but see 4 Taunt. 334, 341. w-Dougl. 376; 2 B. & P. 337; 2 Dall. 193; 4 Id. 289; 6 Binn. 162; 11 Ala. 451; 1 McLean C. C. 411; 12 N. H. 474; 26 Ga. 465; 8 Iowa, 163. x-4 Dallas, 286, 289; 4 Harring. (Del.) 30; 22 Vt. 191; 3 Comst. 502. y-14 Vin. Abr. 458, Pl. 15; 4 Dall. 251; 2 Ves. Ch. 162; 5 Binn. 61; 1 Harr. & J. 754; 3 Wend. 496; 4 Met. (Mass.) 317; 6 Halst. 91; 3 Mo. 86; 4 J. J. Marsh. 244; T. U. P. Charlt. 138; see 3 M'Cord, 166; 1 Ill. 52; 14 Mass. 239. z-Laws, 1871, Ch. 95, § 1; 22 Wend. 157; 4 Mass. 170; 1 Harris & Johns. 754; 2 N. H. 169; 7 Rich. Eq. 395. a-2 Burr. 1097; 2 Str. 931; 4 Burr. 2128; Dougl. 752, n. 3; 2 H. Bl. 267, 284; 2 Campb. 428, n.; 3 Taunt. 503; 4 Id. 30; see 3 Hill, 426. b-9 Mass. 504; 1 Campb. 129; 3 Cow. 426. c-3 Binney, 123; 4 Wend. 675; 9 Johns. 6 N. H. 456. d-9 Pick. 368. e-1 Met. 112; 4 Gilman, 193; 6 Johns. Ch. 353. f-1 Pick. 212; 4 Met. 181; 1 W. & S. 235; 9 S. & R. 409; 3 Sumn. C. C. 336. g-Bunb Exch. 119; 2 W. Bl. 761; 1 Ves. Ch. 63; 1 Binn. 488; 6 Id. 163; 1 Dall. 349; 2 Hen. & M. 381; 1 Hayw. 4; 9 Johns. 71; 2 Wend. 413; 1 Conn. 32; 7 Mass. 14; 11 Id. 504; 1 Mo. 718; 2 Met. (Mass.) 168. h-1 Ala. (N S.) 452; 4 Blackf. 21, 164. i-Sugden. Vend. 327.

pay off incumbrances.[j] *Rent* from the time that it is due.[k] Even if the rent is payable otherwise than in money, but is not so paid.[l] Interest cannot, however, be recovered for arrears of rent payable in wheat.[m]

When the rate of interest is specified in any contract, that rate continues until full payment is made.

JUDGMENTS. Upon a note made payable in a certain number of years, with interest annually, judgment can be recovered only for simple interest on the principal sum.[n]

TIME DUE—DATE OF ALLOWANCE, ETC. In actions for money had and received, interest is allowed from the date of the service of the writ.[o] On debts payable on demand, interest is payable only from the demand.[p] The words "with interest for the same" carry interest from date.[q] The mere circumstances of war existing between two nations is not a sufficient reason for abating interest on debts due by the subjects of one belligerent to another.[r] But a prohibition of all intercourse with an enemy during war furnishes a sound reason for the abatement of interest until the return of peace.[s]

A debt barred by the statute of limitations, and revived by an acknowledgment, bears interest for the whole time.[t]

COMPOUND INTEREST. Interest upon interest is not allowed, except in special cases,[u] and the uniform current of decisions is against it, as being a hard, oppressive exaction, and tending to usury.[v] If an agreement is made to convert interest already due into principal, or if accounts between parties are settled by rests, and therefore in effect upon the principal of compound interest, which may be done by an express accounting,[w] or under a custom of forwarding accounts, quarterly, half-yearly, or yearly, to the debtor who acquiesces in them by his silence;[x] these transactions are valid, and sanctioned by the law: and such a method of computation is even directed by courts.[y] If compound interest has accrued, even under a prior bargain for it, and being actually paid, it cannot be recovered back.[z] But compound interest cannot be recovered as such, even if it be expressly promised.[a] But annual rests in merchants' accounts are allowed,[b] though not after mutual dealings have ceased.[c] In cases where it is expressly stipulated that interest shall be payable at certain fixed times, it has been held that interest may be charged upon the interest from the time it is payable.[d]

Where a partner has overdrawn the partnership funds, and refuses, when called upon to account, to disclose the profits, recourse would be had to compound interest as a substitute for the profits he might reasonably be supposed to have made.[e] And when executors, administrators, or trustees convert the trust money to their own use, or employ it in business or trade, or fail to invest, they are chargeable with compound interest.[f]

In an action to recover the annual interest due on a promissory note, interest will be allowed on each year's interest until paid.[g]

An infant's contract to pay interest on interest will be binding upon him when it is for his benefit.[h]

COMPUTING INTEREST. In casting interest on notes, bonds, etc., upon which partial payments have been made, every payment is to be first applied to keep down the interest; but the interest is never allowed to form a part of the principal so as to carry interest.[i] When a partial payment exceeds the amount of interest due when it is made, it is correct to compute the interest to the time of the first payment, cast interest on the remainder to the time of the second payment, add it to the remainder, and subtract the second payment, and in like manner from one payment to another, until the time of judgments.[j] And the same rule applies to judgments.[k]

Where a partial payment is made before the debt is due, it cannot be apportioned part to the debt and part to the interest. As, if there be a bond for one hundred dollars, payable in one year, and at the expiration of six months fifty dollars be paid in, this payment shall not be apportioned part to the principal and part to the interest, but at the end of the year interest shall be charged on the whole sum, and the obligor shall receive credit for the interest of fifty dollars for six months.[l]

FOREIGN INTEREST. The rate of interest of the place of performance is to be

[j-1] Sch. & L. 134; see 1 Wash. 125; 5 Munf. 342; 6 Binn. 435. [k-4] Johns. 183; 7 Wend. 109; 6 Gill & Johns. 383; 6 B. Mon. 462; 4 Whart. 516; Laws 1871, p. 250. [l-4] Wend. 313; 5 Denio, 135; 2 Comst. 135; 2 Barb. 643; 5 Gratt. 259; 2 Kernan, 40. [m-1] Johns. 276; see 2 Call, 249, 253; 3 Hen. & M. 463; 4 Id. 470; 5 Munf. 21. [n-8] Mass. 455. [o-1] Mass. 436; 15 Pick. 500; 12 N. H. 474. [p-Addis. 137; 15 Pick. 500; 5 Conn. 222; 1 Mass. C. C. 117; see 12 Mass. 4. [q-Addis. 323, 324; 1 Stark. 452, 507. [r-1] Pet. C. C. 524; 4 Harr. & M'H. 161. [s-See on this subject, 2 Dall. 102, 132; 4 Id. 286; 1 Wash. 172; 1 Call, 194; 3 Wash. C. C. 396; 8 S. & R. 103, and *post*, "when interest will be barred." [t-16] Vt. 297. [u-1] Eq. Cas. Abr. 287; Fonbl. Eq. *b.* 1, *c.* 2. § 4, note *a*; 31 Vt. 679; 34 Penn. St. 210. [v-1] Johns. Ch. 14; Cam. & N. 361; 13 Vt. 430. [w-2] Salk. 449; G. Cooper. Ch. 231; 5 Paige, 98; 3 Ham. 18; 4 Rand. 406. [x-2] Anst. 496; 5 B. & Ald. 34; 2 Ves. 15; 3 Camp. 466; 1 Stark. 487; 1 Bald. 536; 3 Camp. 467. [y-13] E. L. & E. 140; 1 Johns. Ch. 620; 5 Id. 497; 7 W. & S. 48; 18 Pick. 1; 7 Yerg. 172; 2 M'Cord Ch. 200; 12 Ala. 354; 6 Dana, 3; 14 Ill. 1; 16 How. 535. [z-3] N. H. 40; 5 Paige, 98. [a-2] Salk. 499; 1 Ves. Jr. 99; 1 Johns. Ch. 13; 5 Paige, 98; 8 Mass. 455; 2 Cush. 92; 2 B. Mon. 336; 4 Rand. 406; 7 Greenl. 48; 4 Yeates, 220. [b-2] Johns. Ch. 210, 214; 3 Wash. C. C. 350; 3 Cal. 231. [c-3] Wash. C. C. 396, 402; 11 Met. 210. [d-1] Tayl. 231; Cam. & N. 357; 2 Nott & M'Cord, 38; 2 Hill. (S. C.) 408; 3 Rich. 125; 1 N. H. 179; 2 Cush. 92; 7 Greenl. 48; 1 Am. L. Cas. 341, 371. [e-2] Johns. Ch. 213. [f-1] Pick. 528; 1 Johns. Ch. 620. [g-2] Mass. 568; 8 Id. 445; 1 N. H. 179; 16 Vt. 45; see as to charging compound interest the following cases: 1 Johns. Ch. 550; Cam. & N. 361; 1 Binn. 165; 4 Yeates, 220; 1 Hen. & M. 4; 3 Id. 89; Vin. Abr. 457, *Int.* (C.); Com. Dig. Chancery (3 S. 3): 1 Hare & W. Sel. Dec. 371. [h-2] T. R 388. [i-2] Wash. C. C. 167, 1 Halst. 408; 2 Hayw. 17; 17 Mass. 417; 1 Dall. 378; see 14 Conn. 445. [j-1] Pick. 194; 4 Hen. & M. 431; 8 S. & R. 458; 2 Wash. C. C. 167; see 3 Wash. C. C. 350, 396; 3 Cow. 86. [k-2] N. H. 169, 8 S. & R. 452. [l-1] Dall. 124.

allowed where such place is specified,[m] otherwise of the place of making the contract.[n] But the rate of interest of either place may be reserved; and this provision will govern, if an honest transaction, and not a cover for usury.[o]

LIMITATION OF INTEREST. When the money due is tendered to the person entitled to it, and he refuses to receive it, the interest ceases.[p] Where the plaintiff is absent in foreign parts beyond the seas, evidence of that fact may be given in evidence to the jury on the plea of payment, in order to extinguish the interest during such absence.[q]

Whenever the law prohibits the payment of the principal, interest during the prohibition is not demandable.[r]

If the plaintiff has accepted the principal, he cannot recover the interest in a separate action.[s]

TO THE PENALTY OF BOND. It is a general rule that the penalty of a bond limits the amount of the recovery.[t] But in some cases the interest is recoverable beyond the amount of the penalty.[u] The recovery depends on principles of law, and not on the arbitrary discretion of a jury.[v]

The exceptions are: Where the bond is to account for moneys to be received;[w] where the plaintiff is kept out of his money by writs of error,[x] or delayed by injunction;[y] if the recovery of the debt be delayed by the obligor;[z] if extraordinary emoluments are derived from holding the money;[a] or the bond is taken only as a collateral security;[b] or the action be on a judgment recovered on a bond.[c] But these exceptions do not obtain in the administration of the debtor's assets, where his other creditors might be injured by allowing the bond to be rated beyond the penalty.[d]

RISK OR SERVICE. A lender may charge an extra price for the risk he incurs, if that risk is distinct and different from the mere personal risk of the debtor being unable to pay; for nothing of this kind is any justification whatever for more than legal interest. But where repayment of money loaned is made to depend upon the happening of contingent events, there the lender may take, beside interest for the sum loaned, enough more to insure him against the casualty which might destroy his claim; that is, as much more as the risk is worth. So, a lender, whether banker, broker,[e] engaged in trade, or lending his own money,[f] may charge, in addition to the discount, a reasonable compensation for his trouble or services. But the sum paid as such compensation or commission for service and trouble in any case must not exceed the amount usually taken in the course of trade or business; and if it do, such excess will make the contract usurious.[g]

SALES OF NOTES, Etc. Negotiable paper may be sold for less than its face, and the purchaser can recover its whole amount from the maker when it falls due, although he thereby gets much more than legal interest for the use of his money; and this principle extends to bonds and other securities for money loaned. For such paper is property; and one may sell the notes which he holds at a price made low, either by doubts of the solvency of the maker, or by stringency in the money market, as well as his house or his horse at a less than the average price. But the purchase must be actual, and made in good faith, and not merely intended to give efficacy to a usurious contract. For if a person makes his own note, and sells that for what he can get, this, while in appearance the sale of a note, is in fact a loan and a borrowing, and nothing else. If the seller of a note acquired it by purchase, or if it is his for money advanced or lent by him to its full amount, he may sell it for what he can get; but if he be the maker of the note, or the agent of the maker, and receives for the note less than would be paid him if only a lawful discount were made, it is a usurious loan. Where a note has been fairly executed, and where there is no usury between the original parties, so that the payee has acquired a legal right to sue the maker upon the note, he may then dispose of it, at any rate of discount from its face, and the purchaser will have a right to enforce it for its full amount against the maker.[h]

USURIOUS INTEREST. Usury is the taking of more interest than the law allows. The excess over the legal rate charged the borrower for the use of money. There must therefore be the use of money; which may be by a loan, or by the continuance of an existing debt. To one or the other of these classes all contracts for the use of money may be referred.

m-10 Wheat. 367; 4 Pet. 111; 20 Johns. 102; 8 Pick. 294; 6 Paige, 627; 3 N. Y. 266; 12 La. An. 815; 1 B. Mon. 29; 2 W. & S. 327; 23 Vt. 286; 21 Ga. 135; 22 Tex. 108; 7 Ired. 424; 5 Clark & F. Ho. Lds. 1–12. n-2 Alk. Ch. 382; 11 Ves. Ch. 314; 2 Vern. Ch. 395; 1 Wash. C. C. 521; 2 Id. 253; 4 Id. 296; 3 Wheat. 101; 17 Mass. 4; 1 J. J. Marsh. 406; 5 Ired. 590; 17 Johns. 511; 1 Paige Ch. 220; 2 N. H. 42; 25 Id. 474; 1 Ala. 387; 13 La. 91; 25 Harr. & J. 193; 3 Conn. 253; 5 Texas, 87–262. o-26 Barb. 208; 2 Penn. St. 85; 14 Vt. 33; 20 Mart. 1; 2 Johns. Cas. 355; 10 Wheat. 367; see 2 Parsons' Notes & B. 337, 375. p-3 Campb. 296; see 8 East. 168; 3 Binn. 295. q-1 Call, 133; 3 M'Cord, 340; 1 Root, 178; but see 9 S. & R. 263. r-2 Dall. 102; 1 Pet. C. C. 524; see also 2 Dall. 132; 4 Id. 286. s-1 Esp. 110; 3 Johns. 229; see 14 Wend. 116. t-2 T. R. 388. u-4 Cranch. 333; 15 Wend. 76; 10 Conn. 95; Paine C. C. 661; 6 Me. 14; 8 N. H. 491. v-3 Caines. 49. w-2 T. R. 388. x-2 Burr. 1094. y-1 Vern. 349; 16 Vin. Abr. 303. z-6 Ves. Ch. 92; 1 Vern. Ch. 349. Show. Parl. Cas. 15. a-2 Brown. Parl. Cas. 251. b-Id. 333. c-1 East. 436; see also 4 Day, 30; 3 Caines, 49; 1 Taunt. 218; 1 Mass. 308; Com. Dig. *Chancery* (3 S. 2) Vin. Abr. *Int.* (E.) d-5 Ves. Ch. 329; see Vin. Abr. *Int.* (C. 5.) e-2 T. R. 52; 2 Anst. 496; 1 B. & P. 156; 3 Camp. 488; 17 Ves. 332; 1 Maddock, 115; 2 Dea. & Ch. 12; 4 M. & S. 196; 10 Exch. 581; 29 Eng. L. & Eq. 369; 2 Day, 483; 2 Conn. 341; 6 Cowen, 657; 7 Johns. Ch. 160; 19 Johns. 160; 4 Hill, 211; 10 Paige, 94; 1 Hoff. Ch. 294; 2 Sandf. Ch. 149; 11 Barb. 80; 4 Dev. & B. 120; 5 B. Mon. 146; 17 Ala. 774; 1 Mont. & A. 385; 2 Camp. 348. f-2 Dea. & Ch. 12; 1 M. & S. 56. g-2 Camp. 348. h-7 Pet. 107; 13 Id. 345; 8 Cow. 685; 3 Wend. 65; 7 Id. 569; 15 Johns. 55; 4 Hill, 472; 10 Paige, 326; 2 Sandf. Ch. 249; 4 Mass. 162; 2 Conn. 179; 4 Id. 153; 3 M'Cord, 365; 1 Dallas, 217; 2 Id. 92; 15 Me. 163; 16 Id. 456; 20 Id. 98; 2 Munf. 36; 1 J. J. Marsh. 497; 3 B. Mon. 67; 6 Id. 529; 7 Humph. 450 17 Ala. 768.

And to constitute usury, there must be an agreement that he who has the use of the money shall pay the owner of it more than the lawful interest therefor.

Interference. See PATENTS.
Interlineation. See CONTRACTS; CONVEYANCES; WRITINGS.
Interlocutory. See PRACTICE.
International Law. See title LAW, "International Law."
Interpleader. See PRACTICE.
Interpretation. See CONTRACTS, "Interpretation."
Interpreter. See EVIDENCE.
Interrogatories. See EQUITY; EVIDENCE.
Interruption. See LIMITATION.
Intestacy, Intestate. See CONVEYANCES, "Wills."
Inundation. See WATER.
Invention. See PATENTS.
Inventory. See PRACTICE.
Invoice. See COMMERCIAL LAW.
Involuntary. See ACTS.
Irregularity. See PRACTICE.
Irresistible Force. See ACCIDENT.
Irrigation. See WATER.
Island. See REAL PROPERTY.
Issue. See EVIDENCE; PLEADING.
Item. See CONTRACTS.
Joinder. See PRACTICE.
Joint Bond—Joint and Several Bond. See BONDS.
Joint Contract. See CONTRACTS.
Joint Representatives. See ESTATES.
Joint Tenants. See CONTRACTS; CONVEYANCES.
Joint Trustees. See ESTATES, "Trusts."
Jointure. See ESTATES.
Journal. See ACCOUNTS; LEGISLATION; MARITIME LAW, ETC.
Judge. See EVIDENCE; OFFICE AND OFFICERS.
Judge Advocate. See OFFICE AND OFFICERS.
Judges' Notes. See EVIDENCE.
Judgment. See PRACTICE.
Judicial Proceedings. See PRACTICE.
Jurat. See AFFIDAVITS.
Jurisdiction. See PRACTICE.
Jurisprudence. See LAW.
Jury. See PRACTICE.
Justice of the Peace. See OFFICE AND OFFICERS.
Justification. See PLEADING; PRACTICE.
Kidnapping. See CRIMINAL LAW.
Knowledge. See CRIMINAL LAW.
Laches. See NEGLIGENCE.
Land, Lands. See REAL PROPERTY.

LANDLORD AND TENANT. See ASSIGNMENTS; BONDS; CONTRACTS; CONVEYANCES, ETC.

LANDLORD AND TENANT is a term used to denote the relation which subsists by virtue of the contract, express or implied, between two or more persons, for the possession or occupation of lands or tenements, either for a definite period, for life, or at will.

A LANDLORD is a person who owns or holds lands and tenements which he leases or rents out to others.

A TENANT is one who has the temporary use and occupation of lands and tenements which belong to another, the duration and other terms of whose occupation are usually defined by an agreement called a lease, while the parties thereto are placed in the relation of landlord and tenant.[a]

A LEASE is a contract for the possession and profits of lands and tenements on the one side, and a recompense of rent or other income on the other.[b] The party who leases is called the *lessor*; he to whom the lease is made, the *lessee*; and the compensation or consideration of the lease is *the rent*.

EXPRESS CONTRACT. When the relation of landlord and tenant is created by an express contract, the instrument made use of for the purpose is called a lease. One of the essential properties of a lease is that its duration must be for a shorter period than the duration of the interest of the lessor in the land; for if he disposes of his entire interest, it becomes an *assignment*, and this is not a lease. In other words, the granting of a lease always supposes that the grantor reserves to himself a reversion in the leased premises.

See title CONVEYANCES, "Leases," ante.

IMPLIED CONTRACT. The relation of landlord and tenant may arise by necessary implication from the circumstances of the case and the relative position of the parties to each other; for the law will imply its existence whenever there is an ownership of land on the one hand, and an occupation of it by permission on the other; and in all such cases it will be presumed that the occupant intends to compensate the owner for the use of the premises.[c] This relation may be inferred from a variety of circumstances; but the most obvious acknowledgment of its existence is the payment of rent; and this principle applies even after the expiration of an express term of years; for if the tenant continues to hold over after his term has run out, the landlord may, if he chooses, consider him a tenant, and he is, in fact, understood to do so, unless he proceeds to eject him at once. If the landlord suffers him to remain, and receives rent from him, or by any other act acknowledges him as tenant, a new tenancy springs up of so definite a character that it cannot be terminated by either party, except by a reasonable notice to quit.[d] The payment of money, however, is only a *prima facie* acknowledgment of the existence of a tenancy; for if it does not appear to have been paid as rent, but stands upon some other consideration, it will not be evidence of a subsisting tenancy.[e] Neither does a mere participation in the profits of land, where the owner is not excluded from the possession nor the letting of land upon shares, unless the occupant expressly agrees to pay a certain part of the crop as rent, in either case amount to a tenancy.[f]

But the relation of landlord and tenant will not be inferred from the mere occupation of land, if the relative position of the parties to each other can, under the circumstances of the case, be referred to any other distinct cause: as, for instance, between a vendor and vendee of land, where the purchaser remains in possession after the agreement falls through. For

a-5 Mann. & G. 54; Bouv. Inst. Index. b-Bac. Abr. *Lease*. c-4 Conn. 473; 4 Pet. 84; 3 Wend. 219; 7 La. 83; 6 Ad. & E. 854; Tayl. Landl. & Ten. 19. d-15 Johns. 505; 1 Denio, 113; 4 M'Cord, 59; 2 Esp. 528; 4 Camp. 275; 2 C. & P. 348. e-3 B. & C. 413; 10 East. 261; 11 Ad. & E. 307; 4 Bingh. 91. f-16 Mass. 443; 1 Speers, 408; 3 M'Cord, 211; 1 Gill. & J. 266; 3 Zabr. 390; 2 Rawle, 11; 3 Hill (N. Y.) 90; 15 Wend. 3[illegible].

the possession in that case was evidently taken with the understanding of both parties that the occupant should be the owner, and not tenant; and the other party cannot, without his consent, convert him into a tenant, so as to charge him with rent.[g] The same principle applies to mortgagor and mortgagee, as well as to that of a mortgagor and the assignee of the mortgagee; for no privity of estate exists in either case; and, as a general rule, a tenancy by implication can never arise under a party who has not the legal estate of the premises in question.[h]

RIGHTS AND LIABILITIES GENERALLY. The rights and obligations of the parties will be considered as having commenced from the date of the lease, if there be one, and no other time for its commencement has been agreed upon; or, if there be no date, then from the delivery of the papers. If, however, there be no writings, it will take effect from the day the tenant entered into possession, and not with reference to any quarter-day.[i] And these rights and duties attach to each of the parties, not only in respect to each other, but also with reference to other persons who are strangers to the contract. The landlord retains certain rights over the property, although he has parted with its possession, while the tenant assumes obligations with respect to it which continue so long as he is invested with that character.

After the making of a lease, the right of possession, in legal contemplation, remains in the landlord until the contract is consummated by the entry of the lessee. When the tenant enters, this right of possession changes, and he draws to himself all the rights incident to possession after this. The landlord's rights in the premises are suspended, or confined to the protection of his reversionary interest; that is, to the maintenance of actions for such injuries as would, in the ordinary course of things, continue to affect his interest after the determination of the lease. Of such are actions for breaking the windows of a house, cutting timber, or damming up a rivulet, whereby the timber on the estate becomes rotten.[j] The injury must be of such a character as permanently affects the inheritance; but it may be so if any one interferes with his tenants, and disturbs their enjoyment so far as to cause him loss of rent or other damage.[k]

The landlord may, however, go upon the premises peaceably for the purpose of ascertaining whether any waste or injury has been committed by the tenant or any other person, first giving notice of his intention. He may also use all ways appurtenant thereto, demand rent, make such repairs as are necessary to prevent waste, or remove an obstruction. But if rent is payable in hay or other produce, to be delivered to him from the farm, he is not entitled to go upon the land and take it, until it is delivered to him by the tenant, or until it has been severed and set apart for his use.[l]

The landlord's responsibilities in respect to possession, also, are suspended as soon as the tenant commences his occupation. If, therefore, a stranger is injured by the ruinous state of the premises, or the tenant creates a nuisance upon them, or if the fences are suffered to fall into decay, whereby the cattle of a stranger stray and are injured or lost, the landlord is in neither case answerable. But it would be otherwise if he had undertaken to keep the premises in repair, and the injury was occasioned by his neglect to keep up the repairs, or if he should renew the lease with a nuisance upon it.[m]

TERMINATION OF THE RELATION. The relation of landlord and tenant may be terminated in several ways. If it is a tenancy for life, it will, of course, terminate upon the decease of him upon whose life the lease depends. If it be for a certain number of years, depending upon some particular event, the happening of that event will determine the tenancy. So if it be for a certain number of years, independent of any contingency, it will expire at the last moment of the anniversary of the day from which the tenant was to hold in the last year of the tenancy. And in all these cases depending upon the express conditions of the lease, no notice to quit will be necessary in order to dissolve the relation of the parties to each other.[n] But a tenancy from year to year, or at will, can only be terminated by a notice to quit: this notice must be in writing; it must be explicit, and require the tenant to remove from the premises; it must run in the name of the person to whom possession is to be given, and not of his agent; and, if given by one of several tenants in common, it is valid only to the extent of his share, but if made by one of several joint tenants, it will inure to the benefit of all.[o] So is a notice by one co-partner of a firm.[p] But notice to quit is not necessary where the relation of landlord and tenant does not subsist,[q] or where the tenant distinctly *disclaims* the title of the landlord.[r] No particular form of the notice is necessary; but there must be a reasonable certainty in the description of the premises and in the statement of the time when the tenant must quit. If there is more than one tenant, the notice should be addressed to all, but it may be served on either one.[s] A valid notice, properly served, vests the premises in the

g-6 Johns. 46; 16 Pet 25; 21 Me. 525; 8 M. & W. 718; 10 Cush 259. h-2 Mann. & R. 303; 6 Ad. & E. 268; Tayl. Landl. & Ten. § 25. i-4 Johns. 230; 15 Wend. 656; Co. Litt. 46, *a*. j-11 Mass. 519; 1 M. & S. 234; 9 Bingh. 3; 4 B. & Ald. 72; 3 Me. 6; 5 Denio, 494. k-14 East, 489; 4 B. & Ald. 72; 1 Hall, 214. l-3 Johns. 408; 1 Vern. Ch. 575; 7 Pick. 76; 1 B. & C. 8; 7 M. & W. 601; but see 5 Dowl. & R. 442; 3 B. & C. 623. m-4 T. R. 318; 2 H. Bl. 350; 4 Taunt. 949; 1 Ad. & E. 827. n-Co. Litt. 216; Shepp. Touchst. 187; 9 Ad. & E. 879; 5 Johns. 128; 1 Pick. 43; 2 S. & R. 49; 18 Me. 264; Tayl. Landl. & Ten. § 465. o-Burr. 1603; 5 Esp. 196; Dougl. 175; 5 Ad. & E. 350; 6 B. & C. 41; 10 Johns. 270; 8 Taunt. 241; 2 Mann. & R. 433; 7 M. & W. 139; 3 Bingh. (N. C.) 677; 1 B. & Ad. 135. p-2 Mann. & R. 483. q-2 Esp. 501; 7 T. R. 83; 10 East. (Day's Ed.) 261, n. 2. r-3 East. 260; 10 Id. 158; 2 Campb. 505; 1 Stark. 181; Id. 308; 3 Campb. 8; 5 M. & W. 14. s-7 East. 551; 5 Esp. 196.

landlord, and absolutely terminates the tenant's right of possession at the time stated.[t] But this and all other effects of the notice may be waived by the landlord, and is so waived by his receiving subsequent rent from the tenant.[u]

A tenant who is entitled to notice of the determination of his tenancy, must be previously notified of such determination, nor can he be dispossessed by process of law, without that previous notice. Such notice is regulated by statute.[v]

This relation will also be dissolved when a tenant incurs a forfeiture of his lease by a breach of some covenant or condition therein. Another means of dissolving a tenancy is by an operation of law, termed a merger, which happens when a tenant purchases the estate, or it descends to him as heir at law, the lease becoming thereby merged in the inheritance, the lesser estate being absorbed in the greater. In addition to the several methods of putting an end to the tenancy already mentioned, a tenant may surrender his lease to the landlord; or, if the subject matter of the lease wholly perishes, or is required to be taken for public uses, or if the premises are converted into a house of ill-fame, or the tenant disclaims to hold under his landlord and therefore refuses to pay his rent, asserts the title to be in himself, the tenancy is at an end, and the landlord may forthwith resume possession.[w]

After the tenancy has ended, the right of possession reverts to the landlord, who may re-enter upon the premises if he can do so without violence. But if the tenant holds over and the landlord takes possession forcibly so as to endanger a breach of the peace, he is liable to an action for a forcibly entry as well as suffering the consequences of an action for his trespass. The landlord should therefore, in all such cases, resort to the law, and receive possession at the hands of an officer. The tenant is bound quietly to yield up the possession of the entire premises, although he still retains a reasonable right of egress or regress for the purpose of removing his goods and chattels. And for a refusal to perform this duty he will be subjected to all the statutory penalties of holding over.[x]

CROPS—EMBLEMENTS—FIXTURES, Etc. Generally an out-going tenant cannot sell or take away the manure.[y] A tenant whose estate has terminated by an uncertain event which he could neither foresee nor control, is entitled to the annual crop which he sowed while his estate continued, by the law of emblements. He may also, in certain cases, take the emblements or annual profits of the land after his tenancy has ended. And, unless restricted by some stipulation to the contrary, may remove such fixtures as he has erected during his occupation, and convenience, profit, or comfort. For, in general, what a tenant has added he may remove, if he can do so without injury to the premises, unless he has actually built it in so as to make it an integral part of what was there originally.

IMMOVABLE FIXTURES. Agricultural erections.[z] Fold-yard walls, Cart-house, Barns fixed in the ground, Beast house, Carpenter shop, Fuel house, Pigeon house, Pineries substantially fixed, Wagon house.[a] Box borders not belonging to a gardener by trade, Flowers, Trees, Hedges.[b] Ale-house bar, Dressers, Partitions.[c] Locks and keys.[d] Benches affixed to the house.[e] Statue erected as an ornament to grounds, Sun-dial.[f] Chimney piece not ornamental.[g] Closets affixed to the house.[h] Conduits.[i] Conservatory, substantially affixed.[j] Doors.[g] Fruit trees, if a tenant be not a nurseryman by trade.[k] Glass windows.[l] Hearths.[m] Millstones.[n] Looms substantially affixed to the floor of a factory.[o] Manure.[p] Threshing machines fixed by bolts and screws to posts let into the ground.[q]

REMOVABLE FIXTURES, THOUGH NOT COMING IN THE CLASS OF TRADE FIXTURES. Arras hanging.[r] Barns resting by weight alone upon foundations let into the ground, or upon blocks.[s] Stables and out-houses.[t] Granaries resting by weight alone.[u] Gas fixtures.[v] Beds fastened to the ceiling.[w] Carding machines.[x] Machinery.[y] Cotton spinning machines, screwed to the floor.[z] Coffee mills, Malt mills, Windmills on posts.[a] Ornamental chimney pieces.[b] Gates (if removable without injury to the premises), Pumps slightly attached.[c] Iron Backs to chimneys, Tapestry.[d] Ornamental cornices.[e] Fire frame.[f] Furnaces.[g] Looking-glasses.[h] Movable boards, fitted and used for putting up corn in bins, Padlock for a corn house.[i] Mills on posts.[j] Ornamental fixtures.[k] Rails and posts.[l] A ladder fixed on the ground and to a beam above, and which was the only means of access to the room above. A crane nailed at the top and bottom to keep it in its place, a bench nailed to the

t-1 Bingh. 158; 7 T. R. 431; Peake's Adm. Cas. 210. u-6 Cush. 415; 6 E. L. & E. 424; S. C. 13 C. B. 178; 11 Barb. 33. v-See GENERAL STATUTES. w-7 Wend. 210; 24 Id. 454; 3 M. & S. 270; 5 Ohio, 303; 11 Met. (Mass.) 448; 1 Esp. 13: 13 Pet. 1; 3 A. K. Marsh. 247; 10 Ill. 41; 20 Penn. St. 398; 6 Yerg. 280. x-1 Addis. 14, 43; 10 Mass. 409; 8 T. R. 357; 1 Dev. & B. 324; 5 C. & P. 201; 1 M. & G. 644; 1 W. & S. 90; 13 Johns. 235; 9 Vt. 352; 1 Strobh. 313. y-6 Greenl. 222; 7 Id. 201; 21 Pick. 367, 371; 22 Id. 437, 442; 15 Wend. 169; 17 Penn. St. 262; 3 N. H. 503. z-3 East. 38, *contra* 10 Barb. 496. a-3 East. 38. b-4 B. & Ad. 655. c-2 W. Bl. 1111. d-11 Rep. 50; 20 Wend. 363, 369. e-Co. Litt. 53, *a*. f-2 Kern. 170. g-7 C. & P. 327. h-2 Ves. & B. 349. i-Cro. J. 121. j-2 B. & B. 54. g-Moore, 177. k-4 Taunt. 316. l-Co. Litt. 53, *a*.; 4 Rep. 63. m-1 Salk. 368. n-11 Rep. 50; 6 Mod. 187; Shep. Touch. 90. o-20 Barb. 407. p-21 Pick. 367; 15 Wend. 169; 6 Greenl. 222; 6 Foster, 345; 7 Greenl. 201. q-18 E. L. & E. 142, S. C.; 1 E. & B 674. r-Rolle, 216. s-4 A. & E. 884; B. N. P. 34. t-10 Barb. 496. u-18 E. L. & E. 142, S. C.; 1 E. & B. 674. v-1 Duer, 363. w-1 Atk. 477. x-20 Wend. 636; 3 Blackf. 111; 17 Johns. 116; 14 Mass. 352; 3 Vt. 425. y-10 Barb. 157; 1 Ohio St. 511, 541. z-3 E. L. & E. 562; S C. 11 Exch. 113. a-6 T. R. 379. b-6 Bingh. 437; 30 E. L. & E. 595; S. C. Exch. 295. c-6 Bingh. 437. d-Stra. 1141. e-3 A. & E 75. f-17 Pick. 192. g-Freem. Ch. 245. h-1 P. Wms. 94. i-4 Pick. 310. j-4 Leon. 241. k-Amos & Ferand on Fixtures, p. 67; 1 P. Wms. 94. l-1 H. Bl. 258.

wall, stables on rollers.[j] Stoves.[k] Window blinds.[l]

Trade fixtures held removable. Brewery vessels, Colliery machines, Cider mills.[m] Engines.[n] Coppers.[o] Buildings accessory to removable trade fixtures.[p] Dutch barns.[q] Jibbs.[r] Salt pans.[s] Shrubs planted for sale.[t] Soap works, Vats.[u] Steam engine.[v] Stills.[w] Trees planted for sale.[x] Varnish house.[y]

LANDLORDS. The principal obligation on the part of the landlord, which is, in fact, always to be implied as a necessary condition to his receiving any rent, is, that the tenant shall enjoy the quiet possession of the premises,[a] which means, substantially, that he shall not be turned out of possession of the whole or any material part of the premises by one having a title paramount to that of landlord, or that the landlord shall not himself disturb or render his occupation uncomfortable by the erection of a nuisance on or near the premises, or otherwise oblige him to quit possession.[b] But if he be ousted by a stranger, that is, by one having no title, or after the rent has fallen due, or if the molestation proceeds from acts of a third person, the landlord is in neither case responsible for it.[c] Another obligation which the law imposes on the landlord, in the absence of any express stipulation in the lease, is the payment of all taxes and assessments chargeable upon the property, or any ground-rent or interest upon mortgages to which it may be subject. Every landlord is bound to protect his immediate tenant against all paramount claims. And if a tenant is compelled, in order to protect himself in the enjoyment of the land in respect of which his rent is payable, to make payment which ought, as between himself and his landlord, to have been made by the latter, he may call upon the landlord to reimburse him, or he may deduct such payment from the rent due or to become due.[d] But the landlord is under no obligation to make repairs, or to rebuild in case the premises should be burned; nor does he guarantee that they are reasonably fit for the purposes for which they were taken. And it is not in the power of a tenant to make repairs at the expense of his landlord, unless there be a special agreement between them authorizing him to do so; for the tenant takes the premises for better or for worse, and cannot involve the landlord in expense for repairs without his consent.[e] Even if the premises have become uninhabitable by fire, and the landlord having insured them has recovered the insurance-money, the tenant cannot compel him to expend the money so recovered in rebuilding, unless he has expressly engaged to do so; nor can he, in such an event, protect himself from the payment of rent during the unexpired balance of the term,[f] unless exempted therefrom by statute or the terms of the lease.

The uninhabitableness of a house is not a good defence to an action for rent.[g] And if the landlord expressly covenanted to repair, the tenant cannot quit and discharge himself of the rent because the repairs are not made, unless there is a provision to that effect.[h] And if a landlord is bound by custom or by express agreement to repair, this obligation, and the obligation of the tenant to pay rent, are independent of each other, so that the refusal or neglect of the landlord to repair is no answer to a demand for rent.[i]

TENANT. The tenant, upon taking possession, is at once invested with all the rights incident to the possession; is entitled to the use of all the privileges and easements appurtenant to the tenement, and to take such reasonable estovers and emblements as are attached to the estate. He may maintain an action against any person who disturbs his possession, or trespasses on the premises, though it be the landlord himself.[j] As occupant, he is answerable for any neglect to repair highways, fences, or party walls, it being generally sufficient, except where a statute otherwise provides, to charge a man with such repairs by the name of occupant. He is also liable for all injuries produced by the mismanagement of his servants, or by a nuisance kept upon the premises, or by an obstruction of the highway adjacent to them, or the like; for, as a general rule, where a man is in possession of property, he must so manage it that other persons shall not be injured thereby.[k]

One of the principal obligations which the law imposes upon every tenant, independent of any agreement, is to treat the premises in such a manner that no substantial injury shall be done to them, and so that they may revert to the landlord at the end of the term unimpaired by any wilful or negligent conduct on his part. In the language of the books, he must keep the buildings wind-and-water-tight, and is bound to make fair and tenable repairs, such as the keeping of fences in order, or replacing doors and windows that are broken during his

j-32 E. L. & E. 422; S. C. 16 C. B. 637. k-17 S. & R. 413; 6 Bing. 437; 10 Pick. 500, 504. l-10 Pick. 500, 504. m-3 Atk. 13. n-3 Atk. 13; Ambl. 113. o-1 Salk. 368; 3 Atk. 38. p-Ambl. 113. q-3 Esp. 11. r-2 B. & Ald. 165. s-1 H. Bl. 259, n. t-2 East. 88; 1 Met. 27. u-1 Salk. 368. v-2 Dev. L. 376; 4 Watts, 330. w-5 Cowen, 323; 3 Mo. 207. x-2 East. 88; 1 Met. 27. y-2 East. 88. a-There is an implied covenant on the part of the lessor to put the lessee into possession, and that he shall quietly enjoy. 4 Bing. N. C. 678; 5 Id. 183; Hob. 12, 10 Mod. 142; Shepp. Touchst.; 4 Rep. 80, b.; 3 M. & P. 57; 26 E. L. & E. 568. But unless the lease be under seal there is no implied covenant for good title, but only for quiet enjoyment. 20 E. L. & E. 374; S. C. 8 Exch. 913. b-3 East. 491; 6 Dowl. & R. 349; 8 Cow. 747; 7 Wend. 281; 13 N. Y. 151; 2 Dev. 388; 4 Mass. 349; 5 Day, 282. c-1 T. R. 671; 3 Johns. 471; 7 Wend. 281; 4 Dev. 46; 5 Hill, 599; 6 Mass. 246; 13 East. 72; 12 Wend. 529; 25 Barb. 594. d-6 Taunt. 524; 12 East. 469; 5 Bingh. 409; 3 B. & Ald. 647; 7 B. & C. 285; 3 Ad. & E. 331; 3 M. & W. 607; 5 B. & Ald. 521. e-6 Cow. 475; 3 Duer, 464; 1 Saund. 320; 7 East. 116; 1 Ry. & M. 357; 7 Mann. & G. 576. f-8 Paige, 437; 1 Sim. Ch. 146; 1 T. R. 314; see 3 Rob. (La.) 52. g-10 M. & W. 321; 12 Id. 68; 5 Bing. N. C. 501; 22 E. L. & E. 173; 4 Comst. 126; 1 Sneed, 613; 3 Duer, 464; 7 Hill, 83. h-7 Mann. & G. 576. i-Bro. Abr. D. pl. 18; 27 H. 6, 10, a. pl. 16; Reporter's n. to Mann. & G. 576 j-1 Denio, 21; Cro. Car. 325; 3 Wils. 461; 2 H. Bl. 924; 2 B. & Ad. 97; 3 Cr. & R. 557. k-3 T. R. 766; 3 Q. B. 449; 1 Scott (N. R.) 392; 4 Taunt. 649; 5 B. & C. 552; 6 M. & W. 499.

occupation. If it is a furnished house, he must preserve the furniture, and leave it, with the linen, etc., clean, and in good order.[l] But he is not bound to any ornamental repair, as painting, papering, etc., although so broad a covenant on his part as "to leave the premises in good and sufficient repair, order, and condition," might cover these repairs.[m] If he expressly agrees to keep the premises in repair, and to deliver them up in good repair, he is not justified in permitting them to remain out of repair by the fact that they were so when he received them.[n] But the age and character of the premises must be considered in determining the proper extent of the repairs.[o] If the landlord is under no legal obligation to repair, and the tenant voluntarily makes them, the landlord is not bound to repay him for the expense.[p] But there would be a sufficient consideration to sustain a subsequent promise by the landlord. A tenant is not bound to rebuild premises which have accidentally become ruinous during his occupation, nor is he answerable for ordinary wear and tear, nor for an accidental fire, nor to put a new roof on the building, nor to make what are usually called general or substantial repairs; neither is he bound to do painting, whitewashing, or papering, except so far as they may be necessary to preserve exposed timber from decay.[q] With respect to farming leases, a tenant is under a similar obligation to repair, but it differs from the general obligation in this: that it is confined to the dwelling-house which he occupies—the burden of supporting the outbuildings and other erections on the farm being sustained by either the landlord or the tenant, in the absence of any express provision in the lease, by the particular custom of the country in which the farm is situated. He is always bound, however, to cultivate the farm in a good and husbandmanlike manner, to keep the fences in repair, and preserve the timber and ornamental trees in good condition; and for any violation of any of these duties, he is liable to be proceeded against by the landlord, and this whether the act be committed by the tenant or a stranger.[r]

The tenant's general obligation to repair also renders him responsible for any injury a stranger may sustain by reason of his neglect to keep the premises in a safe condition; as, by not keeping the covers of his vaults sufficiently closed, so that a person walking in the street falls through, or is injured thereby. If he repairs or improves the building, he must guard against accident to the passers-by in the street, by erecting a suitable barricade, or stationing a person there to give notice of the danger;[s] for any unreasonable obstruction which he places in the highway adjoining his premises, he may be indicted for causing a public nuisance, or obstructing the highway, as well as rendered liable to an action for damages, at the suit of any individual injured. The law will tolerate such a partial and temporary obstruction of the street as may be necessary for business purposes; as, in receiving and delivering goods from a warehouse, or coals or fuel on the sidewalk, or the like: provided, always, that the public convenience does not suffer from it.[t]

The tenant's chief duty, however, is the payment of rent, the amount of which is either fixed by the terms of the lease, or, in the absence of an express agreement, is such a reasonable compensation for the occupation of the premises as they are fairly worth. If there has been no particular agreement between the parties, the tenant pays rent only from the time he has had the beneficial enjoyment of the premises; but if he has entered into an express agreement to pay rent during the term, no casualty or injury of the premises by fire or otherwise—nothing, in fact, short of an eviction—will save him from such payment,[u] in the absence of a statute or agreement exempting him in such event. But if he has been deprived of the possession of the premises, or any part thereof, by a third person under a title superior to that of the landlord, or if the latter annoys his tenant, erects or causes the erection of such a nuisance upon or near the premises, as renders his occupation so uncomfortable as to justify his removal, he is, in either case, discharged from the payment of rent.[v] But it is no answer to a demand for rent that the premises are not in a fit and proper state and condition for the purposes for which they were hired.[w] If, therefore, the premises are burned down, and the tenant is under no obligation to rebuild (not having agreed to keep in repair), or are destroyed by the act of God or the public enemies, yet he is bound to pay rent thereafter.[x] Unless the lease contains a provision that the rent shall cease or proportionately abate while the premises remain wholly or in part unfit for use.

The obligation to pay rent may be apportioned; for, as rent is incident to the reversion, it will become payable to the assignees of the respective portions thereof, whenever that reversion is severed by an act of the parties, or of the law. But the tenant's consent is necessary for the apportionment when made by the landlord, unless the proportion of rent chargeable upon each portion of the land has been settled by the intervention of a jury.[y] A ten-

l-5 C. & P. 239; 7 Id. 327; 4 T. R. 318; 18 Ves. Ch. 331; 2 Esp. 590; 4 Mann. & G. 95; 12 M. & W. 827. m-10 B. & C. 12; 1 Marsh. 567; 6 M. & W. 458; 8 Id. 790. n-16 M. & W. 541. o-Id. 4 Bing. N. C. 451; 7 A. & E 36; 2 Man. & R. 186. p-6 Cowen, 475. q-6 T. R. 650; 6 C. & P. 8; 12 Ad. & E. 476; 1 Marsh. 567; 10 B. & C. 312. r-Co. Litt. 53; 6 Taunt. 300; 5 Johns. 373; 13 East. 18; 3 Mood. 536; 2 Dougl. 745; 1 Taunt. 198; 1 Denio, 104. s-4 T. R. 318; 28 Barb. 194; 6 N. Y. 48; 4 Id. 222. t-1 S. & R. 217; 6 East. 427; 6 C. & P. 636; 1 Denio, 524; Tayl. Landl. & Ten. § 192. u-4 Paige Ch. 355; 18 Ves. Ch. 415; 1 Harr. & J. 42; 16 Mass. 240; 3 Denio, 464; 3 Bos. & P. 420; 6 T. R. 650; 24 Wend. 454; Aleyn, 26; 4 Harr. & J. 564; 1 Bay, 499. v-2 Wend. 561; 12 Id. 529; 4 Cow. 58; 8 Id. 727; 4 N. Y. 217; 2 Ired. 350; 3 Ohio, 364; 4 Rawle, 329; Co. Litt. 148, *b.*; 2 East. 576; 1 Cowp. 242; 6 T. R. 458. w-12 M. & W. 68; 7 Mann. & G. 576; 1 Ch. Cas. 83. x-Dallas, 210; 16 Mo. 214; 6 Mass. 62; 1 Harr. & Johns. 42; 4 Id. 546; 1 Bibb. 536; 5 Barb. 601. y-22 Wend. 121; 2 Barb. 643; 3 Denio, 454; 1 Dowl. & R. 291; 5 B & Ald. 876.

ant, however, cannot get rid of or apportion his rent by transferring the whole or a part of his lease; for if he assigns it, or underlets a portion of it, he still remains liable to his landlord for the whole.[y] Instances of an apportionment by act of law occur where there is a descent of the reversion among a number of heirs, *or* upon a judicial sale of a portion of the premises belonging to them respectively. So, if a man dies, leaving a widow, she will have a right to receive one-third of the rent, while the remaining two-thirds will be payable to his heirs,[z] unless the apportionment be made different by statute.

A tenant cannot dispute his landlord's title. For he is estopped from changing by his own act the character and effect of his tenure.[a] And whenever a tenant disclaims his tenure, or denies his landlord's title, or claims adversely to him, or attorns to another as having title against him, he forfeits his estate. But where the lease was obtained by the fraud of the landlord, the tenant may defend against an action brought on the lease by impeaching the landlord's title.[b] But this fraud must be practised directly against the tenant. A disclaimer by a tenant will work a forfeiture only when it amounts to a renunciation of his character as a tenant, which may be either by setting up a title in another, or claiming title himself.[c]

THIRD PERSONS. The rights and liabilities of landlords and tenants are not confined to the immediate parties to the contract, but attach to all persons to whom the estate may be transferred, or who may succeed to the possession of the premises either as landlords or tenants. This principle follows, as a necessary consequence of that privity of estate which is incident to the relation of landlord and tenant. A landlord may not violate his tenant's rights by a sale of the property; neither can a tenant avoid his responsibilities by substituting another tenant in his stead without the landlord's consent. The purchaser of the property becomes in one case the landlord, and is entitled to all the rights and remedies against the tenant or his assignee which the seller had, while in the other case the assignee of the lessee assumes all the liabilities of the latter, and is entitled to the same protection which he might claim from the assignee of the reversion; but the original lessee is not thereby discharged from his obligations.[d]

Language. See EVIDENCE, "Interpreter."
Lapse. See DEVISE; LEGACY; PATENT.
Larceny. See CRIMINAL LAW.
Last Sickness. See EVIDENCE, "Confession."
Last Will. See CONVEYANCES, "Wills."
Latent Ambiguity. See BONDS, NOTES, AND BILLS; CONTRACTS.
Launch. See MERCANTILE LAW.

LAW. See EQUITY; EVIDENCE; IGNORANCE; KNOWLEDGE; PLEADING; PRACTICE, ETC., ETC.

LAW is a rule of civil conduct prescribed by the supreme power in a State.[e] A rule or enactment promulgated by the legislative authority of a State; a long established local custom which has the force of such an enactment.[f] The rules and methods by which society compels or restrains the action of its members. The aggregate of those rules and principles of conduct which the governing power in a community recognizes as the rules and principles which it will enforce or sanction, and according to which it will regulate, limit, or protect the conduct of its members.

Arbitrary law is a law, or provision of law, so far removed from consideration of abstract justice that it is necessarily founded on the mere will of the law-making power, so that it is rather a rule established than a principle declared. The principle that an infant shall be bound by his contract is not arbitrary; but the rule that the limit of infancy shall be twenty-one years, not twenty nor twenty-two, is arbitrary. The term is also sometimes used to signify an unreasonable law—one that is in violation of justice. Irrevocable laws are those which have not in their nature or in their language some limit or termination provided, and are, in theory, perpetual: but the perpetuity is liable to be defeated by subsequent abrogation. It has sometimes been attempted to secure an absolute perpetuity by an express provision forbidding any abrogation. But it may well be questioned whether one generation has power to bind its posterity by an irrevocable law.[g] Municipal law is a system of law proper to any single State, nation, or community. Positive law is the system naturally established by a community in distinction from natural law. A prospective law or statute is one which applies only to cases arising after its enactment, and does not affect that which is already past. A retrospective law or statute is one that turns backward to alter that which is past, or to affect men in relation to their conduct before its enactment. These are also called *retroactive laws*. In general, whenever a retroactive statute would take away vested rights, or impair the obligation of contracts, it is so far void.[h] But laws which only vary the remedies, or merely cure a defect in proceedings otherwise fair, are valid.[i] A penal law is one which inflicts a penalty for its violation. A private or special law is one which relates to private matters which do not concern the public at large. A public or general law is one which affects the public either generally or in some classes.

ADMIRALTY relates to maritime affairs, maritime causes, civil and criminal.

y-Cro Eliz. 633; 24 Barb. 333. z-Cro. Eliz. 742; 15 Wend 464; Cro. Jac. 160; Co Litt. 148; 1 M. & W. 747. a-11 A. & E. 307, 10 Bing. 549; 4 M. & Sel 347: 2 Bing. 54; 7 J. B Moore, 289; Holt, 489; 3 Peters, 43; 13 Ired. L. 498; 14 Ill. 135; 1 Cal. 470; 16 E. L & E. 232: S C. 1 E. & B. 630: 2 N. J. 261; 11 Humph. 183; 5 Md. 404. b-6 Binn. 45; 6 Penn. St. 154; 1 Rawle. 408; 14 S. & R. 382. c-1 Man. & G. 135; 23 Penn. St. 131. d-17 Johns. 239; 3 Harr. & M'H. 387; 24 Barb. 365; 13 Wend. 135; 19 Id. 68; 8 Ves. Ch. 95; 1 Ves. & B. Ir. 11; 4 T. R. 99. e-1 Step. Comm. 25. f-10 Pet. 18. g-See this subject discussed by Bentham Works, vol. ii, pp. 402–407; and see Dwarris Stat. 479. h-3 Dall. 391. i-10 S. & R. 102, 103; 15 Id. 72; 2 Pet. 380, 627; 8 Id. 88; 11 Id. 420; see EX POST FACTO LAW, *post*

Admiralty jurisdiction is exercised in the first instance by the United States District Courts, from which causes may be removed in certain cases to the United States Circuit Court, and ultimately to the Supreme Court of the United States.

ADMIRALTY JURISDICTION IN CIVIL CASES extends to average[f] bonds of bottomry, respondentia,[g] charter parties,[h] contracts of affreightment between different States or foreign ports,[i] contracts with material men,[j] contracts for conveyance of passengers,[k] maritime contributions,[l] damages occurring at high seas,[l] hypothecation of ship and cargo,[g] jettisons,[l] pilotage,[m] cases of prize or ransom,[n] respondentia,[g] seizures under the laws of impost, navigation, or trade,[o] surveys of ship and cargo,[p] seamen's wages,[q] trespasses occurring at high seas.[r]

ADMIRALTY JURISDICTION IN CRIMINAL CASES extends to all crimes or offences committed on the high seas or beyond the jurisdiction of any country.[s]

CIVIL LAW. The term civil law is generally used to designate the Roman Jurisprudence, *Jus civile Romanorum*. In its most extensive sense the term Roman law comprises all those legal rules and principles which were in force among the Romans, without reference to the time when they were adopted, but in a more restricted sense we understand by it the law compiled under the auspices of the Emperor Justinian, and which are still in force in many of the states of modern Europe, and to which all refer as authority or written reason.

CODE LAW. A code is a body of law established by legislative authority of the State, and designed to regulate completely, so far as a statute may, the subject to which it relates.

When it is considered how rapidly statutes accumulate as time passes, it is obvious that great convenience will be found in having the statute law in a systematic body, arranged according to subject-matter, instead of having it unorganized—scattered through the volumes in which it was from year to year promulgated. But this transposition suggests amendments for the purpose of harmonizing inconsistencies, supplying defects brought to notice, and also the introduction of a system of all other rules which are recognized as the unwritten or common law of the State. Still, however successfully a code might be supposed to embody all existing and declared law, so as to supersede all previous sources, it cannot be expected to provide prospectively for all the innumerable cases which the diversity of affairs rapidly engenders, and there must soon come a time when it must be studied in a light of numerous explanatory decisions resting in the reported cases upon the same or a similar statute. These discussions have called attention to a subject formerly little considered, but which is of fundamental importance to the successful preparation of a code—the matter of statutory expression. There is no species of composition which demands more care and precision than that of drafting a statute. The writer needs not only to make his language intelligible, but he must make it incapable of misconstruction. When it has passed to a law, it is no longer his intent that is to be considered, but the intent of the words which he has used, and that intent is to be ascertained under the strong pressure of an attempt of the advocate to win whatever possible construction may be most favorable to his cause. The true safeguard is found not in the old method of accumulating synonyms and by an accumulation of particulars, but rather by concise but complete statement of the full principle in the fewest possible words, and the elimination of description and paraphrase by the separate statement of necessary definitions. One of the rules to which the New York revisers generally adhered, and which they found of very great importance, was to confine each section to a single proposition. In this way the intricacy and obscurity of the old statutes were largely avoided.[t]

COMMERCIAL LAW; LAW MERCHANT; MERCANTILE LAW. See titles, ACCOUNTS; AGENCY; BAILMENTS; BONDS, NOTES, and BILLS; INSURANCE; INTEREST, ante.

COMMON LAW. Common law is that system of law, or form of the science of jurisprudence, which has prevailed in England and the United States of America, in contradistinction to other great systems. Those principles, usages, and rules of action applicable to the government and security of persons and of property which do not rest for their authority upon any express or positive declaration of the will of the legislature.[u] The law of any country: to denote that which is common to the whole country in contradistinction to laws and customs of local application.

The most prominent characteristic which marks its contrast with other great systems of the law, and perhaps the source of its distinction, lies in the fact that in the common law neither the stiff rule of long antiquity on the one hand, nor on the other the sudden changes of an arbitrary power are allowed ascendency, but, under the sanction of a constitutional government, each of these is set off against the other; so that the will of the peo-

f-6 McLean C. C. 573; 7 How. 729; 19 Id. 162; 21 Bost. L. Rep. 87, 96. g-1 Curt. C. C. 340; 3 Sumn. C. C. 228; 1 Wheat. 96; 4 Cranch. 328; 8 Pet. 353; 18 How. 63. h-1 Sumn. C. C. 551; 2 Id. 589; 2 Story C. C. 81. i-2 Curt. C. C. 271; 2 Sumn. C. C. 567; Ware. Dist. Ct. 188, 263, 382; 6 How. 344. j-4 Wheat. 438; see 20 How. 393; 21 Bost. L. Rep. 601. k-16 How. 469; 1 Blatchf. C. C. 560, 569; 1 Abb. Adm. 48; 1 Newb. Adm. 494. l-2 Parsons' Mart. L.; see 2 Sumn. C. C. 1. m-1 Mas. C. C. 508; 10 Pet. 108; 12 How. 299; see 2 Paine C. C. 131; 9 Wheat. 1, 207; R. M. Charlt. 302, 314; 8 Met. Mass. 332; 1 Bost. L. Rep. 20. n-3 Dall. 6. o-U. S. Rev. Statutes. p-Story Const. § 1665; 5 Mas. 465; 10 Wheat. 411; see 2 Parsons' Marit. L. 511, n. q-2 Parsons' Marit. L. 509. r-2 Id.; see 2 Sumn. C. C. 1. s-2 Parsons' Marit. L. t-The reader who wishes to pursue this subject will see Coode's Treatise on Legislative Expression (Lond. 1845); Gael. Legal Composition (Lond. 1840). u-1 Kent. Comm. 492.

ple, as it is gathered both from long established custom and from the expression of the legislative power, gradually forms a system—just, because it is the deliberative will of a free people—stable, because it is the growth of centuries—progressive, because it is amenable to the constant revision of the people.

Perhaps the most important of these narrower senses is that which it has when used in contradistinction to statute law, to designate unwritten as distinguished from written law. It is that law which derives its force and authority from the universal consent and immemorial practice of the people. It has never received the sanction of the legislature by an express act, which is the criterion by which it is distinguished from statute law. When it is spoken of as the *lex non scripta*, it is meant that it is law not written by authority of law. The statutes are the expression of law in a written form, which form is essential to the statute. The decision of a court which establishes or declares a rule of law may be reduced to writing, and published in the reports; but this report is not the law: it is but evidence of the law; it is but a written account of one application of a legal principle, which principle in the theory of the common law, is still unwritten. However artificial this distinction may appear, it is nevertheless of the utmost importance, and bears continually the most wholesome results. It is only by the legislative power that law can be bound by phraseology and by forms of expression. The common law eludes such bondage; its principles are not limited, nor hampered by the mere forms in which they may have been expressed, and the reported adjudications declaring such principles are but the instances in which they have been applied. The principles themselves are still unwritten, and ready, with all the adaptability of truth, to meet every new and unexpected case; hence, it is said that the rules of the common law are flexible.[v] It naturally results from the inflexible form of the statute or written law, which has no self-contained power of adaptation to cases not foreseen by legislators, that every statute of importance becomes, in course of time, supplemented, explained, enlarged, or limited by a series of adjudications upon it, so that at last it may appear to be merely the foundation of a larger superstructure of unwritten law. It naturally follows, too, from the less definite and precise forms in which the doctrine of the unwritten law stands, and from the proper hesitation of courts to modify recognized doctrines in new exigencies, that the legislative power frequently intervenes to declare, to qualify, or to abrogate the doctrines of the common law. Thus the written and unwritten law, the statutes of the present and traditions of the past, interlace and react upon each other. Historical evidence supports the view which these facts suggest, that many of the doctrines of the common law are but the common law form of antique statutes, long since overgrown and imbedded in judicial decisions.

In this country the common law of England has been adopted as the basis of jurisprudence in all the States except Louisiana. Many of the most valued principles of the common law have been embodied in the constitution of the United States, and the constitutions of the several States; and, in many of the States, the common law and the statutes of England in force in the colony at the time of our independence, are, by the State constitution, declared to be the law of the State until repealed.[w] Hence, where a question in the courts of one State turns upon the law of a sister State, if no proof of such laws is offered, it is, in general, presumed that the common law as it existed at the time of the separation of this country from England prevails in such State.[x] The term "common law," as thus used, may be deemed to include the doctrine of equity.[y] But the term is also used in the amendments to the Constitution of the United States (Art. 7), in contradistinction to equity, in the provision that, "In suits at common law," etc., the "common law" here mentioned is the common law of England, and not of any particular State.[z] The term is used in contradistinction to equity, admiralty, and maritime law.[a] The common law of England is not in all respects to be taken as that of the United States, or of the several States; its general principles are adopted only so far as they are applicable to our situation.[b] In general, too, the statutes of England are not understood to be included, except so far as they have been recognized by colonial legislation, but the course pursued has been rather to re-enact such English statutes as were deemed applicable to our case. By reason of the modifications arising out of our different condition, and those established by American statutes and by the course of American adjudication, the common law of America differs widely in many details from the common law of England; but the fact that this difference has not been introduced by violent changes, but has grown up from the native vigor of the system, identifies the whole as one jurisprudence.

CONFLICT OF LAW is a contrariety or opposition in the laws of States in those cases where, from their relations to each other, or to the subject-matter in dispute, the rights of the parties are liable to be affected by the

v-1 Gray, 263; 1 Swanst. 42; 5 Cow. 587, 628, 632. w-See 1 Bishop Crim. L. § 15, note 4, § 45. x-4 Den. 405; 3 Abb. Pr. 23. y-8 N. Y. 535. z-1 Gall. 20; 1 Baldw. C. C. 554, 558; 3 Wheat. 223; 3 Pet. 446. a-3 Pet. 446; 1 Baldw. C. C. 554. b-2 Pet. 144; 8 Id. 659; 9 Cranch. 333; 9 S. & R. 330; 1 Blackf. 66, 82, 206; 1 Kirb. Comm. 117; 5 Harr. & J. 356; 2 Aik. 187; T. U. P. Charlt. 172; 1 Ohio, 243; see 5 Cow. 628; 5 Pet. 241; 8 Id. 658; 7 Cranch. 32; 1 Wheat. 415; 3 Id. 223; 1 Dall. 67; 2 Id. 297, 384; 1 Mass. 61; 9 Pick. 532; 3 Me. 162; 6 Id. 55; 3 Gill. & J. 62; Sampson's Disc. before the N. Y. Hist. Soc.; 1 Gall. C. C. 489; 3 Conn. 141; 1 Blackf. 205; 5 Cow. 628; 3 Ala. 362.

laws of both jurisdictions. An opposition or inconsistency of domestic laws upon the same subject.

The laws of every State affect and bind directly all property, real or personal, situated within its territory, all contracts made and acts done, and all persons resident within its jurisdiction, and are supreme within its own limits by virtue of its own sovereignty. Ambassadors and other public ministers while in the State to which they are sent, and members of an army marching through, or stationed in a friendly State, are not subject to this rule.[e] Possessing exclusive authority with the above qualification, a State may regulate the manner and circumstances under which property, whether real or personal, in possession or in action, within it, shall be held, transmitted, or transferred, by sale, barter, or bequest, or recovered, or enforced; the condition, capacity, and state of all persons within it; the validity of contracts and other acts done there; the resulting rights and duties growing out of these contracts and acts, and the remedies and modes of administering justice in all cases.[d]

Whatever force and obligation the laws of one country have in another depends upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own or tacit consent.[e] When a statute or the unwritten law of the country forbids the recognition of the foreign law, the latter is of no force whatever. When both are silent, then the question arises, which of the conflicting laws is to have effect. Generally, force and effect will be given by any State to foreign laws, in cases where, from the transactions of the parties, they are applicable, unless they affect injuriously her own citizens, violate her express enactments, or are *contra bona mores* (contrary to good morals).

ASSIGNMENTS AND TRANSFERS. Voluntary assignments of personal property, valid where made, will transfer property everywhere,[f] not as against citizens of the state of *situs* attaching prior to the assignees obtaining possession.[g] An involuntary assignment by operation of law, as, under bankrupt or insolvent laws, will not avail as to attaching creditors in the place of situation of the property.[h] It may be a question whether the same rule would hold if the assignees had obtained possession.[i] An assignment by operation of law is good so as to vest property in the assignees by comity of nations.[j]

FOREIGN LAWS[k] must be proved as matters of fact.[l]

Unwritten Laws must be proved by the opinion of experts.[m]

Written Laws must be proved by the text, or a collection printed by authority, or a copy certified by a proper officer, or, in their absence, perhaps, by opinion of experts as secondary evidence,[n] but the sanction of an oath is required in such case.[o]

JUDGMENTS AND DECREES OF FOREIGN COURTS relating to immovable property within their jurisdiction are binding everywhere. And the rule is the same with regard to movables within their jurisdiction.[q]

Proceedings in rem are held conclusive everywhere if the court had a rightful jurisdiction, founded on actual possession of the subject-matter.[r] But the decree may be avoided for matter apparently erroneous on the face of the record.[s] Proceedings under a garnishee process are held proceedings *in rem*; and a decree may be pleaded in bar of an action against a trustee or garnishee.[t] But the court must have rightful jurisdiction over the *res*, unless the court had actual jurisdiction over the person also.[u]

Judgments in personam, regular on their face, which are sought to be enforced in another country, are conclusive evidence, subject to a re-examination, in the courts where the new action is brought, only for irregularity, fraud, or lack of jurisdiction of the cause of action or parties thereto.[v] Any foreign judgment may be impeached for error apparent on its face.[w]

Foreign judgments are admitted as conclusive evidence of all matters directly involved in the case decided where the same question is brought up incidentally.[x]

Under the constitution of the United States, "full force and effect" are to be given the decrees of the courts of any State in those of all other States. This is construed to mean that the judgment so obtained and properly authenticated shall be conclusive evidence of the rights of the parties,[y] but not unless actual per-

e-4 Barb. 522. d-Story Confl. L. § 18, Vattel *b.* 2, *c.* 7, §§ 84, 85; Wheat. Int. L. pt. 1, *c.* 2, § 5. e-Huberus, lib. 1, *t.* 3, § 2. f-15 N. Y. 320; 4 N. J. 162, 270: 17 Penn. St. 91. g-13 Mass. 146; 6 Pick. 97: 5 Harring. 31, *otherwise* by 12 Md. 54; 4 N. J. 162; 18 Penn. St. 331. h-20 Johns. 229; 5 N. Y. 320; 4 Zabr. 162, 270; 6 Pick. 286, 302; 2 Hayw. 24; 4 M'Cord, 519; 5 N. H. 213; 14 Martin, 92; 6 Binn. 353; 5 Cranch. 289; 5 Me. 245, 1 Harr. & McH. 236; 19 N. Y. 207; 32 Miss. 246. i-Dougl. 167. j-6 M. & S. 126; 1 East. 6; 20 Johns. 262; 6 Binn. 363; 3 Mass. 517. k-See below. l-4 Mood. Parl. Cas. 21; 1 Dowl. & L. 614; 1 Texas, 434; 9 Humph. 546; 2 Barb. Ch. 582; 19 Vt. 182; 9 Mo. 3. m-11 Clark & T. Ho. L. 85; 1 Carr. & K. 269; 4 Johns. Ch. 520; 14 Eng. L. & Eq. 549; 1 Wall. Jr. C. C. 47; 4 Cow. 526. n-Story Confl. L. 641; 1 Greenl. Ev. § 486: 14 How. 426; 2 Cranch. 237; 8 Ad. & E. 208; 1 Campb. 65; 6 Wend. 475; 10 Ala. (N. S.) 885; 1 Texas, 93, 10 Ark. 516. o-4 Conn. 517; 12 Id. 384; see 12 Vt. 396; Story Confl. L. § 641; 1 Greenl. Ev. § 488, n. q-Story Confl. L. § 592; 1 Greenl. Ev. § 541. r-4 Cranch. 241, 293, 433; 7 Id. 423; 9 Id. 126; 4 Johns. 34; 3 Sumn. C. C. 600; 1 Story C. C. 157; 1 Johns. Cas. 341; 1 Harr. & J. 142; 1 Binn. 299; 3 Id. 220; 6 Mass. 277; 7 Id. 275. s-7 T. R. 523; 8 Id. 444; 1 Caines Cas. 21, t-1 Greenl. Ev. § 542; 4 Cow. 520, *n.* u-31 Me. 314; 7 B. Mon. 376; 9 Mass. 498; Story Confl. L. § 592; Greenl. Ev. § 542. v-1 Greenl. Ev. § 546; Westl. Priv. Int. L. 372; Story Confl. L § 607; 2 Swanst. Ch. 325; Dougl. 6, *n.*; 3 Sim. Ch. 458; 6 Q. B. 288; 16 Id. 717; 4 Munf. 241; 15 N. H. 227. That they are *prima facie* evidence merely, see 2 H. Bl. 410; Dougl. 1, 6; 3 Maule & S. 20; 9 Mass. 462; 8 Id. 273. w-21 Barn. & Ad. 757; 1 Greenl. Ev. § 547, n. x-1 Greenl. Ev. § 547, and note; 12 Pick. 572; 7 Bost. L. Rep. 461. y-15 N. H. 227; 9 Mass. 467; 11 Vt. 425; 22 Id. 419; 7 Cranch, 481; 3 Wheat. 234; 15 Johns. 121; 11 How. 165; 5 Gill. & J. 500; 7 Ohio, 273; 9 S. & R. 252; 4 B. Mon. 136; 13 Ill. 436; 12 Ark. 756.

sonal jurisdiction was obtained.[z] And want of jurisdiction may be shown even to contradict the record,[a] and must be shown affirmatively, if the record show jurisdiction on its face.[b]

The constitution and rules of comity apply only to civil judgments, and not to criminal.[c]

PARTICULAR PERSONAL RELATIONS.

Executors and administrators have no power to sue or be sued by virtue of a foreign appointment as such[d] in the absence of a statute authorizing it. But an executor who has so changed his situation towards the action as to render it his own may sue in a foreign court.[e] Administration must be taken out in the *situs* (place of situation) of the property,[f] unless otherwise provided by statute.

In general, administration is granted as of course to the executor or administrator entitled under the *lex domicilii*. In such cases the probate granted in the place of domicil is the principal, and that in the *situs* ancillary.[g] There is no legal privity between them.[h]

All property of the decedent which is in the jurisdiction of the court granting principal or ancillary administration, or which comes into it if not already taken possession of under a grant of administration, comes under its operation.[i] Ships and cargoes, and the proceeds thereof, complete their voyages and return to the home port.[j] The property of each jurisdiction is held liable for debts due in that jurisdiction, and the surplus is to be remitted to the principal administrator for distribution under the *lex domicilii*.[k] Each administrator must give priority to claims according to the law of his jurisdiction.[l] But a transmission of effects or their proceeds to another jurisdiction does not divest a creditor's precedence.[m]

Guardians have no power over the property, whether real or personal, of their wards, by virtue of a foreign appointment.[n]

Receivers in equity have no extra territorial powers by virtue of their appointment,[o] and the comity of the States and Territories will hardly help a receiver.[p]

An appointment of a receiver does not vest the funds of a foreign jurisdiction.[q]

Sureties come under general rules, and their contracts are governed by the *lex loci*; but in case of government bonds the seat of government is held to be the *lex loci*.[r]

PERSONAL PROPERTY.

Bills of exchange and promissory notes are to be governed, as to validity and interpretation, by the law of the place of making, as are other contracts. The residence of a drawee of a bill of exchange, and the place of making a promissory note, where no other place of payment is specified, is the *locus contractus*,[s] where the place of address is said to be the place of making. As between the drawee and drawer and other parties (but not as between an indorser and indorsee),[t] each indorsement is considered a new contract.[u] The place of payment is, however, to be considered as the place of making.[v] The better rule as to the rate of interest to be allowed on bills of exchange and promissory notes, where no place of payment is specified, and no rate of interest mentioned, seems to be the interest of the *lex loci*.[w] The damages recoverable on a bill of exchange not paid are those of the place where the plaintiff is entitled to reimbursement, and are generally fixed by statute.[x] Where the place of payment is specified, the interest of that place must be allowed.[y]

Chattel mortgages, valid, and duly registered under the laws of the State in which the property is situated at the time of the mortgage, will be held valid in another State to which the property is removed, although the regulations there are different.[z] The registration of chattel mortgages and transfer of government and local stocks are frequently made subjects of positive law, which then suspends the law of the domicil. Such mortgage will be respected in preference to claims of citizens of the State into which the property is removed.[a]

z-4 Bradf. Surr. 174; 9 Mass. 467; 15 Johns. 121; 4 Conn. 380; 17 Id. 500; 6 Pick. 240; 4 Met. (Mass.) 333; 3 Gray, 508; 11 Vt. 425; 5 Ill. 536; 17 Id. 572; 4 Harring. 280; 2 Blackf. 108; 29 Me. 19; 3 Ala. (N. S.) 552; 13 Ohio, 209. a-13 Gray, 597; 15 Johns. 121; 19 Id. 162; 3 Binn. 241; 9 Mass. 467; 4 Cow. 292; 4 Cranch, 241; 1 R. I. 73; 2 Ind. 24; 15 Ill. 415; 7 Met. (Mass.) 343, but see 17 Vt. 302; 4 Harring. 230. b-4 Bradf. Surr. 174. c-17 Mass. 515. d-Westlake, Priv. Int. Law, 279; 1 Greenl. Ev. § 544; 2 Jones Eq. 276; 10 Rich. 393. It seems to be otherwise where a foreign executor has brought assets into the State. 18 B. Mon. 582; 1 Bradf. Surr. 241, and see 16 Ark. 28. It is otherwise by statute in Ohio, 5 McLean C. C. 4. e-Westl. Priv. Int. L. 286; 1 Hare Ch. 86; 4 Beav. Rolls. 506. f-12 Wheat. 109; 20 Johns. 229; 1 Mas. C. C. 381; 1 Bradf. Surr. 69. g-3 Bradf. Surr. 233; 21 Conn. 577. h-35 N. H. 434. i-3 Paige Ch. 459. j-Story Confl. Laws, § 520. k-8 Clark & F. Ho. L. 1; 24 Beav. Rolls. 100; 3 Pick. 145; 3 Bradf. Surr. 233; 21 Conn. 577. In cases of insolvency, it is said the assets would be retained here for an equitable distribution among the creditors of an amount proportioned to the whole amount of assets and claims. 3 Pick. 147. l-Story Confl. L. § 524; 5 Pet. 518; 20 Johns. 265. m-7 L. Jour. Ch. 135: Westl. Priv. Int. L. 293. n-4 Cow. 52; 1 Johns. Ch. 153; Story Confl. L. § 504. As to the relations of foreign and domestic guardians, see 14 B. Mon. 544. o-17 How. 322. p-3 Wend. 538; 3 Fla. 93. q-17 How. 322; see 2 Paige Ch. 615. r-6 Pet. 172; 7 Id. 43; Story Confl. L. § 290. s-10 Barn. & C. 21; 1 Woodb. & M. C. C. 381; 4 Carr. & P. 35; 4 Mich. 450; 6 McLean C. C. 622; 9 Cush. 46; 26 Vt. 698; 11 Gratt. 477; 3 Gill. 430; 8 Conn. 138; 6 Ind. 107; see 11 Texas, 54; 17 Miss. 220. t-19 N. Y. 436, but see 14 Vt. 33. u-14 B. Mon. 556; 5 Sandf. 330; 2 Ga. 158; 3 McLean C. C. 397. v-30 Miss. 59; 7 Ohio St. 134; 4 Mich. 450; 5 McLean C. C. 448; 13 N. Y. 290; 25 Barb. 383; 5 Sandf. 326; 3 Gill. 430; 8 B. Mon. 306; 14 Ark. 189; 17 Miss. 220; 13 Grav. 597, but see 4 N. J. 319. w-6 Johns. 183; 5 Clark & F. Ho. L. 1, 12; 6 Cranch, 221; 3 Wheat. 101; 1 Dall. 191; 12 La. An. 815; and see 9 Gratt. 31; 24 Miss. 463; 24 Mo. 65; Parsons' Contr. 238. x-4 Johns. 119; 6 Mass. 157; 2 Wash. C. C. 167; 3 Sumn. C. C. 523. y-14 Vt. 33; 22 Barb. 115; *contra* 21 Ga. 135. It seems to be undecided whether the rate of interest which is legal by the *lex loci*, but higher than that allowed at the place of payment, may be reserved where a place of payment is specified. That it may, Parsons' Contr. 96, *n.*; 20 Martin, 1. That it may not, Story Confl. Laws, § 298. z-37 N. H. 86; 7 Ohio St. 134; 12 Barb. 631; 8 Humph. 542. a-30 Vt. 42; overruling 23 Vt. 279; 7 Ohio St. 134; 12 Barb. 631; 8 Humph. 542.

Questions of priority of liens and other claims are, in general, to be determined by the *lex rei sitæ*, even in regard to personal property.[b] The existence of the lien will depend on the *lex loci*.[c]

Movables in general. Personal property follows the owner, and hence its disposition and transfer are to be determined by the law of domicil.[d]

CRIMINAL LAW is that branch of jurisprudence which treats of criminal offences. The extreme importance of a knowledge of criminal law is self-evident; for a mistake in point of law, which every person of discretion not only may know, but is bound and presumed to know, is in criminal cases no defence. This law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it.[e] This doctrine has been carried so far as to include the case of a foreigner charged with a crime which was no offence in his own country.[f] And further, the criminal law, whether common or statute, is imperative with reference to the conduct of individuals; so that, if a statute forbids or commands a thing to be done, all acts or omissions contrary to the prohibition or command of the statute are offences at common law, and ordinarily indictable as such.[g] When a statute punishes a crime by its legal designation without enumerating the acts which constitute it, then it is necessary to resort to the common law for a definition of the crime with its distinctions and qualifications. So if an act is made criminal, but no mode of prosecution is directed or no punishment provided, the common law (in the absence of a statute to the contrary) furnishes its aid, prescribing the mode of prosecution by indictment, its mode of punishment by fine and imprisonment. So far, therefore, as the rules and principles of the common law are applicable to the administration of the criminal law, and have not been altered or modified by legislative enactment or judicial decisions, they have the same force and effect as laws finally enacted.[h]

The following are some of the leading principles of the criminal law:

1. Every man is presumed to be innocent till the contrary is shown; and if there is any reasonable doubt of his guilt, he is entitled to the benefit of the doubt.

2. In general, no person can be brought to trial till a grand jury on examination of the charge has found reason to hold him to trial.

3. The prisoner is entitled to trial by a jury of his peers, who are chosen from the body of the people with a view to impartiality, and whose decision on questions of fact is final.

4. The question of his guilt is to be determined without reference to his general character, previous history or habits of life.

5. The prisoner cannot be required to criminate himself, nor be compelled to exculpate himself by giving his own testimony on trial.

6. He cannot be twice put in jeopardy for the same offence.

7. He cannot be punished for an act which was not an offence by the law existing at the time of its commission; nor can a severer punishment be inflicted than was declared by law at the time of its commission.

The elements of criminal offences are, in general, as follows:

CRIMES OR PUBLIC OFFENCES are wrongs which the State or Commonwealth notices as injurious to the public, and punishes in what is called a criminal proceeding in its own name.[i] Crimes are defined and punished by statutes and by the common law. Most common law offences are as well known and as precisely ascertained as those which are defined by statutes. Yet from the difficulty of exactly defining and describing every act which ought to be punished, the vital and preserving principle has been adopted that all immoral acts which tend to the prejudice of the community are punishable criminally by courts of justice.[j] Criminal offences are, in general, defined, and the mode of punishment prescribed by statute.

Crimes are sometimes classified according to the degree of punishment incurred by their commission. They are more generally arranged according to the nature of the offence. The following is, perhaps, as complete a classification as the subject admits:

I. *Offences against the sovereignty of the State.* 1. Treason; 2. Misprision of treason.

II. *Offences against the lives and persons of individuals.* 1. Murder; 2. Manslaughter; 3. Attempt to kill or murder; 4. Mayhem; 5. Rape; 6. Robbery; 7. Kidnapping; 8. False imprisonment; 9. Abduction; 10. Assault and battery.

III. *Offences against public property.* 1. Burning or destroying public property; 2. Injury to the same.

IV. *Offences against private property.* 1. Arson; 2. Burglary; 3. Larceny; 4. Obtaining goods under false pretences; 5. Embezzlement; 6. Malicious mischief.

V. *Offences against public justice.* 1. Perjury; 2. Bribery; 3. Destroying public records; 4. Counterfeiting public seals; 5. Jail breach; 6. Escape; 7. Resistance to officers; 8. Obstructing legal process; 9. Barratry; 10. Maintenance; 11. Champerty; 12. Contempt of court; 13. Oppression; 14. Extortion; 15. Suppression of evidence; 16. Compounding felony; 17. Misprision of felony.

b-5 Cranch. 289; 4 Binn. 353; 14 Martin, 93; 2 Harr. & J. 193, 224; 3 Pick. 128; 3 Rawle. 312; 13 Pet. 312; 17 Ga. 491; 4 Rich. 561; 13 Ark. 543; 3 Barb. 89. c-Story Confl. § 322, *b.*; 5 Cranch. 289. d-4 Kent Comm. 428. e-Per Tindal, C. J.; 10 Clark & F. 210. f-1 El. & B. 1; Dearsl. 51; 7 C. & P. 456; Russ. & R. Cr. Cas. 4. g-Broom Comm. 865; Hawkins Pl. Cr. Bk. 2 Ch. 25, § 4; 8 Q. B. 883; see 15 M. & W. 404. h-5 Cush. 303, 304; 4 Met. (Mass.) 358; 13 Id. 69, 70. i-1 Bishop Cr. L. § 43; see 4 Denio, 260; 6 Ark. 187, 461. j-2 Rev. Swift Dig. 284; 2 East. 5, 21; 7 Conn. 386; 5 Cow. 258; 5 Pick. 26.

VI. *Offences against the public peace.* 1. Challenging or accepting a challenge to a duel; 2. Unlawful assembly; 3. Rows; 4. Riot; 5. Breach of the peace; 6. Libel.

VII. *Offences against chastity.* 1. Sodomy; 2. Bestiality; 3. Adultery; 4. Incest; 5. Bigamy; 6. Seduction; 7. Fornication; 8. Lascivious carriage; 9. Keeping and frequenting houses of ill fame.

VIII. *Offences against public policy.* 1. False currency; 2. Lotteries; 3. Gambling; 4. Immoral shows; 5. Violation of the right of suffrage; 6. Destruction of game, fish, etc.; 7. Nuisance.

IX. *Offences against the currency, and public and private securities.* 1. Forgery; 2. Counterfeiting; 3. Passing counterfeit money.

X. *Offences against religion, decency, and morality.* 1. Blasphemy; 2. Profanity; 3. Sabbath-breaking; 4. Obscenity; 5. Cruelty to animals; 6. Drunkenness; 7. Promoting intemperance.[k]

XI. *Offences against the public, individuals, or their property.* 1. Conspiracy.

ABDUCTION is the taking and carrying away of a child, a ward, a wife, etc., by force, fraud, persuasion, or open violence.[l]

ABORTION is the criminal act of miscarrying or producing young before the natural time or before the fœtus is perfectly formed, and before it has acquired the power of sustaining an independent life.

When in consequence of the means used to procure an abortion, the death of the mother ensues, it is murder. If the person, intending to procure an abortion, does an act which causes a child to be born so prematurely that it dies in consequence thereof, the person so bringing the child into the world, so putting it in a situation in which it cannot live, is guilty of murder; and this guilt is not lessened from the mere existence of a possibility that something might have been done to prevent its death.[m]

ABUSE is to treat rudely, or with reproachful language, to revile. See AFFRONT, below.

A person is liable for whatever injury arises from the abuse of property, while in his control or custody, unless it is occasioned by inevitable accident or causes wholly beyond their control.

An ACCESSORY is an abettor; an accomplice. One who is guilty of a felony, misdemeanor, or treason; not by committing the offence in person or as principal, but by advising, assisting, or commanding another to commit the crime, or assisting him to escape, or concealing him. One who not being the principal is in some way concerned in the commission of the offence, either before or after its commission. No one who is principal can be accessory. In many States all are considered principals. An accessory after the fact is one who, knowing an offence to have been committed, assists, comforts, conceals, receives or relieves the offender.[n] An accessory before the fact is one who, being absent at the time an offence is committed, yet commands, counsels, or procures another to commit it.[o] When the act is committed through the agency of a person who has no legal discretion nor a will, as in the case of a child or insane person, the inciter, though absent when the crime was committed, will be considered not an accessory, for no one can be an accessory to the acts of a madman, but a principal.[p] But if the instrument is aware of the consequences of his act, he is a principal, and the employer, if absent when the offence is committed, is an accessory before the fact,[q] or, if he is present, a principal in the second degree,[r] unless the instrument concur in the act merely for the purpose of detecting and punishing the employer, in which case he is considered as an innocent agent.[s]

An accomplice is an abettor, an accessory, and confederate; an associate in crime; a partner or partaker in guilt. One who is in some way concerned in the commission of a crime, though not as a principal. All persons who have been concerned in the commission of a crime, all *particeps criminis*, whether they are considered in strict legal propriety as principals in the first or second degree, or merely as accessories before or after the fact.[t]

It is a rule of practice that a jury should not convict on the unsupported evidence of an accomplice; and the judge will, in general, advise the jury to acquit, unless the testimony of the accomplice is corroborated, not only as to the circumstances of the offence, but also as to the participation of the accused in the transaction; and where several parties are charged, that it is not sufficient that the accomplice should be confirmed as to one or more of the prisoners, to justify a conviction of those prisoners with respect to whom there is no confirmation.[u]

AN ACCUSATION is a charge, in writing, upon oath or affirmation, against one or more persons of a felony or misdemeanor. An accusation is generally made in the form of an affidavit or complaint before some magistrate authorized to try, acquit, bind over, or convict the offender. In courts of competent and general jurisdiction the accusation is presented in the form of an indictment or information. An indictment is based upon the finding of a grand jury. An information is based upon the affidavit or complaint of any competent person supported by his oath or affirmation.

In an accusation before a magistrate, it is sufficient, as a general rule, to describe the offence in the words of the statute.[v]

The essential requisites of an accusation are:

1. *It must be presented to some court having jurisdiction* of the offence stated therein.

k-See 2 Sharsw. Bl. Conn. 42, *et seq.* l-Bl. Comm. m-2 Carr. & K. 784. n-4 Bl. Comm. 37. o-1 Hale Pl. Cr. 615. p-1 Id. 618. q-1 Russ. & R. Cr. Cas. 363; 1 Den. Cr. Cas. 37; 1 Carr. & K. 589. r-1 Fast Cr. Cas. 349. s-2 Mood. Cr. Cas. 301; 1 Carr. & K. 395. t-Fost. Cr. Cas. 341; 1 Russ. Cr. 21; 4 Bl. Comm. 331; 1 Phill. Ev. 28; Merlin Rep. *Complic.* u-7 Cox Cr. Cas. 20; Dearsl. Cr. Cas. 555; 20 Pick. 397; 10 Cush. 535; see 1 Fost. & F. Cr. Cas. 386. v-8 Kas. 288.

2. *It must be made by a person competent to testify.*

3. *It must be made in writing, under oath* or affirmation of the accuser.

4. *It must charge the person accused with the commission of a felony or misdemeanor;* for this purpose, the charge must contain a certain description of the felony or misdemeanor of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation.[w]

5. *It must be in the English language;* but if any document in a foreign language be necessarily introduced, it should be set out in the original tongue, and then translated, showing its application.[x]

6. *It must be subscribed* by the accuser.

7. *It must be sworn to* before an officer authorized to administer an oath.

The formal requisites of an accusation are:

1. *The venue must always be laid* in the county where the offence has been committed, although the charge be in its nature transitory, as a battery.[y] The venue is stated in the margin, thus: "State of ——, —— County, ss."

2. *The name of the defendant;* but in case an error has been made in this respect, it is cured by the plea of the defendant,[z] and the facts are entered accordingly.

3. *The names of third persons*, when they must be necessarily mentioned in the complaint, should be stated with such certainty as to sufficiently inform the defendant who are his accusers. When, however, the names of third persons cannot be ascertained, it is sufficient, in some cases, to state "a certain person or persons to this affiant unknown."[a]

4. *The time when the offence was committed* should, in general, be stated to be on a specific year and day;[b] but, though it is necessary that a day certain should be stated in the complaint, yet, in general, the prosecutor may give evidence of an offence committed on any other day previous to the making of the accusation.[c]

5. *The offence should be properly described.* And, as a general rule, it is sufficient to describe the offence in the words of the statute.

The whole facts of the case necessary to make it appear judicially to the court that the accuser has gone upon sufficient premises, should be set forth; but there should be no unnecessary matter, nor anything which, on its face, makes the accusation repugnant, inconsistent, or absurd.

The offence must not be stated in the disjunctive; as, that the defendant committed, *or* caused to be committed, etc., so as to leave it uncertain on what it is intended to rely as an accusation.[d]

The following rules should be observed in drawing an accusation:

1. *Keep near the words of the statute.*—The pleader must keep reasonably near the words of the statute, or there will be a variance, and on this ground the accusation will be defective.[e]

2. *Negative averments to show affirmatively an offence.*—No accusation is sufficient which alleges an act or omission in itself innocent, unless it proceed to disclose circumstances which render such act or omission illegal.[f]

It is not necessary that the negative averments should be made in strict conformity to the exact words of the statute; whatever amounts to a substantial negative is sufficient.[g]

An unnecessary negative will be rejected as surplusage; it needs no proof.

3. *If there is an exception in the enacting clause of the statute*, the party pleading must show that the defendant is not within the exception; *but if there be an exception in a subsequent clause, or a subsequent statute*, that is matter of defence, and is to be shown by the other party.[h]

4. *Matters of defence are never necessary in an accusation.*

Commencement and Conclusion of an Accusation.

State of ——, —— county, ss.
A. B., being duly sworn, says:
That C. D., on the —— day of ——, A. D. ——, in the county of ——, and State of ——, did then and there unlawfully (*or* feloniously, etc.), (*here describe the offence committed*). **A. B.**
Subscribed and sworn to, before me, this —— day of ——, A. D. ——. M. R., *Mayor, or*
P. J., *Police Judge, or*
J. P., *Justice of the Peace, etc.*

See INDICTMENT; INFORMATION, below.

Amendment of Accusation.—The accusation, the accused being present and consenting, may, of course, be amended to an extent to which it is not easy to set limits;[i] or if the evidence satisfies the magistrate that a crime different from the one charged against the prisoner has been committed by him, he may hold him until a fresh accusation is drawn, covering the crime as proved.[j] In this case the prisoner is held on the original accusation, which, under such circumstances, the magistrate is not bound to dismiss until the proper accusation is made against him. But if a person known to the magistrate happens to be in his court, and he suspects an absent person has an accusation to make against him for a misdemeanor, he cannot detain him and send for the person. The magistrate should have the charge actually made before he detains the party.[k] Unless it be for a felony.

w-Cowp. 682; 2 Hale Pl. Cr. 167; 1 Binn. 201; Id. 533; 4 S. & R. 194; 6 Id. 398; 4 Sharsw. Bl. Comm. 301; 4 Cranch, 167. x-6 T. R. 162. y-Hawk. Pl. Cr. *b.* 2. *c.* 25, § 35. z-Bac. Abr. *Misnomer* (B), *Indict.* (G. 2); 2 Hale Pl. Cr. 175; 1 Chitty Pr. 202; Russ. & R. 489. a-Hawk. Pl. Cr. *b.* 2, *c.* 25, § 71; 2 East. Pl. Cr. 651, 781; 2 Hale Pl. Cr. 181; Plowd. 85; Dyer, 97, 286; 8 C. & P. 773. b-In some offences, as in perjury, the day must be precisely stated, 2 Wash. C. C. 328. c-5 S. & R. 316; see 11 Id. 177; 1 Chitty Cr. L. 217, 224; 1 Chitty Pl. Index, *Time;* 17 Wend. 475; 2 Dev. 567; 6 Miss. 14; 4 Dana, 496; 1 Cam. & N. 369; 1 Hawks, 460. d-6 Dowl. & R. 143; 2 Str. 900; 2 Rolle Abr. 31. e-29 Vt. 60, 66; 34 Me. 500; 34 N. H. 495. f-Starkie Crim. Pl. (2d Ed.) 171. g-34 Me. 500; 12 Gray, 132; 5 Humph. 102; 3 Ind. 193; 12 Gill. & J. 262. h-8 Am. Jur. 234; 1 Ben. & H. L. Cas. 255, 256. i-11 Cal. 280. j-4 Ind. 428. k-5 C. & P. 206; 1 Moody & R. 160.

ACQUITTAL is a deliverance from the charge of an offence. A judicial decree of innocence, by a finding of the court, or the verdict of a jury. Acquittals in fact are those where upon the trial the defendant is pronounced innocent of the offence with which he is charged. Acquittals in law are those which take place by operation of law, as where one is charged as an accessory or accomplice, and the principal is acquitted.[l] An acquittal by a court of competent jurisdiction is a bar to any prosecution for the offence alleged in the first accusation, or for any inferior degree thereof.

AN ADMONITION is a reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that should he be again guilty of the same fault for which he is admonished, he will be punished with greater severity.[m]

ADULTERATION is the unlawful act of corrupting, or debasing, or rendering an article impure and unwholesome. Converting a pure and genuine article into something of less value for the purpose of deceit and gain, as an adulteration of food or drink.

ADULTERY is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.[n] Violation of the marriage bed; a civil injury and crime which introduces or may introduce into a family illegitimate or spurious offspring. It is a criminal offence, punishable by fine or imprisonment, or both.

AFFRAY is a fight between two or more persons, by agreement, in a public place.[o] No quarrelsome or threatening words will amount to an affray,[p] there must have been a fight, and in a public place, for fighting in private is assault and battery, and not an affray.[q]

AFFRONT is uncivil encounter; ill treatment; insult; offence; outrage. Anything contemptuous or reproachful that excites or justifies resentment, as foul language or personal abuse. It usually expresses a less degree of abuse than insult.[r]

"It appears probable that judicial combat was originally permitted in order to determine the points respecting personal character or reputation of individuals, and was afterwards extended not only to criminal cases but to questions concerning property. Thus: If any man shall say to another these reproachful words: 'You are not a man equal to other men;' or, 'You have not the heart of a man;' and the other shall reply: 'I am as good a man as you.' Let them meet upon the highway. If he who first gave offence appear, and the person offended absent himself, let the latter be deemed a worse man than he was called; let him not be admitted to give evidence in judgment, either for man or woman; and let him not have the privilege of making a testament. If he who gave the offence be absent, and only the person offended be present, etc., then let him who absented himself be deemed infamous, because he uttered words he durst not support. If both appear, properly armed, and the person offended shall fall in the combat, let a half compensation be paid for his death. But if the person who gave offence shall fall, let it be imputed to his own rashness. 'The petulance of his tongue hath been fatal to him.' Let him lie in the field without any compensation being demanded for his death."[s] This mode of settlement in modern times takes the form of the duel, a practice without sanction of law or morals, and prohibited under heavy penalties. By the laws of the Salians, if any person called another a "*hare*" (*i. e.*, a timid, cowardly fellow), or accused him of having left his shield on the field of battle, he was ordained to pay a large fine.[t] So, if one called another "*Cenitus*" (a term of reproach equivalent to "*Arga*," below), he was bound to pay a high fine.[u] And by the law of the Lombards, if one called another "*Arga*" (*i. e.*, a good-for-nothing fellow), he might immediately challenge him to combat.[v] Courts Military and Chivalry, as courts of honor, were to give satisfaction to such as were aggrieved on that point; a point of a nature so nice and delicate that its wrongs and injuries escape the notice of the common law, and yet are fit to be redressed somewhere. Such, for instance, as calling a man a coward, or the more modern villifying epithets, or giving him the lie; they are productive of no immediate damage to his person or property, yet they are such injuries as will prompt every man of spirit to demand some honorable amends.[w] The statutes of many of the States take cognizance of these offences in some general form.

AFORETHOUGHT is premeditation. It is the length of time during which the accused has entertained the thought of committing the offence. The length of time is not very material, provided he has in fact entertained such thought or premeditation; he is thereby rendered criminal in a greater degree than if he had committed the offence without premeditation.[x]

AGGRAVATION is the act or quality of increasing enormity, heinousness, severity, or wrong. In criminal actions one of the rules respecting variances is, that cumulative allegations, or such as merely *operate in aggravation*, are immaterial, provided that sufficient is proved to establish the same right, offence, or justification included in the charge, claim, or defence set up. The rule runs through the whole criminal law, that it is invariably enough to prove so much of the charge as shows that the defendant

l-Co. 2d Inst. 364. m-Merlin Repert. n-Bishop Marr. & D. § 415; 6 Met. 243; 36 Me. 261; 11 Ga. 56; 1 Strobh. 174. o-1 Blackf. 377; see Hawk. Pl. Cr. Bk. 1 Ch. 65, § 3; 4 Bl. Comm. 146; 1 Russ. Cr. 271. p-Hawk. Pl. Cr. Bk. 1 Ch. 63, § 3. q-Id. § 1; 1 Crompt. M. & R. 757; 1 Cox Cr. Cas. 177. r-See Merlin Rep.

s-Vide *Lex Uplandica*, Stiernhook, p. 76. t-Vide *Leg. Sal.* tit. XXXII, §§ 4, 6. u-Id. § 1. v-Vide *Leg. Longob.* lib. I, tit. V, § 1. w-3 Bl. Comm. 104. x-See 2 Chitty Cr. L. 785; 4 Bl. Comm. 199; Foster Cr. Cas. 132, 291, 292; Cro. Car. 131; Palm. 545; W. Jones, 198; 4 Dall. 146.

committed a substantive crime therein specified.[y] Thus, on an indictment for murder, the prisoner may be convicted of manslaughter, for the averment of malice aforethought is merely matter of aggravation.[z]

AIDING AND ABETTING is the act of being in such communication, and so situated during the perpetration of a crime, as to readily aid the perpetrators thereof. Actual presence is not necessary; it is sufficient if so situated as to come readily to the assistance of his fellows.[a] Although not the direct perpetrator of a crime, yet if the person be present at its commission doing some act to render aid to the perpetrator thereof he is, in contemplation of the law, an aider and abettor.[b]

AID AND COMFORT is assistance or encouragement, either by furnishing strength or means to effect a purpose, or to prevent or remove evil. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.[c]

AMERCEMENT is the pecuniary penalty or fine imposed upon an offender by a judicial tribunal.

AMNESTY is an act of oblivion; a general pardon of the offences of subjects against the government, and usually upon condition that they return to their allegiance within a given period. It is the proclamation of such act. Amnesty is either express or implied, general or limited: express when in direct terms; implied when it results from a treaty of peace made between the contending parties;[d] general when it applies to all; limited when certain classes are excluded from its operation. It differs from pardon, for pardon is given to one who is certainly guilty, or has been convicted, while amnesty is given to those who may have been so. Amnesty is the act of the sovereign power whose object is to efface and cause a crime or misdemeanor to be forgotten; pardon is the act of the same power whose object is to exempt the individual from the punishment which the law applies for the crime he has committed.[e] Pardon remits a part or the whole of punishment awarded. Amnesty destroys the effect of the criminal act. Pardon is given to individuals after conviction Amnesty is granted either before or after.

AMOTION is the unlawful taking of personal property out of the possession of the owner, or of one who has a special authority in them.

ANIMO; ANIMUS. See INTENTION, below.

ARRAIGNMENT is the act of calling a defendant before the court or tribunal to answer to the accusation, charge, or impeachment contained in the information or indictment.

Arraignment consists: 1. In calling the prisoner before the court for the purpose of identifying him as the person charged in the information or indictment with the commission of the offence.[f] 2. In reading the information or indictment to the accused in order to enable him fully to understand the charge against him.[g] 3. In asking the prisoner, "How say you," or "What say you, P. R.: are you guilty or not guilty?"[h] Thereupon, if the prisoner confesses the charge, and it appears to the satisfaction of the court that he fully comprehends the effect of his plea of "guilty," he at once, or after hearing such evidence as he may require, or after deliberation, pronounces judgment. If, however, he answers "not guilty," this plea is entered of record, and forms the issue for trial. If he fails to answer, or cannot or will not answer, the court orders a plea of "not guilty" entered in his behalf.

When the offence charged is punishable by fine only, personal appearance for arraignment is unnecessary, provided some responsible person appears in his behalf.

ARREST is the taking of a person into custody that he may be held to answer for a public offence.

An arrest is the taking, attaching, or seizing a person or thing, either by a public officer in execution of the command of some court, or minister of justice, or by a private person, according to the command or permission of the law.[i]

An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers.[j] The arresting of an offender and the retaking of him on fresh pursuit after an escape constitutes but one effective arrest.[k]

An officer must inform the defendant that he acts under the authority of a warrant, and must show the warrant if required.[l]

If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.[m]

To constitute an arrest it is not ordinarily sufficient that words of arrest be spoken; there must be something done by way of actual physical restraint, though it is enough, if the party arresting touch the other "even with the end of his finger."[n] So, if a bailiff comes into a room, and tells the defendant he arrests him, and locks the door, that is an arrest; for he is in custody of the officer.[o] So, also, if there is neither a touching of the person, nor other force employed in the first instance, yet, if the party to be arrested submits on being informed of the intended arrest, nothing more is required, especially when he is in the power of the officer, to make the arrest complete.[p]

y-Per Ld. Ellenborough; 2 Campb. 583; 4 B. & C. 329; 21 Pick. 525; 4 Gray, 18; 7 Id. 49, 331; 1 Tayl. Ev. § 215. z-Co. Litt. 282, *a*. a-13 Mo. 382. b-4 Sharsw. Bl. Comm. 34; Russ. & R. Cro. Cas. 363, 421; 9 Ired. 440; 1 Woodb. & M. C. C. 221; 10 Pick. 477; 12 Whart. 460; 26 Miss. 299. c-Const. U. S. Art. 3. § 3; see post, TREASON. d-Vattel 1, 4, Ch. 2, §§ 20–22. e-7 Pet. 160. f-1 W. Bl. 33; see Arch. Cr. Pl. (Ed. 1859), 128. g-The accused may demand, as a right, a copy of the information or indictment, but this is rarely done, he or his counsel being permitted to examine the original. h-The prisoner may demand a reasonable time, which, if necessary, is usually granted. i-Law of Arrests, London, 1742, p. 1. j-2 Blackf. 294. k-2 G. & H. p. 397, § 33. l-Id. § 34. m-Id. § 35. n-6 Mod. 173; 1 Salk. 79. o-Cas. *temp*. Hardw. 298, 301; and see 4 Bingh. (N. R.) 212; 5 Scott, 561. p-18 N. H. 198; 100 Mass. 79, 85.

Thus: If the bailiff, who has process against one, says to him, when he is on horseback or in a coach, "You are my prisoner, I have a writ against you," upon which he submits, turns back, or goes with him, though the bailiff never touched him, yet it is an arrest, because he submitted to the process; but if instead of going with the bailiff, he had gone or fled from him, it could be no arrest unless the bailiff laid hold of him.[q]

Restraint does not alone constitute an arrest; 'tis the duty of one seeking to arrest another to make his purpose known,[r] unless the circumstances are such as to render the purpose obvious;[s] for, where circumstances are such as to make the intention to apprehend plain to the mind of him who is to be apprehended, he need not be told this; and the arrest will be legal, and the resistance of the arrested person illegal, the same as if the purpose had been announced in words.[t]

A person making an arrest should not use unnecessary violence.[u] Though the officer may lay hands on another in order to serve him with process,[v] yet he cannot drag about or strike the defendant, unless these acts are rendered necessary by his resistance.[w] He may make use of so much force as is necessary to accomplish his object, and cannot be made liable by the defendant, except for wanton violence.[x] Officers of the law, when engaged in the performance of their duties, are invested with a peculiar prerogative. If resisted when so employed, and the party resisting be killed in the struggle, such homicide is justifiable. And, on the other hand, if the party having such authority, in exercising it properly, happen to be killed, it will be murder in all who take part in such resistance,[y] though there be no malice.[z] An officer is justified, who, in the execution of his office, either in a civil or criminal case, kills a person who assaults and resists him. The resistance will justify the officer in proceeding to the last extremity. So that, in all cases, whether civil or criminal, where persons having authority to arrest and imprison, and using the proper means for that purpose, are resisted in so doing, they may repel force with force, and need not give back; and if the party making resistance is unavoidably killed in the struggle, this homicide is justifiable.[a] But where a party does not resist, but merely flies to avoid the arrest, the conduct of the officer should be cautiously regulated by the nature of the proceeding. For in civil cases, and also in the case of a breach of the peace, or any other misdemeanor, short of felony, if the officer should pursue a defendant flying in order to avoid an arrest, and should kill him in the pursuit, this will be murder or manslaughter, according to the circumstances by which such homicide may have been attended.[b]

If a man is committing a felony, and an officer attempts to arrest him, yet he runs away, and the officer calls on him to stop, if he will not stop, the officer is justified in shooting at him to compel him to stop; but if the offence is a misdemeanor, he has no right to take this extreme measure.[c]

Where the arrest has actually been made, whether for felony or misdemeanor, *if the person attempts to break away*, he may be killed to prevent it, provided this extreme measure is necessary.[d]

Where there is an attempt at an unlawful arrest, as, for instance, where an officer undertakes to arrest without a warrant, and not on fresh pursuit, one whose crime is no more than a misdemeanor, the person on whom the attempt is made may lawfully resist, though not to the taking of life;[e] and if, in such resistance, he takes the officer's life, his crime will only be manslaughter.[f] So, the person thus unlawfully arrested is justified in escaping if he can;[g] and an attempt to re-arrest him will be equally unlawful with the first arrest.[h] But there are circumstances in which, if the person arrested submits, he waives an objection which he might have taken; and in these circumstances, he has no right afterward to escape.[i]

One having custody of an arrested person should treat him well, but may even inflict death to prevent his escape, where no other means are available. *A fortiori*, an officer who has a prisoner under arrest may tie him if this is necessary; and where an officer acts honestly and from pure motives, he is to be himself the sole judge of the necessity of such a measure as this.[j] If, then, having arrested the prisoner lawfully, the latter breaks away, he may retake him without any fresh warrant,[k] and this even where the officer has consented to the escape.[l]

—— ARREST WITHOUT A WARRANT.

By private persons. In felonies and in treason. If the offence has been in fact committed, and a private person has reasonable cause to suspect a particular person to be guilty of its commission, he may, acting in good faith,

q-1 Salk. (6th E[illegible]) 79, note referring to B. N. P. 62; 1 C. & P. 153; 3 C. & P. 464; M. & M. 244; 6 B. & C. 528; 2 C. [illegible] Bishop Crim. L. Vol. II, § 49. r-9 Co. 65, *a*. s-[illegible]35. t-1 Moody, 207; and see 1 Moody, 378; C[illegible]33, 537, 538; 9 Co. 65, *b*. u-3 Harring. 568. [illegible]B. & C. 445. w-7 Blackf. 74. x-24 Me. 158. [illegible]art. Hom. 54, 83, 285; Fost. 273, 308; 1 Hale, 501; 1 East. P. C. 295. z-17 Ga. 194. a-1 Hale, 494; 1 Hawk. P. C. *c*. 28, §§ 17, 18; Fost. 270; 4 Bl. Com. 179; 1 East. P. C. *c*. 5, § 74, p. 307. So long as a party liable to arrest endeavors peaceably to avoid it, he may not be killed; but whenever by his conduct he puts in jeopardy the life of any attempting to arrest him, he may be killed, and the act will be excusable, State *vs.* Anderson; 1 Hill, 327. b-Russell Crimes, Vol. 1, B. III, § 3. c-2 Den. C. C. 35; compare with Bishop Cr. L. Vol. I, § 528, II, § 600; see also 2 Dev. 58; 25 Ala. 15; 19 Texas, 285. If, instead of flying, he stands and resists, the party having the right to arrest may press forward in his purpose, even though the case be not one of felony; and if not desisting, but still pressing forward, he is obliged to take the life of the other, as in self-defence, he will be justified. 30 Ala. 683; 2 Dev. 58; 2 Mill. 314; 3 Harring. 568; see 10 Wis. 562; 1 East. C. P. 295. d-Bishop Cr. L. Vol. II, § 600. e-Id. § 650. f-12 Cush. 246. g-5 Harring. 496. h-1 Moody, 132. i-42 Me. 384; 5 Vt. 588. j-2 Ired. 50. k-2 Blackf. 294. l-1 Grant, 187; 1 Chitty Cr. L.

arrest such person; and he will not be liable, either in a civil or criminal prosecution, should the suspicion prove unfounded.[m] But if the offence has not in fact been committed by any one, he may be compelled, on a civil suit, to pay damages to the party arrested, however strong or reasonable may have been his suspicions.[n] And these rules extend to all felonies, even to petit larceny.[o]

When a crime is a felony, the law casts upon all persons present the duty to make the arrest. It is also a duty of precisely the same nature to interfere to prevent the commission of a felony or treason, and this duty carries with it the right; consequently, though an attempt to commit a felony is a misdemeanor, and not a felony, yet if a man finds another attempting to commit a felony, he may arrest him.[p]

In misdemeanors, a private person, or an officer acting without a warrant, cannot make an arrest for a misdemeanor committed on an occasion which has already past.[q] It is the duty of every good citizen to endeavor to suppress a riot; and when he finds a mistaken multitude engaging in treasonable practices, to the subversion of all peace and good order, he is protected by law in coming forward with other well-disposed characters to repel them by force.[r] Affrays may be suppressed by any private person present, who is justifiable in endeavoring to part the combatants, whatever consequence may ensue.[s]

By officers of the law. Whenever the circumstances of a case would justify a private person in making an arrest, without a warrant, they will equally justify a constable, sheriff, or watchman.[t] Where an officer, authorized by statute to make arrests without warrant, finds a person in the act of committing a criminal offence, it is not necessary to the lawfulness of the attempt to arrest him to first inform him of the charge upon which the attempted arrest is made, where the officer and the cause of arrest are known to the offender.[u] But for a past offence, below a felony, officers of the peace cannot, any more than a private person, arrest the offenders without a warrant.

When a magistrate is commanded by statute to keep the peace, by construction, he is authorized to call upon his officers, and upon private individuals, for such assistance as the nature of his office and the particular circumstances render it incumbent on them to perform; and such magistrate may lawfully, by word of mouth, authorize any one to arrest another, who shall be guilty of any actual breach of the peace in his presence,[v] or shall be engaged in a riot in his presence.[w] If an offence is committed in the court of a magistrate, he may verbally authorize the attending officer to take the offender into custody; no warrant being necessary in the first instance.[x] Likewise, if an arrest is made without a warrant, in a case where such an arrest is lawful, and the offender is brought before the magistrate, the latter may take jurisdiction and proceed to judgment without issuing a warrant of arrest. "Why issue a warrant for the apprehension of a party already in custody?"[y] But a written complaint (under oath) against the party, setting out his offence, is as necessary in such a case as in any other.[z]

Sheriffs[a] and constables are *ex-officio* conservators of the peace; so, in a measure, are watchmen and other like officers.

What is a reasonable and proper cause to suspect the person who is to be arrested is a question of law; and it is a question of fact whether or not the circumstances constituting such cause exist; and on the trial of an officer at the suit of the arrested party, the question is ordinarily to be submitted to the jury as a mixed one of law and fact.[b] A proclamation by the governor, published in pursuance of law, announcing the commission of a felony, is a sufficient justification for a peace officer who arrests the suspected felon.[c] A watchman and beadles have authority at common law to arrest and detain in prison, for examination, persons walking the streets at night, whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed.[d]

From time immemorial constables and watchmen had authority, without warrant, to arrest those whom they saw engaged in an affray or breach of the peace, and to detain them until they should find proper sureties.[e] And the officers of government have authority, derived from the general rights of the government, without any statute whatever on the subject, to exercise all necessary force for the prevention of crime, either by the arrest of individuals, or by the seizure and detention of the instruments of crime;[f] and this applies to sheriffs, constables, and the like.

Officers' power to call assistance. The chief difference between the power and duty of an officer and a private person, in respect to such arrest, is, that the former has the greater authority to demand assistance of others, and is liable to a severer fine for any neglect of this kind, and has no sure way to discharge himself of the arrest of any person apprehended by him for felony, without bringing him before a magistrate in order to be examined;

m-Cald. 291; 3 Jones, 433; 3 Wend. 350; 6 Binn. 316; 8 S. & R. 47; 2 Root, 171; 12 Co. 90; 12 Ga. 293; 2 Dev. 58; 3 Vroom, 70. n-3 Wend. 350; 3 Binn. 316; 9 Port. 195; 2 Selw. N. P. 935; 8 C. & P. 522; 2 Moore & P. 500; 5 Bingh. 354; 2 C. & P. 565. Yet, possibly, such a matter may be shown in the mitigation of damages, 2 Stew. & Port. 195; Minor, 407. o-3 Parker C. C. 240. p-1 Moody, 93; 2 B. & P. 260; 3 Vroom, 70. q-3 B. & Ad. 798; see 4 Scott (N. R.) 54; 1 Dowl. (N. S.) 216; 2 C. & P. 585. r-1 Yeates, 419, 421. Assisting to quell a [illegible] riot is lawful, 1 W. Bl. 47. s-1 Bl. Comm. 145. t-[illegible] wk. P. C. *c.* 13, § 1. u-19 Ohio St. 248. v-11 Gratt. 794. w-2 Hawk. P. C. *c.* 13, § 14. x-19 Ill. 242; see Id. p. 245; and see 12 Ind. 369; 8 Conn. 375. y-6 Humph. 236; 19 Ill. 242, 245. z-4 Conn. 107. a-10 Johns. 85. b-2 Moore & P. 590; 5 Bingh. 354. c-6 Humph. 53. d-3 Taunt. 14; and see 14 Gray, 65 e-2 Nott. & M'Cord, 475, 478; 8 S. & R. 47; 5 Harring. 505. f-21 Vt. 9; and see 36 N. H. 246.

whereas, a private person, having made such an arrest, needs only to deliver his prisoner into the hands of the constable.[g] Accordingly, it is in the power of an officer making an arrest, though without a warrant, to call in the aid of the bystanders—for the sheriff may call out the power of the county, and the officer may command the inhabitants of his precinct. And this extends not merely to the arrest, but equally to the detaining of the prisoner after the arrest is made. If any one obstructs the officer in the performance of these duties, he may at once be taken into custody.

—— ARREST UNDER A WARRANT. Where a warrant in due form is put into the hand of an officer, to whom it is addressed, he is justified in executing it, if the magistrate who issued it had jurisdiction over the cause, even though it was improperly or unlawfully obtained. But it is otherwise if the warrant is illegal on its face, or if the magistrate had no jurisdiction; which question of jurisdiction the officer must decide at his peril.[h] And if, in a civil case, an arrest is made after the process is returnable, the officer becomes thereby a trespasser.[i] Where process under which an officer makes an arrest is voidable, by reason of some irregularity or mistake, he is justified; though he is not when it is void.[j]

One who is called upon to assist an officer in making an arrest under warrant, and who acts in good faith, is justified, though the process is not valid to the extent of justifying the officer himself; for if all those summoned had to examine and judge the legality of the process, and then to act upon their own responsibility, this necessary power in the officer would, in practice, be paralyzed to a great degree.[k]

The warrant must be executed by a public officer (as the sheriff or constable of the county, marshal of any incorporated city), or some person specially appointed, in writing, by the court or magistrate.[l]

Form of Special Appointment on the Warrant.

I hereby appoint S. A. to execute the within writ. [*Signature, seal, and official title.*]

The warrant must be executed by the officer or person to whom it is directed and delivered. And in all cases where an arrest is made by virtue of a warrant, the warrant, if demanded, at least should be produced.[m] Where the officer is not known to be such, he must show his authority, his warrant, before making the arrest.[n] If the officer permits the prisoner to take the warrant into his hands to peruse, and the latter refuses to return it, he may use "just so must violence as is necessary to retake it, and no more;"[o] but if he cannot retake it by reason of its destruction, or otherwise, he may still execute the command of the warrant, and return the facts.

The officer should, as soon as he conveniently can, though he may do so at any time afterward until the object of the warrant is satisfied,[p] proceed with secrecy to find out and actually *arrest* the party,[q] not only in order to secure him, but also to subject him, and all other persons, to the consequences of escape and rescue. And if he refuse or neglect to execute the warrant, he will be punishable for his disobedience or neglect.[r]

—— *Breaking Doors, etc.* To make an arrest in criminal actions the officer may break open any outer or inner door or window of a dwelling-house, or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.[s] But this does not authorize any officer executing a search-warrant to enter any house or building not described in the warrant.

A private individual, in order to justify breaking open doors without a warrant, must, in general, prove the actual guilt of the party arrested; and it will not suffice to show a felony has actually been committed, or that reasonable ground of suspicion existed. But an officer acting *bona fide* on the positive charge of another will be excused, and the party making the accusation will alone be liable.[t]

The breaking of an outer door is, in general, so violent, obnoxious, and dangerous a proceeding that it should be adopted only in extreme cases, where an immediate arrest is requisite.

The house of a third person, if the offender fly to it for refuge, is not privileged, but may be broken open after the usual demand; for it may even be so upon civil process.[u] But it is at the peril of the officer, that the party against whom he obtained the warrant be found there.[v] This doctrine is also recognized as respects civil process.[w]

If a party be once actually arrested and escaped from custody, any door may be broken open to retake him, after proper demand of admittance.[x]

When an officer, after obtaining admittance, is locked in, or otherwise prevented from retiring, and whether executing civil or criminal process, he may break out by any means in his power. And a sheriff may break open the

g-2 Hawk. P. C. *c.* 13, § 7. h-1 Conn. 40; 6 Eng. 642; 1 Id. 461; 24 Ala. 672; 3 Dev. 468; 5 Day, 506, 508; 6 Cow. 456; 13 Mass. 286; 3 Caines, 267; 10 Conn. 514; 5 Ired. 72; 8 Met. 324; 1 Moody, 281; 7 Hill (N. Y.) 39; 2 Fla. 171; 4 E. D. Smith, 445; Breese, 18; 37 Me. 130; 1 Foster, 262; 25 Ill. 70. i-3 Day. 1; 6 Mass. 20. j-4 Mass. 232, 234; 13 Id. 324, 286, 288; 14 Id. 210; and see 17 Ga. 194; 1 Chitty Cr. L. 60, 61. k-2 J. J. Marsh. 44. l-M. & M. 107; 3 C. & P. 31; Bishop Cr. L. 1 Vol. I, § 307; Vol. II, §§ 653, 654, 665, 727, 1228. m-See GENERAL STATUTES. n-8 T. R. 187; and see 1 Chitty Cr. L. 41; 1 Hayes' Dig. Cr. Stat. L. (2d Ed.) 69. o-1 Hayw. 471; 13 Mass. 321; 10 Wend. 514. p-Peake, 234. q-Dalt. Just. 169; Dick. Just. Arrest III. r-Cro. Eliz. 664; 1 Hals. P. C. 581. s-2 B. & Ald. 592; 14 East. 163; Foster, 329; 2 Hawk. P. C. *c.* 14, § 1; 3 B. & P. 229; Barl. Just. Arrests; Dick. Just. Arrests. t-Dougl. 358; Dick. Just. Arrests, III. u-5 Co. 91; 2 Hale P. C. 117. v-2 Hale P. C. 117; 5 Co. 63, *a.*; 1 Marsh. 565; 6 Taunt. 246. w-1 Marsh. 565; 3 B. & B. 223; Dick. Just. Arrest, III; 13 Mass. 520; 10 Wend. 300; 14 B. Mon. 395; see post title ARREST. x-Foster, 320; 6 Mod. 173, 174; Salk. 179; 1 Hale P. C. 459; 2 Hawk. P. C. *c.* 14, § 9; Dick. Just. Arrest, III.

door of a house to rescue his bailiffs, unlawfully detained within it.[y]

An officer, once entering a house, either upon civil or criminal process, may, after ineffectually demanding admittance, break open any inner door that obstructs his progress.[z]

—— DISPOSITION OF ARRESTED PERSON.

When Arrested without a Warrant. When a private person arrests a man without a warrant, he should cause him, as soon as convenience will permit, to be brought before some justice of the peace, by whom the prisoner may be examined and bailed, or committed to prison.[a] Where a private person has apprehended another assisting in an affray, he may lawfully detain him till the heat is over, and then deliver him to the constable.[b]

An officer having arrested the offender, in case of an affray, may confine him till the heat of his passion, or intemperance is over, or till he can bring him before a justice of the peace;[c] and in all cases, he should carry the offender before a justice of the peace as soon as circumstances will permit.[d] And a constable arresting a man on suspicion of felony, must take him before a justice of the peace to be examined as soon as he reasonably can; and cannot justify handcuffing a prisoner, unless it be necessary to prevent his escape.[e]

When Arrested under a Warrant.—"When an officer has made his arrest, he is, as soon as possible, to bring the party to the jail, or the justice, according to the import of the warrant,"[f] if permitted or required by the law. If he be guilty of unnecessary delay, it is a breach of duty.[g] But if the time be unseasonable, as in or near the night, whereby he cannot attend the justice, or, if there be danger of a rescue, or the party be ill, and unable at present to be brought, he may, as the case require, secure him or detain him in a house till the next day, or until it may be reasonable to bring him.[h]

When brought before the magistrate the prisoner is still considered to be in the custody of the officer, until he has been discharged, bailed, or committed to prison.[i] And the officer may keep his warrant for his own justification, and need only return to the magistrate what he has done in pursuance of his commands.[j]

ARSON is the malicious burning of another's house[k]—out-house, ship or shipping, store-house, or other property. The term "house" comprehends not only the very mansion-house, or residence itself, but all out-houses which are a part thereof, though not contiguous thereto, nor under the same roof, such as the barn, cow-house, dairy-house, mill-house, sheep-house, stable, or the like, being within the dwelling-house enclosure, or same common fence as the dwelling or mansion itself.[l]

The burning must have been both malicious and wilful,[m] that is, it must be done *intentionally*, not accidentally. Generally, if the act is proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary is proved.[n] An intent to injure or defraud will be conclusively inferred from the wilful act of firing.[o] But this inference will only arise where the act is wilful; therefore, if the fire appears to be the result of accident, the party who is the cause of it will not be liable. The subject of arson is very generally regulated by statute.

ASPORTATION is the felonious removal of goods from the place where they were deposited. A theft, though the goods are not carried from the house or apartment.[p]

ASSASSINATION is murder committed for hire, without provocation or cause of resentment given to the murderer by the person upon whom the crime is committed.[q]

AN ASSAULT is an unlawful setting upon one's person; an attempt or offer to beat another without touching his person.[r] It is an unlawful offer or attempt, with force or violence, to do a corporal hurt to another. It is force unlawfully directed or applied to the person of another, under such circumstances as to cause a well-founded apprehension of immediate peril.

Aggravated assault is one committed with the intention of committing some additional crime.

Simple assault is one committed with no intention to do any other injury.

Any act causing a well-founded apprehension of immediate peril from a force already partially or fully put in motion, is an assault,[s] unless justifiable. But if justifiable, it is not necessarily a battery or an assault.

There are many other acts which are in the eye of the law assaults. Thus, if a master takes indecent liberties with a female scholar, without her consent, it is an assault.[t] If a medical practitioner unnecessarily strips a female patient naked under pretence that he cannot otherwise judge of her illness, it is an assault, if he assisted in taking off her clothes.[u] And carnal connection with a girl fourteen

y-Cro. Jac. 555; Foster, 319; 6 Mod. 173; 2 Hawk. P. C. *c.* 14, § 11; 1 Hale P. C. 459; Dick. Just. Arrest, III. z-1 Hale P. C. 459; Foster, 319; 3 B. & P. 229. a-1 Hale P. C. 589; 2 Id. 77–81; 2 Hawk. P. C. *c.* 13, § 7; Id. c. 16, § 3. b-2 Hawk. P. C. c. 13, § 8. c-1 Chitty Cr. L. 23, 24. d-2 Hale P. C. 951, *et seq.*; see 10 Wend. 514. e-4 B. & C. 596; 6 D. & R. 623; see 24 How. (U. S.) 544; see also 2 Wash. C. C. 353. f-1 Chitty Cr. L. 59. g-Fortes. 143; 2 Hale P. C. 119; see 5 Foster, 251. h-2 Hale P. C. 95, 96, 119, 120. i-1 Chitty Cr. L. 60; 2 Hale P. C. 120. j-2 Ld. Raym. 1196; Dick. Just. Arrest, IV. k-Co. 3d Inst. 66; Bishop Cr. L. § 415; 4 Bl. Comm. 220; 2 Pick. 320; 10 Cush. 470; 7 Gratt. 619; 9 Ala. 175; 7 Blackf. 168; 1 Leach Cr. Cas. (4th Ed.) 218. l-1 C. & K. 533; 14 M. & W. 181; 4 C. & P. 245; 20 Conn. 245; 16 Johns. 203; 18 Id. 115; 3 Ired. 570; 3 Rich. 242; 5 Whart. 427; 4 Leigh. 483; 4 Call. 109. m-Rosc. Cr. Ev. 272; 2 East. Pl. Cr. 1019, 1031; 1 Bishop Cr. L. § 259. n-1 Russ. & R. Cr. Cas. 26. o-1 Russ. & R. Cr. Cas. 207; 1 Mood. Cr. Cas. 263; 2 B. & C. 264. p-Bl. Comm. q-Erskine Inst. b. 4, tom. 4, n. 45. r-As by lifting the fist or a cane in a threatening manner, or by striking at him and missing him. If the blow takes effect it is a battery. Bl. Comm. s-4 C. & P. 349; 9 Id. 483, 626; 1 Ired. 125, 375; 11 Id. 475; 1 S. & R. 347; 3 Strobh. 137; 9 Ala. 79; 2 Wash. C. C. 435. t-Russ. & R. Cr. Cas. 130; Cox Cr. Cas. 64; 9 C. & P. 722. u-1 Moody, 19; 1 Lewin. 11.

years of age, under pretence of thereby treating her medically, she making no resistance from a *bone fide* belief that such was the case, was held an assault.[v] An unlawful imprisonment is also an assault.[w]

Assault is generally coupled with battery, and for the excellent practical reason that they generally go together; but the assault is rather the initiation or offer to commit the act of which the battery is the consummation. An assault is included in every battery.[x] Where a person is only *assaulted*—still the form of the complaint is the same as where there has been a *battery*: "That the defendant assaulted, and beat, bruised, and wounded the plaintiff."[y] One who incites or procures another to commit an assault, though not present at its commission, nor otherwise participating therein, may be indicted and punished as a principal.[z]

AN UNLAWFUL ASSEMBLY is the meeting of three or more persons to do an unlawful act—although they may not carry their purpose into execution. It differs from a riot or rout, because in each of the latter cases there is some act done besides the simple meeting.[a]

ATTAINDER upon a felon is, in effect, in general terms, that all his estate, real and personal, is forfeited to the State; that his blood is corrupted, and so nothing passes by inheritance to, from, or through him;[b] that he cannot sue in a court of justice.[c] The effect of attainder is abrogated by the constitution, *q. v.*

AN ATTEMPT is an endeavor to accomplish a crime, carried beyond mere preparation, but falling short of its execution or any part of it.[d] It is an intent combined with an act which falls short of the offence intended.[e] There must be an intent to commit some offence which would be punishable if committed, either from its own character or that of its natural or probable consequences;[f] and the offence intended must at least be a misdemeanor.[g]

BANISHMENT is a punishment inflicted upon criminals by compelling them to quit a city, place, or country for a specified period of time, or for life.[h]

BARRATRY is the offence of frequently exciting and stirring up quarrels and suits, either at law or otherwise.[i] An indictment for this offence must charge the offender with being a common barrator,[j] and the proof must show at least three instances of offending.[k] An attorney is not liable to an indictment for maintaining another in a groundless action.[l]

BATTERY is an unlawful beating, or other wrongful physical violence or constraint inflicted on a human being without his consent.[m] It must be either wilfully committed, or proceed from the want of due care.[n] Hence, an injury, be it never so small, done to the person of another in an angry, spiteful, rude, or insolent manner,[o] as by spitting in his face,[p] or on his body,[q] or in any way touching him in anger,[r] or violently pushing him,[s] are batteries in the eye of the law.[t] And anything attached to the person partakes of its inviolabilty. If, therefore, A. strikes a cane in the hands of B. it is a battery.[u]

A battery may be justified:

1. As a mode of correction—a parent may correct his child; a master his apprentice; a school-teacher his scholar;[v] and a superior officer one under his command.[w]

2. As a necessary means of defence of the person against the plaintiff's assault in the following instances: in defence of himself, his wife,[x] his child, and his servant.[y] So, likewise, the wife may justify a battery in defending her husband,[z] the child its parent,[a] and the servant his master or mistress. In these relations the party need not wait until a blow has been given, for then he might come too late, and be disabled from warding off a second stroke, or from protecting the person assailed. Care, however, must be taken that the battery do not exceed the bounds of necessary defence and protection; for it is only permitted as a means to arrest an impending evil, which might otherwise overwhelm the party, and not as a punishment, retaliation, or revenge, for the injurious attempt.[b] The degree of force necessary to repel an assault will naturally depend upon and be proportioned to the violence of the assailant; but with this limitation any degree is justifiable.[c]

3. As a defence to one's property. If the plaintiff is in the act of entering peaceably upon the defendant's land, or, having entered, is discovered, not committing violence, a request to depart is necessary in the first instance.[d] And if the plaintiff refuses, the defendant may then gently lay hands upon the plaintiff and remove him from the premises, and for this purpose may use, if necessary, any degree of force short of striking the plaintiff; as, by thrusting him off.[e] If the plaintiff resists, the defendant may

v-1 Denio Cr. Cas. 580; 4 Cox Cr. Cas. 220; Templ. & M. Cr. Cas. 218. w-1 Hawk. Pl. Cr. Ch. 61, § 2. x-1 Hawk. Pl. Cr. *c.* 62, § 1. y-1 Saund. (6th Ed.) 14, *a.* z-12 Ohio St. 214. a-See 1 Ired. 30; 9 C. & P. 91, 431; 5 Id. 154; 1 Bishop Cr. L. § 395; 2 Id. §§ 1039, 1040. b-1 Wms. Saund. 361, n.; 6 Co. 63, *a*, 68, *b.*; 2 Rob. Eccl. 547; 24 Eng. L. & Eq. 598. c-Co. Litt. 130, *a*. d-5 Cush. 367. e-1 Bish. Cr. L. 510; 14 Ga. 55; 14 Ala. (N. S.) 411. f-3 Harring. 571; 18 Ala. (N. S.) 532; 1 Park. Cr. Cas. 327; 9 Humphr. 455; 7 C. & P. 518; 8 Id. 541; 1 Crawf. & D. Cr. Cas. 156, 186; 1 Bish. Cr. L. §§ 513-518. g-1 Crawf. & D. Cr. Cas. 149; 1 Ct. M. 661, n.; 1 Dall. 39; 1 Bish. Cr. L. § 528. h-See 4 Dall. 14. i-4 Bl. Comm. 134; Co. Litt. 368. j-1 Sid. 282; Train & H. Prec. 55. k-15 Mass. 227; 1 Cush. 23; 1 Ball. 379. l-1 Bail. 379; see 1 Bishop Cr. L. §§ 401, 645, 646; 2 Id. §§ 57-61; 8 Co. 36 *b*; 9 Cow. 587; 15 Mass. 229; 11 Pick. 432; 13 Id. 362. m-2 Bishop Cr. L. § 62; 17 Ala. 540; 9 N. H. 491. n-Strange, 596; Hob. 134; Plowd. 19; 3 Wend. 391. o-9 Pick. 1. p-6 Mod. 172. q-1 Swint. 597. r-1 Russ. Cr. 751. s-See 4 Hurlst. & N. 481. t-1 Hawkins Pl. Cr. 263; see 1 Selwyn N. P. 33. u-1 Dall. 114; 1 Penn. 380; 1 Hill (S. C.) 46; 4 Denio, 453; 4 Wash. C. C. 534; 1 Baldw. C. C. 600. v-24 Edw. IV; 4 Gray. 36; 2 Dev. & B. 365. w-Keilw. 136; B. N. P. 19; Bee Adm. 161; 1 Bay. 3; 14 Johns. 119; 15 Mass. 365. x-3 Salk. 46. y-Ow. 150; but see 1 Salk. 407. z-Ld. Raym. 62. a-3 Salk. 46. b-Strange. 593; 1 Comst. 34; 4 Vt. 629; 4 J. J. Marsh. 578; 2 Bish. Cr. L. 561. c-1 Ld. Raym. 177; 2 Salk. 642; 11 Humphr. 200; 4 Barb. 460; 2 N. Y. 193; 1 Ohio St. 66; 23 Ala. (N. S.) 17, 28; 14 B. Mon. 614; 18 Id. 49; 16 Ill. 17; 5 Ga. 85. d-2 Salk. 641. e-Skinn. 98.

oppose force to force.[f] But if the plaintiff is in the act of forcibly entering upon the land, or, having entered, is subverting the soil, cutting down a tree or the like,[g] a previous request is unnecessary, and the defendant may immediately lay hands upon the plaintiff.[h] A man may justify a battery in defence of his personal property without a previous request, if another forcibly attempt to take away such property.[i]

4. As a means of preserving the peace, in the exercise of an office, under process of court, and in aid of an authority at law. See ARREST, below.

BAWDY HOUSES are houses of ill-fame, kept for the resort and unlawful commerce of lewd people of both sexes. It must be reputed of ill-fame;[j] it may be a single room;[k] but more than one woman must live and resort there.[l] It need not be kept for lucre.[m] Such a house is a common nuisance,[n] and the keeper may be indicted; and, if a married woman, either alone or with her husband.[o] One who assists in establishing such a house is guilty of an indictable misdemeanor,[p] including a lessor who has knowledge.[q] A charge of keeping a bawdy house is actionable, because it is an offence which is indictable at common law as a common nuisance, and clearly involves moral turpitude.[r] See BROTHEL, below.

BIGAMY is the wilfully contracting a second marriage, when the contracting party knows that a first is subsisting—the state of a man having two wives, or of a woman having two husbands, living at the same time. When the man has more than two wives, or the woman more than two husbands, living at the same time, then the party is said to have committed polygamy; but the name of bigamy is more frequently given to this offence in legal proceedings.[s] If a woman who has a husband living marries another person, she is punishable, though her husband has voluntarily withdrawn from her, and remained absent and unheard of for any term of time less than seven years, and though she honestly believes, at the time of her second marriage, that he is dead.[t] On trial of a woman for bigamy, whose first husband had been absent from her for more than seven years, the jury found that they had no evidence at the time of her second marriage she knew that he was alive, but that she had means of acquiring knowledge of that fact, had she chosen to make use of them. It was held upon this finding that the conviction could not be supported.[u] If a man is prosecuted for bigamy, his first wife cannot be called to prove her marriage with the defendant.[v] Where the first marriage was made abroad, it must be shown to have been valid when made.[w] Reputation is not sufficient to establish the fact of th first marriage.[x] If the second marriage be a foreign State, it is not bigamy,[y] except statute.[z] The second marriage is not necessarily valid.[a]

The punishment of this offence varies in the different States.

BILLS OF INDICTMENT are written accusations of one or more persons of a crime or misdemeanor, lawfully presented to a grand jury. If twelve or more members of the jury are satisfied that the accused ought to be tried, the return is made, "A true bill;" but when no sufficient ground is shown for putting the accused on trial, a return is made, "Not found," "Not a true bill," or "Ignoramus."[b] See ACCUSATION, above.

BILL OF PAINS AND PENALTIES is a special act of the legislature which inflicts a punishment less than death upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings.[c] It differs from a bill of attainder in this, that the punishment inflicted by the latter is death. It has been thought by some that the clause in the federal constitution prohibiting bills of attainder includes bills of pains and penalties.[d]

BLASPHEMY consists of speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the reverence of God. It is purposely using words concerning God calculated and designed to impair and destroy the reverence, respect, and confidence due to him as the intelligent Creator, ruler, and judge of the world. It embraces the idea of detraction, when used towards the Supreme Being; as "calumny" usually carries the same idea when applied to an individual. It is a wilful and malicious attempt to lessen men's reverence of God by denying his existence, or his attributes as an intelligent Creator, governor, and judge of men, and to prevent their having confidence in him as such.[e]

The statutes of the different States enacted against this offence are not understood in all cases to have abrogated the common law; the rule being that where the statute does not vary the class or character of an offence, but only authorizes a particular mode of proceeding and of punishment, the sanction is cumulative, and the common law is not taken away. Neither these statutes nor the common law doctrine is repugnant to the constitutions of those States in which the question has arisen.[f]

BREAKING BULK. This doctrine proceeds upon the ground of a determination of the

f-8 T. R. 78; 2 Met. (Mass.) 23. g-2 Salk. 641. h-8 T. R. 78. i-2 Salk. 641; see 7 Met (Mass.) 596; 12 Id. 482; 4 Cush. 608; 6 Cox Cr. Cas. 461. j-17 Conn. 467: but see 4 Cranch C. C. 338, 372. k-1 Salk. 382; 2 Ld. Raym. 1197. l-5 Ired. 603. m-21 N. H. 435; 2 Gray, 357; 18 Vt. 70. n-1 Russ. Cr. 299; Bac. Abr. Nuisances. o-1 Met. Mass. 151. p-2 B. Mon. 417. q-3 Pick. 26; 6 Gill, 425. r-13 Johns. 275; 5 M. & W. 549. s-1 Russ. Cr. 187. t-7 Met. (Mass.) 472. u-1 Dearsl. & B. Cr. Cas. 98. v-T. Raym. 1; 2 Taylor Ev. § 1228. w-5 Mich. 349. x-1 Park. Cr. Cas. 378; see 13 Ired. 289. y-2 Park Cr. Cas. 195. z-36 Eng. L. & Eq. 614. a-1 Carr & K. 144. b-See 11 Cush. 473; 13 N. H. 488; 5 Me. 432, Bennett's note. c-2 Wooddeson Sect. 625. d-6 Cranch. 138; Story Const. § 1338. e-Per SHAW, C. J.; 20 Pick. 211, 212; see Evlyn's Pref. to Vol. 8, St. Tr.; 20 Pick. 244. f-Heard Lib. & S. § 343; 20 Pick. 206; 11 S. & R. 394; 8 Johns. 290; 4 Sandf. 156; 2 Harring. 553; 2 How. 127.

purity of the bailment by the wrongful act of the bailee. Thus, where a carrier has agreed to carry certain bales of goods which were delivered to him, to Southampton, but carried them to another place, broke open the bales, took the goods contained in them feloniously, and converted them to his own use, the majority of the judges held that if the party had sold the entire bales it would not have been felony; "but as he broke them, and took what was in them, he did it without warrant," and was so guilty of a felony.[g] If a miller steals part of the meal, "although the corn was given to him to grind, nevertheless if he steal it, it is a felony, being taken from the rest."[h]

BREAKING DOORS. See ARREST, above.

BRIBERY is the (giving or) receiving or offering any undue reward by or to any person whomsoever, whose ordinary profession or business relates to the administration of public justice (as well as all other officers), in order to influence his behavior in office, and to induce him to act contrary to his duty, and the known rules of honesty and integrity.[i] An attempt to bribe, though unsuccessful, has been holden to be criminal, and the offender may be indicted.[j]

BROTHEL is a bawdy house; a common habitation of prostitutes. Such places have always been deemed common nuisances. For a history of these pernicious places.[k]

BUGGERY. See SODOMY, below.

BURGLARY is the breaking and entering the house of another in the night time, with intent to commit a felony therein, whether the felony be actually committed or not.[l]

1. To be burglary the breaking and entry must be felonious; if a felony, however, be committed, the act will be *prima facie* evidence of an intent to commit it.[m] If the breaking and entry be with an intention to commit a trespass, or other misdemeanor, and nothing further is done, the offence will not be burglary.[n]

2. To be burglary, there must be both a breaking and an entry, or an exit. An actual breaking takes place when the burglar breaks or removes any part of the house or the fastenings provided for it, with violence.[o] Breaking a window, taking a pane of glass out, by breaking or bending the nails or other fastenings;[p] cutting and tearing down a netting of twine nailed over an open window;[q] raising a latch, when the door is not otherwise fastened;[r] picking open a lock with a false key; putting back the lock of a door, or the fastening of a window, with an instrument; lowering a window fastened only by a wedge or weight;[s] turning the key when the door is locked on the inside, or unloosening any other fastening which the owner has provided; lifting a trap door;[t] are several instances of actual breaking.[u] Constructive breakings occur when the burglar gains an entry by fraud;[v] by conspiracy; or threats.[w] The breaking of an inner door of the house will be sufficient to constitute a burglary.[x] And even the least entry, with the whole or any part of the body, hand, or foot, or with any instrument or weapon introduced for the purpose of committing a felony, will be sufficient to constitute the offence.[y] But the introduction of an instrument in the act of breaking the house will not be sufficient entry, unless it be introduced for the purpose of committing a felony.[z] The whole physical frame need not pass within.[x]

3. To be burglary, it must, in general, be committed in a mansion or dwelling-house, actually occupied as a dwelling; but if it be left by the owner with an intention of returning, though no person resides in it in his absence, it is still his mansion or residence.[a] But burglary may be committed in a church at common law,[b] or in a store, warehouse, barn, vessel, or railway coach or car. It must be in the dwelling, etc., of another person.[c]

4. To be burglary, the offence must be committed in the night; for in daytime there can be no burglary.[d] For this purpose it is deemed night, when by the light of the sun a person cannot clearly discern the face or countenance of another.[e] This rule does not apply to moonlight.[f] The breaking and entering need not be done the same night,[g] but it is necessary the breaking and entering should be in the night-time; for if the breaking be in daylight, and the entering be in the night, or *vice versa*, it will not be burglary.[h]

CALENDAR is a record containing a list of prisoners, their names, the time when they were committed, and by whom, and the cause and time of their commitments.

CAPAX DOLI. When one has sufficient mind and understanding to be made responsible for

g-13 Edw. IV, Fol. 9. h-Rolle Abr. 73, Pl. 16; 1 Pick. 375. i-Co. 3d Inst. 149; 1 Hawk. Pl. Cr. Ch. 67, § 2; 4 Bl. Comm. 139; 1 Russ. Cr. 156. j-2 Dall. 384; 4 Burr. 2500; Co. 3d Inst. 147; 2 Campb. 229; 2 Wash. 88; 1 Va. Cas. 138; 2 Id. 460. k-See Merlin Repert; *Bordel;* Parent Duchatellet; *De La Prostitution dans la Legislation sur les Femmes Publiques, &c.*, por M. Sabatier. l-Co. 3d Inst. 63; 1 Hale Pl. Cr. 549; 1 Hawk. Pl. Cr. Ch. 38, § 124; Bl. Comm. 224; 2 East. Pl. Cr. Ch. 15, § 1, p. 484; 2 Russ. Cr. 2; Rosc. Cr. Ev. 252; 1 Coxe, 441; 7 Mass. 247. m-1 Gabbett Cr. L. 192. n-7 Mass. 245; 16 Vt. 551; 1 Hale Pl. Cr. 560; East. Pl. Cr. 509, 514, 515; 2 Russell Cr. 33. o-1 Bishop Cr. L. § 190. p-1 C. & P. 300; 9 Id. 44; 1 Russ. & R. 341, 499; 1 Leach Cr. Cas. 406. q-8 Pick. 354, 384. r-1 Strange, 481; 8 C. & P. 747; Coxe, 439; 1 Hill, 336; 4 Id. 437; 25 Me. 500. s-1 Russ. & R. 455, 451. t-1 Mood. Cr. Cas. 377; but see 4 Carr. & & P. 231. u-1 Mass. 476. v-1 Crawf. & D. Cr. Cas. 202; Hob. 62; 18 Ohio, 308; 9 Ired. 463. w-1 Russ. Cr. (Graves Ed.) 792; 2 Id. 2; 2 Chitty Cr. L. 1093. x-1 Hale Pl. Cr. 553; 1 Strange, 481, 8 C. & P. 747; 1 Hill & D. 63; 2 Bishop Cr. L. § 84. y-Co. 3d Inst 64; 4 Bl. Comm. 227; Bac. Abr. *Burglary* (B); Com. Dig. *Justices* (P. 4.) z-1 Leach Cr. Cas. (4th Ed.) 406; 1 Mood. Cr. Cas. 183; 1 Gabbett Cr. L. 174. a-1 Bishop Cr. L. §§ 81–83; 1 Gabbett Cr. L. 176. a-Fost. 77; 3 Rawle, 207; 10 Cush. 478. b-3 Cox Cr. Cas. 581; Co. 3d Inst. 64. c-1 Bishop Cr. L. 891; 2 East. Pl. Cr. 502. d-4 Bl. Comm. 224; 1 C. & K. 77; 16 Conn. 32; 10 N. H. 105. e-1 Hale Pl. Cr. 550; Co. 3d Inst. 63; 1 C. & P. 297; 7 Dane Abr. 134. f-4 Bl. Comm. 224; 2 Russ. Cr. 32; 10 N. H. 105; 6 Miss. 20; see 2 Cush. 582. g-1 Russ. & R. 417. h-1 Hale Pl. Cr. 551; 2 Russ. Cr. 32; but see Wilmot Burg. 9; Com. Dig. *Justices* (P 2); 2 Chitty Cr. L. 1092.

his actions, he is deemed capax doli (capable of committing crime.)

CARNAL KNOWLEDGE is sexual connection; this term is generally, if not exclusively, applied to the act of the male. The term "carnally knew," is a technical phrase essential in an indictment to charge the defendant with the crime of rape. No other words, nor circumlocution will answer,[i] their omission renders the indictment bad on demurrer, but is cured by a verdict.[j]

CARRYING AWAY is such a removal of, or taking into possession, personal property as is required in order to constitute the crime of larceny. Any removal, however slight, of the entire article, which is not attached either to the soil or to any other thing not removed, is sufficient,[k] thus, to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair;[l] to remove sheets from a bed and carry them into an adjoining room;[m] to take plate from a trunk, and lay it on the floor with intent to carry it away;[n] to remove a package from one part of a wagon to another, with a view to steal it;[o] have respectively been holden to be felonies. But nothing less than such a severance will be sufficient.[p]

CASTRATION is the act of gelding. When this act is maliciously performed upon a man, it is a mayhem, and punishable as such, although the sufferer consented to it;[q] the punishment is, generally, fine and imprisonment. By the ancient law of England the crime was punished by retaliation—member for member.[r] By the civil law the punishment was by death.[s] The consequences of castration, when complete, are impotence and sterility.[t]

CHALLENGE is a request by one person to another to fight a duel. It may be oral or written.[u] Sending a challenge is a high offence at common law, and indictable as tending to a breach of the peace.[v] He who carries a challenge is also punishable by indictment.[w] In most States this practice is punishable by special laws.[x]

CHANCE-MEDLEY is a sudden affray; this word is sometimes applied to any kind of homicide by misadventure, but in strictness is applicable to such killing only as happens in defending one's self.[y]

CHARACTER. See title EVIDENCE, ante.

CHARGE. See ACCUSATION; BILL OF INDICTMENT, above.

CHASTITY is that virtue which prevents the unlawful commerce of the sexes. Sending a letter to a married woman, soliciting her to commit adultery, is an indictable offence.[z] Solicitation of chastity is in some States an indictable offence. Words charging a woman with a violation of chastity are actionable in themselves, because they charge her with a crime punishable by law, and of a character calculated to degrade, disgrace, and exclude her from society.[a] A woman may defend her chastity by killing her assailant. See SELF-DEFENCE, below.

CHEAT is deceitful practices in defrauding or endeavoring to defraud another of his known right, by some wilful device, contrary to the plain rules of common honesty.[b] It is the fraudulent obtaining of the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public. In order to constitute a cheat or indictable fraud, there must be a prejudice or injury received; and such injury must affect the public welfare, or have a tendency so to do.[c] A cheat, in order to be indictable at common law, must have been probable in its nature, by being calculated to defraud numbers, or to deceive or injure the public in general, or by affecting the public trade or revenue, the public health, or being in fraud of public justice, etc. And yet cheats, apparently private, have been held to be indictable at common law, it appearing upon examination to involve considerations of a public nature, or founded in conspiracy or by forgery. Thus, it is not (unless so provided by statute) indictable for a man to obtain goods by false verbal representations of his credit in society, and of his ability to pay for them,[d] or to violate his contract, however fraudulently it be broken,[e] or fraudulently to deliver a less quantity of amber than was contracted for and represented,[f] or to receive good barley to grind, and to return instead a musty mixture of barley and oatmeal.[g]

To cheat a man of his money or goods, by using false weights or false measures, has been indictable at common law from time immemorial.[h]

COERCION. *Direct or positive coercion* takes place when a man is by physical force compelled to do an act contrary to his will. *Implied coercion* exists where a person is legally under subjection to another, and is induced in consequence of such subjection to do an act contrary to his will.

As will is necessary to the commission of a crime, or the making of a contract, a person coerced into either has no will on the subject, and is not responsible.[i] The command of a

i-Com. Dig. *Indictment;* 1 Hal. Pl. Cr. 632; 1 Chitty Cr. L. 243; Co. Litt. 137. j-1 Russ. Cr. Cas. 686; 1 East. Pl. Cr. 448. k-2 Bishop Cr. L. § 699; 1 Mood. Cr. Cas. 14; 1 Dearsl. Cr. Cas. 421; Coxe, 439. l-1 Leach Cr. Cas. 320. m-1 Leach Cr. Cas. 222, n. n-Id. o-1 Leach Cr. Cas. 236. p-2 East. Pl. Cr. 556; 1 Leach Cr. Cas. (4th Ed.) 236, 321; 1 Hall Pl. Cr. 508; 1 Ry. & M. Cr. Cas. 14; 4 Sharsw. Bl. Comm. 231; 2 Russ. Cr. 96. q-2 Bishop. Cr. L. §§ 842, 847. r-Co. 3d Inst. 118. s-Dig. 48, 8, 4, 2. t-Beck Med. Jur. 72. u-6 Blackf. 20. v-Hawk. Pl. Cr. B. 1, Ch. 3, § 3; 3 East. 581; 6 Id. 464; 1 Dana. 524; 1 South. 40; 2 M'Cord, 334; 1 Const. 107; 1 Hawks. 487; 2 Ala. 506; 6 Blackf. 20; 9 Leigh, 603; 3 Rog. 133; 3 Wheeler Cr. Cas. 245. w-3 Cranch C. C. 178. x-2 Bishop Cr. L. §§ 270–273. y-4 Bl. Comm. 184. z-7 Conn. 266; see 14 Penn. St. 226. a-7 Conn. 707; 8 Pick. 384; 5 Gray, 2, 5; 2 N. H. 194; Heard Lib. & Sland. § 36. b-Hawkins Pl. Cr. B. 2, Ch. 23, § 1. c-2 East. Pl. Cr. 817; 1 Gabb. Cr. L. 199; 1 Deacon Cr. L. 225. d-6 Mass. 72. e-1 Mass. 137. f-2 Burr. 1125; 1 W. Bl. 273. g-4 M. & S. 214. h-1 Gabbett Cr. L. 201; 3 Greenl. Ev. § 86; 6 Mass. 72. i-1 East. Pl. Cr. 225; 5 Blackf. 73; 2 Dall. 86; 5 Q. B. 279; 1 Dav. & M. 367. The law upon the responsibility of married women for crime is fully stated in 1 Bennett & H. Lead. Cr. Cas. 76–87.

superior to an inferior,[j] of a parent to a child,[k] or a master to his servant, or a principal to his agent,[l] may amount to coercion.

As to persons acting under the constraint of superior power, and, therefore, not criminally amenable, the principal case is that of a married woman, with respect to whom the law recognizes certain presumptions: thus, if a wife commits a felony, other than treason or homicide, or, perhaps, highway robbery, in company with her husband, the law presumes that she acted under his coercion, and, consequently, without any guilty intent, unless the fact of non-coercion is distinctly proved.[m] This presumption appears, on some occasions, to have been conclusive, and is still practically regarded in no very different light, especially where the crime is of a flagrant character; but the better opinion seems to be that in every case the presumption may be rebutted by positive proof that the woman acted as a free agent.[x] And a married woman cannot be convicted under any circumstances as a receiver of stolen goods, when the property has been taken by her husband, and given to her by him.[n]

Whether the doctrine of coercion extends to any misdemeanor may admit of some doubt; but the better opinion seems to be that, provided the misdemeanor is of a serious nature, as, for example, the uttering of base coin, the wife will be protected in like manner as in cases of felony; although it has been distinctly held that the protection does not extend to assaults and batteries, or to the offence of keeping a brothel.[o] It is probable that in all inferior misdemeanors this presumption, if admitted at all, would be held liable to be defeated by far less stringent evidence of the wife's active co-operation than would suffice in cases of felony.[p] For the law upon the responsibility of married women for crime.[x]

COMMON SCOLD is one who by practice of frequent scolding disturbs the neighborhood.[q] The offence of being a common scold is cognizable at common law. It is a particular form of nuisance, and was punishable by the ducking-stool at common law; but this punishment is substituted by fine and imprisonment.[r]

COMPLAINT is an accusation made to a proper officer that some person, whether known or unknown, has been guilty of a designated offence, with an offer to prove the fact, and a request that the offender may be punished. It is also a technical term, descriptive of proceedings before a magistrate.[s] To have a legal effect the complaint must be supported by such evidence as shows that an offence has been committed, and renders it certain or probable that it was committed by the person named or described in the complaint.

The general and specific requisites of a complaint are stated at length under the title ACCUSATION, above. See EXAMINATION, below.

COMPOUNDING A FELONY is the act of the party immediately aggrieved, or of the officer in charge of the prosecution, who agrees with the thief or other felon that he will not prosecute him, on condition that he return to him the goods stolen, or who takes a reward not to prosecute. This is an offence punishable by fine or imprisonment, or both, and at common law rendered the person committing it an accessory.[t] A failure to prosecute for an assault with an intent to kill is not compounding a felony.[u] The accepting of a promissory note, signed by a party guilty of a larceny, as a consideration for not prosecuting, is sufficient to constitute the offence.[v] The mere retaking by the owner of stolen goods is no offence, unless the offender is not to be prosecuted.[w]

The compounding a felony is an indictable offence, and no action can be supported in any contract of which such offence is the consideration in whole or in part.[x]

COMPOUNDING OF MISDEMEANORS is also a perversion or defeating of public justice, and is in like manner an indictable offence at common law.[x] But the law will permit a compromise of any offence, though made the subject of a criminal prosecution, for which the injured party might recover damages in a civil action. But if the offence is of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution for it.[y] A receipt in full of all demands given on consideration of stifling a criminal prosecution is void.[z]

CONFEDERACY is an agreement between two or more persons to do an unlawful act, or an act which, though not unlawful in itself, becomes so by the confederacy. The technical term usually employed to signify this offence is conspiracy.

CONFESSION. See title EVIDENCE, ante.

CONSPIRACY is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means.[a] The terms "criminal" and "unlawful" are used because it is manifest that many acts are unlawful which are not punishable by indictment or other public prosecution, and yet there

j-1 Wash. C. C. 209, 220; 12 Met. (Mass.) 56; 1 Blatch. C. C. 549; 13 How. 115. k-Broom Max. (2d Ed.) 11. l-13 Mo. 246; 14 Id. 137, 340; 3 Cush. 279; 11 Met. (Mass.) 66; 5 Miss. 304; 14 Ala. 365; 22 Vt. 32; 2 Denio, 341; 14 Johns. 119. m-See 2 Carr. & K. 887, 903; Jebb. Cr. Cas. 93. x-See Jebb. Cr. Cas. 93; 1 Mood. Cr. Cas. 1143. n-1 Dearsl. Cr. Cas. 184; 1 Denio Cr. Cas. 396. o-2 Lew. Cr. Cas. 229; 8 C. & P. 19, 541; 2 Mood. Cr. Cas. 384; 10 Mod. 63; 1 Met. (Mass.) 151; 10 Mass. 152. p-8 C. & P. 541; 2 Mood. Cr. Cas. 53; 1 Taylor Ev. 152. x-1 Bennett & H. Leading Cr. Cas. 76-87. q-Bishop Cr. L. § 147. r-12 S. & R. 220; 3 Cranch, 620; see 1 T. R. 748; 6 Mod. 11; 4 Rog. 90; 1 Russ. Cr. 302; Roscoe Cr. Ev. 665. s-11 Pick. 436. t-Hawkins Pl. Cr. 125. u-20 Ala. (N. S.) 628. v-16 Mass. 91. w-Hale Pl. Cr. 546; 1 Chitty Cr. L. 4. x-16 Mass. 91; 18 Pick. 440; 5 Vt. 42; 9 Id. 23; 5 N. H. 553; 2 South. 578; 13 Wend. 592; 6 Dana, 338. x-18 Pick. 440. y-6 Q. B. 308; 9 Id. 371; 2 Bennett & H. Lead. Cr. Cas. 258, 262. z-11 Vt. 252. a-2 Mass. 337, 538; 4 Met. (Mass.) 111; 4 Wend. 229; 15 N. H. 396; 5 Harr. & J. 317; 3 S. &
R. 220; 12 Conn. 101; 11 Clark & F. Ho. L. 155; 4 Mich. 414.

is no doubt that a combination by numbers to do them is an unlawful conspiracy, and punishable by indictment.[b] Of this character was a conspiracy to cheat by false pretences without false tokens, when a cheat by false pretences only, by a single person, was not a punishable offence.[c] So a combination to destroy the reputation of an individual by verbal calumny, which is not indictable.[d] So, a conspiracy to induce and persuade a young female, by false pretensions, to leave the protection of her parents' house, with a view to facilitate her prostitution.[e] So, a conspiracy by false and fraudulent representations that a horse bought by one of the defendants from the prosecutor was unsound, to induce him to accept a less sum for the horse than the agreed price.[f] So, a conspiracy by traders to dispose of their goods in contemplation of bankruptcy, with intent to defraud their creditors.[g]

A combination to go into a theatre to hiss an actor;[h] to indict for the purpose of extorting money;[i] to charge a person with being the father of a bastard child;[j] to coerce journeymen to demand a higher rate of wages;[k] to charge a person with poisoning another;[l] to effect the price of public stocks by false rumors;[m] to prevent competition at an auction;[n] have each been held indictable.

In order to render the offence complete, it is not necessary that any act should be done in pursuance of the unlawful agreement entered into between the parties, or that any one should have been defrauded or injured by it; the conspiracy is the gist of the crime.[o]

A wilful and corrupt conspiracy to cast away, burn, or otherwise destroy any ship or vessel, with intent to injure any underwriter thereon, or the goods on board thereof, or any lender of money on such vessel on bottomry or respondentia, is a felony, and the offender punishable by fine, not exceeding ten thousand dollars, and by imprisonment and confinement at hard labor not exceeding ten years.[p]

CONTAGIOUS DISORDERS are those diseases which are capable of being transmitted by mediate or immediate contact. Persons sick of such disorders may remain in their own houses,[q] but are indictable for exposing themselves in a public place, endangering the public.[r] Nuisances which produce such diseases may be abated.[s]

CONVICTION is that legal proceeding of record which ascertains the guilt of the party and upon which the sentence or judgment is founded. Summary conviction is one that takes place before an authorized magistrate or court without the intervention of a jury. Conviction must precede judgment or sentence,[t] but is not necessarily followed by it.[u] Generally, when several are charged in the same indictment, a part may be convicted and the others acquitted,[v] but not where a joint offence is charged.[w] A person cannot be convicted of part of an offence charged in an indictment, except by statute.[x] A conviction prevents a second prosecution for the same offence.[y] Summary convictions, being obtained by proceedings in derogation of the common law, must be obtained strictly in pursuance of the provisions of statute;[z] and the record must show fully that all the proper steps have been taken,[a] and especially that the court had jurisdiction.[b]

Conviction of certain crimes when accompanied by judgment disqualifies the person convicted as a witness,[c] and renders him incapable of holding any office of trust or profit.

COOL BLOOD is the condition of one who has the calm, deliberate, and undisturbed use of his reason. In cases of homicide it frequently becomes necessary to ascertain whether the act of the person killing was done in cool blood or not, in order to ascertain the degree of his guilt.[d]

COOLING TIME is the time for passion to subside and the reason to interpose. Cooling time destroys the effect of provocation, leaving homicide murder the same as if no provocation had been given.[e]

CORPUS DELICTI (the body of the offence; the essence of the crime). It is a general rule not to convict unless the *corpus delicti* can be established, that is, until the fact that the crime has been actually perpetrated has been first proved. Hence, on a charge of homicide the accused should not be convicted unless the death be first distinctly proved, either by direct evidence of the fact, or by inspection of the body.[f] Instances have occurred of a person being convicted of having killed another, who, after the supposed criminal has been put to death for the proposed offence, has made his appearance alive. Hence the wisdom of the rule; but it has been questioned whether, in extreme cases, it may not be competent to

b-12 Conn. 101; 15 N. H. 396; 1 Mich. 216; Dearsl. Cr. Cas. 337; 11 Q. B. 245; 9 Penn. St. 24; 8 Rich. 72; 1 Dev. 357. c-11 Q. B. 245. d-Per Shaw, C. J.; 4 Met. (Mass.) 123. e-5 W. & S. 461; 2 Denio Cr. Cas. 79; see 5 Rand. 627; 6 Ala. (N. S.) 765; 2 Yeates, 114. f-1 Dearsl. Cr. Cas. 337. g-1 Fost. & F. Cr. Cas. 33. h-2 Campb. 369; 6 T. R. 628. i-4 B. & C. 329. j-1 Salk. 174. k-6 T. R. 619; 14 Wend. 9. l-F. Moore, 816. m-3 M. & S. 67. n-6 C. & P. o-2 Mass. 337, 538; 6 Id. 74; 7 Cush. 514; 3 S. & R. 220; 8 Id. 420; 23 Penn. St. 355; 4 Wend. 259; 1 Halst. 293; 3 Zabr. 33; 3 Ala. 360; 5 Harr. & J. 317; but see 10 Vt. 353. p-U. S. Stat. 1825, c. 76, § 23; 3 Story Laws U. S. 2006. q-2 Barb. 104. r-See 4 Maule & S. 73, 272. s-15 Wend. 397; see 4 M'Cord, 472; 2 Dougl. 332; 1 Greene, 348; 3 Hill (N. Y.) 479; 25 Penn. St. 503. t-1 Caines, 72; 34 Me. 594; 16 Ark. 601. u-1 Denio Cr. Cas. 568; 14 Pick. 88; 17 Id. 296; 8 Wend. 204; 3 Park Cr. Cas. 567; Dudl. 188; 4 Ill. 76. v-2 Den. Cr. Cas. 86; 4 Hawks. 356; 8 Blackf. 205; see 2 Va. Cas. 227; 3 Yerg. 428; 3 Humphr. 289. w-14 Ohio, 386; 6 Ired. 340. x-7 Mass. 250; 2 Pick. 506; 19 Id. 479; 7 Mo. 177; 1 Murph. 134; 13 Ark. 712. y-1 McLean C. C. 429; 7 Conn. 414; 14 Ohio, 295; 2 Yerg. 24; 28 Penn. St. 13; see 2 Gratt. 558. z-1 Burr. 613. a-R. M. Charlt. 235; 1 Coxe, 392; 1 Ashm. 410; 2 Bay, 105; 19 Johns. 39, 41; 14 Mass. 224; 10 Met. (Mass.) 222; 3 Me. 51; 4 Zabr. 142. b-2 Tyl. 167; 4 Johns. 292; 14 Id. 371; 7 Barb. 462; 3 Yeates, 475. c-18 Miss. 192; see 11 Met. (Mass.) 302. d-Bacon Abr. *Murder* (B); Kel. 56; Sid. 177; Lev. 180. e-1 Russ. Cr. 525; Wharton L. of Hom. 179; 3 Gratt. 94. f-Best Pres. § 201; 1 Starkie Ev. 575; see 6 C. & P. 176; 2 Hale Pl. Cr. 290.

prove the basis of the *corpus delicti* by presumptive evidence.[g]

The presumption arising from the possession of the fruits of crime recently after its commission, which in all cases is one of fact, rather than of law, is occasionally so strong as to render unnecessary any direct proof of what is called the *corpus delicti*. Thus, if a man were to go into a wine-cellar wherein much wine was stowed, quite sober, and shortly afterwards were to be found very drunk, staggering out of such cellar, this would be reasonable evidence that the man had stolen some of the wine in the cellar, though no proof were given that any particular vat had been broached, and that any wine had actually been missed.[h]

CORRUPTION is an act committed with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another.[i]

CUCKING STOOL, called also a trebucket-tumbril, and castigatory, was an engine or machine for the punishment of scolds and unquiet women. Bakers and brewers were formerly also liable to the same punishment. Being fastened to the machine, they were immersed over head and ears in some pool.[j]

CULPRIT is a person guilty, or supposed to be guilty, of a public offence.

DEAD BODY. To take up a dead body without lawful authority, even for the purpose of dissection, is a misdemeanor for which the offender might be indicted at common law.[x] This offence is, in general, punishable by statute. There can be no larceny of a dead body,[y] but may be of the clothes or shroud upon it.[z] Removing a dead body from its place of burial is an indictable offence. But when the master of a workhouse, having as such the lawful possession of the bodies of paupers who died therein, and who, therefore, was authorized by statute to permit the bodies of such paupers to undergo anatomical examination, unless to his knowledge the deceased person had expressed in his lifetime, in the manner therein mentioned, his desire to the contrary, "or unless the surviving husband or wife, or any known relative of the deceased person, should require the body to be interred without such examination," in order to prevent the relatives of the deceased paupers from making this requirement, and to lead them to believe that the bodies were buried without dissection, showed the bodies to the relatives in coffins, and caused the appearance of a funeral to be gone through, and having by this fraud prevented the relatives from making the requirement, then sold the bodies for dissection, he was held not to be indictable at common law.[a] The preventing a dead body from being interred is also an indictable offence.[b] To inter a dead body found in a river would, it seems, render the offender liable to indictment for a misdemeanor, unless he first sent for a coroner.[c] The leaving unburied the corpse of a person for whom the defendant is bound to provide Christian burial, as a wife or child, is an indictable misdemeanor, if he is shown to have been of ability to provide such burial.[d]

See MEDICAL LAW; DEATH, below.

DECLARATIONS. See title EVIDENCE, ante.

DEFAULTING. A public officer or any other person acting in a fiduciary capacity becoming a defaulter is liable to indictment therefor.

DELIBERATION. See AFORETHOUGHT, above; PREMEDITATION, below.

DESERTION is an unlawful abandonment of the public service in the army or navy; the unlawful abandonment of a wife or child.

DISCRETION is the ability to know and distinguish between good and evil, between what is lawful and unlawful. The age at which children are said to have discretion is not very accurately ascertained. Under seven years it seems that no circumstances of mischievous discretion can be admitted to overthrow the strong presumption of innocence which is raised by an age so tender.[e] Between the ages of seven and fourteen, the infant is, *prima facie*, destitute of criminal design; but this presumption diminishes as the age increases, and even during this interval of youth may be repelled by positive evidence of vicious intention; for tenderness of years will not excuse a maturity in crime, the maxim being, "malice supplies the want of age." At fourteen children are said to have acquired legal discretion.[f]

DISORDERLY HOUSE is a house the inmates of which behave so badly as to become a nuisance to the neighborhood. The keeper of such a house may be indicted for maintaining a public nuisance.[x]

DISORDERLY PERSONS. See GENERAL STATUTES.

DISSUADING a witness from giving evidence against a person indicted is an indictable offence at common law.[g] The mere attempt to stifle evidence is also criminal, although the person should not succeed, on the general principle that an incitement to commit a crime is in itself criminal.[h]

DUELLING is the fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. It differs from an affray in this: that the latter occurs on

g-3 Bentham Jud. Ev. 234; Wills Circ. Ev. 105; Best Pres. § 204. h-Dearsl. Cr. Cas. 284; 1 Taylor Ev. § 122. i-Merlin Repert. j-Blount; Co. 3d Inst. 219; 4 Bl. Comm. 168. x-1 Russ. Cr. 414; 1 Dowl. & R. 13; Russ. & R. 366, n. b.; 2 Chitty Cr. L. 35. y-2 East. Pl. Cr. 652; 12 Co. 306. z-13 Pick. 402; 12 Co. 113; Co. 3d Inst. 110. a-1 Dearsl. & B. Cr. Cas. 590. b-2 T. R. 734; 4 East. 460; 1 Russ. Cr. 415, 416, n. *a*.

c-1 Keny. 250. d-1 Denio Cr. Cas. 325. e-1 Hale Pl. Cr. 27, 28; 4 Bl. Comm. 23. f-1 Hale Pl. Cr. 25. x-Hardr. 344; Hawk. Pl. Cr. B. 1, Ch. 78, §§ 1, 2; Bac. Abr. *Inns*, A; 1 Russ. Cr. 298; 1 Wheel. Cr. Cas. 290; 1 S. & R. 342; 2 Id. 298; Bac. Abr. *Nuisances*; 4 Sharsw. Bl. Comm. 167, 168, n. g-Hawk. Pl. Cr. B. 1, Ch. 21, § 15. h-1 Russ. Cr. 44; 2 East. 5, 21; 6 Id. 464; 2 Strange, 904; 2 Leach Cr. Cas. 925.

a sudden quarrel, while the former is always the result of design. When one of the parties is killed, the survivor is guilty of murder.[i] Fighting a duel, even where there is no fatal result, is of itself a misdemeanor;[j] by statute in many States a felony.

EAVESDROPPERS are such persons as wait under walls or windows, or the eaves of a house, to listen to the discourses within and thereupon to frame mischievous tales. The common law punishment for this offence is fine and a finding of sureties for good behavior.[k]

ELECTION. See PRACTICE.

EMBEZZLEMENT is the fraudulently removing and secreting of personal property, with which the party has been intrusted, for the purpose of applying it to his own use. The principles of the common law not being found adequate to protect general owners against the fraudulent conversion of property by persons standing in certain fiduciary relations to those who were the subject of their peculations, certain statutes have been enacted creating new criminal offences, and annexing to them their proper punishment. A taking is requisite to constitute a larceny; an embezzlement is in substance and essentially a larceny, aggravated rather than palliated by the violation of a trust or contract, instead of being, like larceny, a trespass. The administration of the common law has been not a little embarrassed in discriminating the two offences. But they are so far distinct in their character that, under an indictment charging merely a larceny, evidence of embezzlement is not sufficient to authorize a conviction; and in cases of embezzlement the proper mode is to allege sufficient matter in the indictment to apprize the defendant that the charge is for embezzlement. Although the statutes declare that a party shall be deemed to have committed the crime of simple larceny; yet it is a larceny of a peculiar character, and must be set forth in its requisite and distinctive character.[l]

When embezzlement of a part of the cargo takes place on board of a ship, either from the fault, fraud, connivance, or negligence of any of the crew, they are bound to contribute to the reparation of the loss in proportion to their wages. When the embezzlement is fixed on any individual, he is solely responsible; when it is made by the crew, or some of the crew, but the particular offender is unknown, and, from circumstances of the case, strong presumptions of guilt apply to the whole crew, all must contribute. The presumption of innocence is always in favor of the crew, and the guilt of the parties must be established beyond all reasonable doubt before they can be required to contribute.[m]

Embezzlement of arms, munitions, and habiliments of war, property stored in the public storehouses, letters, precious metals, and coins from the mint are prohibited by acts of Congress under severe penalties.[x]

EMBRACERY is an attempt to corrupt or influence a jury, or in any way incline them to be more favorable to one side than to the other, by money, promises, threats, or persuasions, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict be true or false.[n]

ENGROSSING is buying up such large quantities of an article as to obtain a monopoly of it for the purpose of selling at an unreasonable price, especially provisions.[o] Merely buying for the purpose of selling again is not necessarily engrossing.[p]

ENTRY is the act of entering a dwelling-house, or other building, vessel, or enclosure in order to commit a crime. In cases of burglary, the least entry of the whole, or any part of the body, hand, or foot, or with any instrument, or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offence.[q] It is an entry where the person descends a chimney but is arrested before he can get low enough to enter any room; it is an entry to open a window entirely, but not to push it up or down when partly opened; putting a finger or pistol over a threshold is an entry, but not a centre-bit or crowbar, these instruments being intended for breaking, and not for committing a felony. It is not necessary in all cases to show an actual entry by all the prisoners, there may be a constructive entry as well as a constructive breaking. A., B., and C. come in the night, by consent, to break and enter the house of D., to commit a felony; A. only actually breaks and enters the house; B. stands near the door, but does not actually enter; C. stands at the lane's end, or orchard gate, or field gate, or the like, to watch that no help come to aid the owner, or to give notice to the others if help comes; this is burglary in all, and all are principals though one only did actually enter.[r] See BURGLARY, above.

ESCAPE is the departure of a prisoner from custody before he is discharged by due course of law. It is the voluntarily or negligently allowing any person lawfully in confinement to leave the place.[s] The deliverance of a person who is lawfully imprisoned out of prison before such person is entitled to such deliverance by law.[t] Escape takes place without force; prison breach, with violence; rescue through the intervention of third parties. Actual escape takes place when the prisoner in fact gets out of the prison and unlawfully regains his liberty.

i-1 Russ. Cr. 443; 1 Yerg. 228. j-See 2 Com. Dig. 252; Roscoe Cr Ev. 610; 2 Chitty Cr. L. 728, 848; Co. 3d Inst. 157; 3 East. 581; 6 Id. 464; Hawk. Pl. Cr. B. 1, Ch. 31, § 21; 3 Bulstr. 171; Const. 167; 2 Ala. 506; 2 Johns 457; see 1 Russ. Cr. 495; 2 Bishop Cr. L. § 268; 3 Cow. 686. k-4 Bl. Comm. 167; Dane Abr. Index; 1 Russ. Cr. 302; 2 Overt. 108. l-8 Met. (Mass.) 247; 9 Id. 138; 9 Cush. 284. m-1 Mas. C. C. 104; 4 Bos. & P. 347; 3 Johns. 17; 1 Marshall Ins. 241; Dane Abr. Index; Weskett Ins. 194; 3 Kent Comm. 151; Hardin, 529; Parsons' Marit. L. Index. x-See Revision U. S. Laws 1873-4. n-Hawk. Pl. Cr. 259; Bac. Abr. *Juries*, M. 3; Co. Litt. 157 *b*, 369 *a*; Hob. 294; Dyer, 84 *a*, pl. 19; Noy. 102; 1 Str. 643; 11 Mod. 111, 118; Comb. 601; 5 Cow. 503. o-1 East. 143. p-14 East. 406; 15 Id. 511; see 4 Sharsw. Bl. Comm. 159, n, for the law on this subject. q-Co. 3d. Inst. 64. r-1 Hale Pl. Cr. 555. s-2 Bishop Cr. L. § 917. t-5 Mass. 310.

Constructive escape takes place when the prisoner obtains more liberty than the law allows, although he still remains in confinement.[t] Negligent escape takes place when the prisoner goes at large, unlawfully, either because the building or prison in which he is confined is too weak to hold him, or because the keeper by carelessness lets him go out of prison. Voluntary escape takes place when the prisoner has given to him voluntarily any liberty not authorized by law.[u]

When a man is imprisoned in a proper place under the process of a court having jurisdiction in the case, he is lawfully imprisoned, notwithstanding the proceedings may be irregular;[v] but if the court has not jurisdiction the imprisonment is unlawful, whether the process be regular or otherwise.[x] Letting a prisoner, confined under final process, out of prison for any, even the shortest time, is an escape, although he afterwards return;[w] and this may (as in case of imprisonment under the civil writ of *capias ad satisfaciendum*), although an officer may accompany him.[x] In criminal cases the prisoner is indictable for a misdemeanor, whether the escape be negligent or voluntary;[y] and the officer is also indictable.[z] If the offence of the prisoner was a felony, a voluntary escape is a felony on the part of the officer;[a] if negligent, it is a misdemeanor only in any case.[b] Nothing but an act of God, or the enemies of the country, will excuse an escape.[c] It is the duty of the officer to rearrest after an escape.[d] See GENERAL STATUTES.

EXACTION is a wilful wrong done by an officer, or by one who, under color of his office, takes more fee or pay for his services than the law allows. Between extortion and exaction there is this difference, that in the former case the officer extorts more than his due where something is due to him; in the latter, he exacts what is not his due, when there is nothing due to him.[e]

EXAMINATION; PRELIMINARY EXAMINATION. See title EVIDENCE, "Examination," ante.

EXCUSABLE HOMICIDE is the killing of a human being when the party killing is not altogether free from blame, but the necessity which renders it excusable may be said to have been partly induced by his own act.[f]

EXECUTION is the putting of a convict to death in pursuance of his sentence. "Whenever any person is condemned to suffer death by hanging, for any crime of which he shall have been convicted, the punishment is generally inflicted within the walls or yard of the jail of the county in which he is convicted; and the sheriff or coroner of the said county attends such execution, to which he invites the presence of a physician, the prosecuting attorney of the county, and twelve reputable citizens, selected by himself; and the sheriff, at the request of the criminal, permits such ministers of the gospel, not exceeding two, as he may name, and any of his immediate relatives, to attend and be present at the execution, together with such officers of the prison, and such of the sheriff's deputies as the sheriff or coroner, in his discretion, may think it expedient to have present." No person under age is permitted, on any account, to witness the execution.

EXPOSURE OF PERSON is such an intentional exposure, in a public place, of the naked body as is calculated to shock the feelings of chastity or to corrupt the morals. This offence is indictable on the ground that every public show and exhibition which outrages decency, shocks humanity, or is contrary to good morals, is punishable at common law.[g] An indecent exposure, though in a place of public resort, if visible by only one person, is not indictable as a common nuisance. An omnibus is a public place sufficient to support an indictment.[h]

EXTENUATION is that which renders a crime or wrong less heinous than it would appear or be without it; it is opposed to aggravation. In general, extenuating circumstances go in mitigation of punishment in criminal cases, or of damages in those of a civil nature.

EXTORTION is the unlawful taking by an officer, by color of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due.[i] To constitute extortion, there must be the receipt of money or something of value; the taking of a promissory note which is void, is not sufficient to make an extortion.[j] It is an extortion and oppression for an officer to take money for the performance of his duty, even though it be in the exercise of a discretionary power.[k]

EXTRADITION; see FUGITIVE FROM JUSTICE, below.

FALSE PRETENCES are false representations and statements, made with a fraudulent design to obtain "money, goods, wares, and merchandise," with intent to cheat.[l] It is a representation of some fact or circumstance, calculated to mislead, which is not true.[m] The pretence must relate to past events. Any representation or assurance in relation to a future transaction may be a promise, or a covenant, or warranty, but cannot amount to a statutory false pretence.[n] It must be such as to impose upon a person of

t-Bac. Abr. Escapes (B); Plowd. 17: 5 Mass. 310; 2 Mas. C. C. 486. u-5 Mass. 310; 2 N. Chip. 11. v-1 Crawf. & D. Cr. Cas. 203. x-Bac. Abr. Escape in Civ. Cas. (A 1); 5 Johns. 89; 13 Id. 378; 1 Cow. 309; 8 Id. 192; 1 Root, 288. w-2 W. Bl. 1048; 1 Rolle Abr. 806. x-3 Co. 44, *a*; Plowd. 37; Hob. 202; 1 Bos. & P. 24; 2 W. Bl. 1048. y-2 Hawk. Pl. Cr. (Cumm. Ed.) 189; Cro. Car. 209; 7 Conn. 384; 16 Id. 47. z-2 Bishop Cr. L. § 924. a-2 Hawk. Pl. Cr. Ch. 19, § 25. b-2 Bishop Cr. L. 925. c-24 Wend. 381; 2 Murph. 386; 1 Brev. 146; see 5 Ired. 702; 5 W. & S. 455; 17 Wend. 543. d-6 Hill & Y. 344. e-Co. Litt. 368. f-1 East. Pl. Cr. 220. g-2 Bishop Cr. L. § 318. h-1 Denio Cr. Cas. 23; 2 C. & K. 933; 2 Cox Cr. Cas. 376; 3 Id. 183; Dearsl. Cr. Cas. 207; but see 1 Dev. & B. 208. i-4 Bl. Comm. 141; 1 Hawk. Pl. Cr. Ch. 68, § 1; 1 Russ. Cr.* 144. j-2 Mass. 523; 16 Id. 93, 94; see Bac. Abr.; Co. Litt. 168. k-2 Burr. 927; see 6 Cow. 661; 1 Caines, 130; 13 S. & R. 426; 3 Penn. 183; 1 Yeates, 71; 1 South. 324; 1 Pick. 171; 7 Id. 279; 4 Cox Cr. Cas. 387. l-2 Bouv. Inst. n. 2308. m-19 Pick. 184. n-19 Pick. 185; 3 T. R. 98.

ordinary strength of mind;[o] and this will doubtless be sufficient.[p] But although it may be difficult to restrain false pretences to such as an ordinarily prudent man may avoid, yet it is not every absurd or irrational pretence which will be sufficient.[q] It is not necessary that all the pretences should be false, if one of them, by itself, is sufficient to constitute the offence.[r] And although other circumstances may have induced the credit, or the delivery of the property, yet it will be sufficient if the false pretences had such an influence that without them the credit would not have been given, or the property delivered.[s] The false pretences must have been used before the contract was completed.[t] There must be an intent to cheat or defraud some person.[u] This may be inferred from the false representation.[x] The intent is all that is requisite; it is not necessary that the party defrauded should sustain any loss.[v]

This offence is modified in the different States by the wording of the statutes, which vary from each other slightly. The interpretation of the words "by any false pretence" in such statutes is, that wherever a person fraudulently represents as an *existing fact* that which is not an existing fact, and so gets money, etc., he is guilty of the offence embraced in the statute.[w]

FALSIFY. The alteration or making false a record is punishable at common law and by statute, both State and federal.[x]

FEAR is an emotion excited by an expectation of evil or apprehension of danger. Anxiety, dread, solicitude. Fear in a person robbed is one of the ingredients required to constitute a robbing from the person, and without this the felonious taking of property is a larceny. It is not necessary that the owner of the property should be in fear of his own person; but fear of violence to the person of his child,[y] or to his property[z] is sufficient.[a]

FELONIES are offences punishable by death, or imprisonment in the State prison or penitentiary. They are offences of great gravity. At the common law it occasioned a total forfeiture of lands or goods, or both, to which capital or other punishment was superadded, according to the degree of guilt.[b] It is clearly defined by the statutes of most States.

See ARREST WITHOUT PROCESS, above.

FINES are pecuniary punishments imposed by a lawful tribunal upon a person convicted of a criminal offence. The amount of the fine is generally left to the discretion of the court. To prevent the abuse of power to fine, the Constitution of the United States directs that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."[x] When, therefore, the offence committed, for which the penalty is by statute excessive or cruel, the court will pronounce a nominal sentence only, for the law will not suffer cruelty, but tempers its punishment with reason and justice.

FLIGHT is the evading of the course of justice by a man's voluntarily withdrawing,[c] and this, though the withdrawal be for an hour, a day, a week, etc.

See ESCAPE, above; FUGITIVE FROM JUSTICE, below.

FORESTALLING THE MARKET is the buying of victuals on their way to market before they reach it, with the intent to sell again at a higher price.[d] It is every device or practice by act, conspiracy, words, or news, to enhance the price of victuals or other provisions.[e] These acts must be in themselves an unlawful, unreasonable, unconscionable, and prohibited by statute, for a legitimate purchase in the ordinary course of trade, to sell again at reasonable and usual prices, is at all times lawful.

FORFEITURE is a punishment annexed by law to some illegal act or negligence. It is a sum of money paid by way of penalty for a crime.[f]

FORGERY is falsely making or materially altering, with intent to defraud, any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.[g] The fraudulent making and alteration of a writing to the prejudice of another man's right.[h]

The intent must be to defraud another; but it is not requisite that any one should have been injured: it is sufficient that the instrument forged might have proved prejudicial.[i] Most States have passed laws making certain acts to be forgery, and the national legislature has also enacted several on this subject, which are here referred to; but these statutes do not take away the character of the offence as a misdemeanor at common law, but only provide additional punishment in the cases particularly enumerated in the statutes.[j]

The making of a whole written instrument in the name of another with a fraudulent intent is a sufficient making; but a fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a

o-3 Haws. 620; 4 Pick. 178. p-11 Wend. 557. q-See 14 Ill. 348; 17 Me. 211; 2 East. Pl. Cr. 828; 1 Denio Cr. Cas. 592; Russ. & R. 127. r-14 Wend. 547. s-11 Wend. 557; 13 Id. 87; 14 Id. 547. t-13 Wend. 311; 14 Id. 546. u-Russ. & R. Cr. Cas. 317; 1 Stark. 396. x-13 Wend. 87. v-11 Wend. 18; 1 C. & M. 516, 537; 4 Pick. 177. w-See 1 Denio Cr. Cas. 559; 3 C. & K. 98. x-Laws U. S. 1790, April 30; 1 Story U. S. Stat. 86. y-2 East. Pl. Cr. 718. z-Id. 731; 2 Russ. Cr. 72. a-2 Russ. 71-90. b-4 Bl. Comm. 94, 95; 1 Russ. Cr. 42; 1 Chitty Pr. 14; Co. Litt. 391; 1 Hawk. Pl. Cr. Ch. 37; 5 Wheat. 153, 159. x-Const. U. S. Amendment Art. 8. c-4 Bl. Comm. 387. d-Cowel, Blount; 4 Bl. Comm. 158. e-Co. 3d. Inst. 196; 1 Russ. Cr. 169; 4 Bl. Comm. 158; Hawk. Pl. Cr. B. 1, Ch. 80, § 1. f-21 Ala. (N. S.) 672; 10 Gratt. 700. g-2 Bishop Crim. Law, § 432. h-4 Blackstone Comm. 247. Bishop 2 Crim. Law, § 432, has collected seven definitions of forgery, and justly remarks that the books abound in definitions. Coke says the term is "taken metaphorically from the smith, who beateth upon his anvil and forgeth what fashion and shape he will." Coke 3d Inst. 169. i-3 Gill. & J. Md. 220; 4 Wash. C. C. 726. j-3 Cush. Mass. 150; 3 Gray, Mass. 441; Act of March 2, 1803, 2 Story U. S. Laws, 888; Act of March 3, 1813, 2 Story U. S. Laws, 1304; Act of March 1, 1823, 3 Story U. S. Laws, 1889; Act of March 3, 1825, 3 Story U. S. Laws, 2003; Act of October 12, 1837, 9 U. S. Stat. at Large, 696.

forgery,[k] and this, although it be afterwards executed by a person ignorant of the deceit.[l] The fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versa*, will also be a forgery.[m] For example, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head, and then procure the signature of such sick person to be affixed to the paper without revealing to him the legacies thus fraudulently inserted.[n] A party who makes a copy of a receipt and adds to such copy material words not in the original, and then offers it in evidence on the ground that the original has been lost, may be prosecuted for forgery.[o] It is a sufficient making where, in the writing, the party assumes the name and character of a person in existence.[p] But the adoption of a false *description* and *addition* where a false name is not assumed and there is no person answering the description, is not a forgery.[q] Making an instrument in a fictitious name, or the name of a non-existing person, is as much a forgery as making it in the name of an existing person,[r] and although a man may make the instrument in his own name, if he represent it as the instrument of another of the same name, when in fact there is no such person, it will be a forgery in the name of a non-existing person.[s] But the correctness of this decision has been doubted.[x] Though, in general, a party cannot be guilty of forgery by a mere *non-feasance*, yet if in drawing a will he should fraudulently omit a legacy which he had been directed to insert, and by the omission of such bequest it would cause a material alteration in the limitation of a bequest to another, as, where the omission of a devise of an estate for life to one causes a devise of the same lands to another to pass a present estate which would otherwise have passed a remainder only, it would be a forgery.[t]

With regard to the thing forged, it may be observed that it has been holden to be forgery at common law fraudulently to falsify or falsely make records and other matters of a public nature,[x] a parish register,[u] a letter in the name of a magistrate, or of the governor of a gaol directing the discharge of a prisoner.[v] With regard to private writings, forgery may be committed of any writing which, if genuine, would operate as the foundation of another man's liability or the evidence of his right,[w] as, a letter of recommendation of a person as a man of property and pecuniary responsibility,[x] an acceptance of a conditional order for the delivery of goods,[y] a false testimonial to character,[z] a railway-pass,[a] a railroad-ticket,[c] or fraudulently to testify or falsely to make a deed or will.[d] Forgery may be of a printed or engraved as well as of a written instrument.[e] A forgery must be of some document or writing: therefore the printing an artist's name in the corner of a picture, in order falsely to pass it off as an original picture by that artist, is not a forgery.[f]

FORNICATION is unlawful carnal knowledge by an unmarried person of another, whether the latter be married or unmarried. Fornication is distinguished from adultery from the fact that the guilty party is not married. Four cases of unlawful intercourse may arise: 1. Where both parties are married. 2. Where the man only is married. 3. Where the woman only is married. 4. Where neither is married. In the first case such intercourse must be adultery; in the second case the crime is fornication only on the part of the woman, but adultery on the part of the man; in the third case it is adultery in the woman and fornication (by statute in some States adultery) in the man; in the last case it is fornication only in both parties. By the statutes of many of the States fornication is an indictable offence by statute;[g] and where it is there may be a conviction for this offence on an indictment for adultery.[h]

FRAUD includes all deceitful practices in defrauding or endeavoring to defraud another of his known right by means of some artful device, contrary to the plain rules of common honesty. In considering fraud in its criminal aspect it is difficult to determine whether facts in evidence constitute a fraud, or amount to a felony. In general, if the property obtained, whether by means of a false token or false pretence, be parted with, absolutely, by the owner it is a fraud; but if the possession only be parted with, and that possession be obtained by fraud, it will be felony.[i] Examples of gross frauds are: uttering a fictitious bank bill;[j] selling unwholesome provisions;[k] malpractice of a physician;[l] rendering false accounts, and other frauds, by persons in official situations;[m] fabrication of news tending to the public injury;[n] cheats by means of false weights and measures;[o] and generally, the fraudulent obtaining the property of another by any deceitful or illegal practice or token (short of felony) which affects or may affect the public,[p] as with

k-1 Strange, 18; 1 And. 101; 5 Esp. 100; 5 Strobh. So. C. 581. l-2 East. Pl. Cr. 855. m-11 Gratt. Va. 822; 1 Add. Penn. 44. n-Noy. 101; F. Moore, 759, 760; Coke, 3d Inst. 170; 1 Hawkins Pl. Cr. c. 70, s. 2; 2 Russell Crimes, 318; Bacon Abr. *Forgery* (A). o-5 Esp. 100. p-2 Russell Crimes, 327. q-1 Russ. & R. 405. r-2 East. Pl. Cr. 957; 2 Russell Crimes, 328. s-2 Leach Cr. Cas. 775; 2 East. Pl. Cr. 963. x-Roscoe Crim Ev. 384. t-F. Moore, 760; Noy, 101; 1 Hawkins Pl. Cr. c. 70, s. 6; 2 East. Pl. Cr. 856; 2 Russell Crimes, 320. x-1 Rolle Abr. 65, 68. u-1 Hawkins Pl. Cr. c. 70. v-6 Carr. & P. 129; Mood. Cr. Cas. 379. w-3 Greenleaf Ev. § 103; 2 Mass. 397; 12 Serg. & R. Penn. 237; 8 Yerg. Tenn. 150. x-2 Greenleaf Ev. § 365. y-3 Cush. Mass. 150. z-Templ. & M. Cr. Cas. 207; 1 Den. Cr. Cas. 492; Dearsl. Cr. Cas. 285. a-2 Carr. & K. 604. c-3 Gray, Mass. 441. d-1 Hawkins Pl. Cr. b. 1, c. 70, § 10. e-3 Gray, Mass. 441; 9 Pick. Mass. 312. f-1 Dearsl. & B. Cr. Cas. 460. g-6 Vt. 311; 2 Taylor, 105; 2 Gratt. 555. h-2 Dall. 124; 4 Ird. 231; 2 Bishop Cr. L. § 12. i-Bac. Abr. *Fraud;* 2 Leach Cr. Cas. 1066; 2 East. Pl. Cr. 673. j-2 Mass. 77. k-4 Bl. Comm. 162. l-1 Ld. Raym. 213. m-2 East. 136; 5 Mod. 179; 2 Campb. 269; 3 Chitty C. L. 666. n-Stark. Bk. 546; Hale Sumn. 132. o-2 East. Pl. Cr. Ch. 18, § 3, p. 820. p-2 East. Pl. Cr. Ch. 18, § 2, p. 818.

the common cases of obtaining property under false pretences.

FUGITIVES FROM JUSTICE are those who, having committed crime, flee from the jurisdiction within which the offence was committed to escape punishment. As one State cannot pursue those who violate its laws into the territories of another, and as it concerns all that those guilty of the more atrocious crimes should not go unpunished, the practice prevails among the more enlightened nations of mutually surrendering such fugitives to the justice of the injured State. This practice is founded on national comity and convenience, or on express compact. The United States recognizes the obligation only when it is created by express agreement, and have contracted this obligation with several foreign States by treaty, and with one another by their federal constitution and laws.

The various treaties with foreign powers enumerate the crimes for which persons may be surrendered, and limit in other particulars their application. Before any person can be surrendered a demand for him must be made upon the executive by the executive power of the State whose laws have been violated. It is usual to make this demand before judicial proceedings are instituted for the arrest of the fugitive;[o] but this is not required by act of Congress.[p] The usual method of action is for some police officer or other special agent, after obtaining the proper papers in his own country, to repair to the foreign country, carry the case through with the aid of his minister, receive the fugitive, and conduct him back to the country having jurisdiction of the crime.[q] The expense of the apprehension must be borne and defrayed by the party making the requisition.

Under the United States Constitution and laws, etc.

"A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, and to be removed to the State having jurisdiction of the crime."[r] On demand of the executive authority of a State, and production of a copy of the indictment found, or an affidavit made before a magistrate charging the person demanded with treason, felony, or other crime certified as authentic by the governor or chief magistrate of the State from whence the person so charged fled, that the executive authority of the State or Territory to which such person shall have fled shall cause the person charged to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and cause the fugitive to be delivered to such agent when he shall appear; but if such agent do not appear within six minutes, the prisoner shall be discharged.[s]

The treason, felony, or other crime, extends to and embraces all acts which by the laws of where they were committed are made criminal.[t] The accusation must be in the form of an affidavit, or indictment found and duly authenticated. If by affidavit, it should be sufficiently full to justify arrest and commitment for hearing.[u] The accused must have fled from the State in which the crime was committed; and of this the executive authority of the State upon which the demand is made should be reasonably satisfied. This is sometimes done by affidavit. In the absence of direct evidence on the question of flight, if it appear from the indictment or affidavit produced that the crime charged is atrocious in its nature, and recently committed, and the prosecution promptly instituted, the unexplained presence of the accused in another State immediately after the commission of the crime may be regarded as *prima facie* evidence of flight, sufficient at least to warrant an order of arrest. The order of surrender is not required, by act of Congress, to be made at the same time with the order of arrest, and time, therefore, can be taken in doubtful cases, after the accused is arrested, to hear proofs to establish or rebut such *prima facie* evidence.[v]

The surrender of the accused must be made to an agent of the executive authority of the demanding State, duly appointed to receive the fugitive. The proceedings of the executive authority are subject to be reviewed on *habeas corpus* by the judicial power, and if found void the prisoner may be discharged.[w]

Any person setting at liberty or rescuing a fugitive from an agent while transporting a fugitive to the State or Territory from which he fled is liable to a fine of five hundred dollars and imprisonment not exceeding one year.[x]

GAME LAWS. See GENERAL STATUTES.

GAMING is an agreement between two or more persons to play by certain rules at cards, dice, or other contrivance that the result shall determine the owner of the amount staked, contributed, or wagered upon the game. In general, at common law, all games are lawful, unless some fraud has been practised, or such games are contrary to public policy. Each of the parties to the contract must have a right to the money or thing played for. He must have given his full and free consent, and not have been entrapped by fraud. There must be equality in the play. The play must be conducted fairly. But even when all these rules have been observed, the courts will not countenance gaming by giving too easy a remedy for the recovery of money won at play.[y] But

o-8 Opinions Aty's Gen. 521. p-Id. 240. q-Id. 521. r-Constitution U. S. Art. 4, § 2. s-Laws U. S. 1793, February 12, Vol. 1, p. 302. t-6 Penn. L. Jur. 412; 1 Kent Comm. (9 Ed.) 42, n; 6 Am. Jour. 226; 9 Wend. 212; 1 An. L. Jour. (N. S.) 271; 13 Ga. 97; 3 Zabr. 311; Hurd Habeas Corp. 597. u-6 Penn. L. Jour. 412; 3 McLean C. C. 121; 1 Sandf. 701; 3 Zabr. 311; Hurd Habeas Corp. 605. v-6 Am. Jur. 226; 7 Boston L. Rep. 386. w-3 McLean C. C. 121; 3 Zabr. 311; 9 Texas, 635; 4 Harr. 575; 2 Mo. 26; Hurd Habeas Corp. 615. x-Laws U. S. 1793, February 12, Vol. 1, 302. y-Bac. Abr.

where fraud has been practised, as in all other cases, the contract is void; and in some cases when the party has been guilty of cheating, by playing with false dice, cards, and the like, he may be indicted at common law, and fined and imprisoned, according to the heinousness of the offence.[a]

For the laws forbidding gaming, see the GENERAL STATUTES.

GAMING HOUSES are houses kept for the purpose of permitting persons to gamble for money or other valuable things. They are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices.[a]

GAOL. See JAIL; PRISON, below.

GOOD BEHAVIOR. Surety for good behavior may be demanded from any person who is justly suspected, upon sufficient grounds, of intending to commit a crime or misdemeanor. Surety for good behavior is somewhat similar to surety of the peace, but the recognizance is more easily forfeited, and it ought to be demanded with greater caution.[b]

GOODS AND CHATTELS. Choses in action, as bank notes, mortgage deeds, and money, do not fall within the technical definition of "goods and chattels;" and if described in an indictment as goods and chattels, these words may be rejected as surplusage.[c]

GRAND LARCENY. Simple larceny is divided into grand larceny and petit larceny. Grand larceny is made a felony in most States, while petit larceny is made a misdemeanor—the former embraces larcenies from a prescribed minimum (*e. g.* five dollars in value) to any amount in value, however great; the latter is any amount in value less than the prescribed maximum (*e. g.* five dollars in value).

GRAVE. The violation of the grave, by taking up a dead body, or stealing the coffin or grave clothes, is a misdemeanor at common law.[d] Penalties for violation of the grave, desecration of cemeteries, etc., are exacted in most of the States.

See DEAD BODY, above.

GUILT is criminality; offence; liability to punishment; it is opposed to innocence. In general, every one is presumed innocent until guilt has been proved; but in some cases the presumption of guilt overthrows that of innocence; as, for example, where a party destroys evidence to which the opposite party is entitled. The spoliation of papers material to show the neutral character of a vessel furnishes strong presumption against the neutrality of the ship.[e]

HARD LABOR is, in general, a part of the sentence of convicts in States where the penitentiary system has been adopted. This labor is such as is ordinarily performed voluntarily by laborers and mechanics, and is generally of the same character. It may be any of the common industries, such as the working of wood, metals, weaving, quarrying, and the like employments.

HANGING. See EXECUTION, above.

HEARING. See title, EVIDENCE; EXAMINATION, ante.

HIGHWAY ROBBERY. See ROBBERY, below.

HOMICIDE is the killing of a human being,[x] by human agency.[f] Excusable homicide takes place under such circumstances of accident or necessity that the party cannot strictly be said to have committed the act wilfully and intentionally, and whereby he is relieved from the penalty annexed to the commission of a felonious homicide. Felonious homicide is that committed wilfully under such circumstances as to render it punishable. Justifiable homicide is that committed with full intent, but under such circumstances as to render the act one proper to be performed. The distinction between justifiable and excusable homicide is that in the former the killing takes place without any manner of fault on the part of the slayer; in the latter there is some slight fault; between justifiable or excusable and felonious homicide there is a great and important distinction. For example: "If a person driving a carriage happen to kill another, if he saw or had timely notice of the mischief likely to ensue, and yet wilfully drove on, it would be murder; if he might have seen the danger, but did not look before him, it will be manslaughter; but if the accident happened in such a manner that no want of due care could be imputed to the driver, it will be accidental death and excusable homicide."[g]

To constitute the offence of homicide there must be a person in actual existence;[h] but the destruction of human life at any period after birth is homicide, however near it may be to extinction from any other cause.[i] The person killed, to constitute the homicide felonious, must have been entitled to his existence. Thus, a soldier of the enemy in time of war has no right to life, but may be killed. A criminal sentenced to death has no right to life; but no person can take life but the authorized officer, and in the manner prescribed by law.

See MURDER; MANSLAUGHTER; SELF-DEFENCE.

HOUSE OF CORRECTION is an asylum or prison for incorrigibles or those who have committed minor crimes.

HOUSE OF ILL-FAME is a house resorted to for the purpose of prostitution and lewdness.[j] Keeping a house of ill-fame is an offence at common law.[k] So, the letting of a house to a woman of ill-fame, knowing her to be such, with the intent that it shall be let for purposes of prostitution, is an indictable offence at common law.[l] If a lodger lets her room for the

[a]-1 Russ. Cr. 406. [a]-1 Russ. Cr. 299; Roscoe Crim. Ev. 663; 3 Denio, 101. [b]-1 Binn. 98, n; 2 Yeates, 437; 14 Vin. Abr. 21; Dane Abr. Index. As to what is a breach of good behavior, see 2 Martin (N. S.) 683; Hawk. Pl. Cr. B. 1, Ch. 61, § 6; 1 Chitty Pr. 676. [c]-4 Gray, 416; 3 Cox Cr. Cas. 460; 1 Denio Cr. Cas. 460; 1 Dearls. & B. Cr. Cas. 426; 2 Zabr. 207; 1 Leach Cr. Cas. 241. [d]-1 Russ. Cr. 414. [e]-2 Wheat. 227. [x]-See 4 Bl. Comm. 177. [f]-1 Hawkins Pl. Cr. Ch. 8, § 2; 5 Cush. 303. [g]-1 East. Pl. Cr. 260; see 4 Sharsw. Bl. Comm. 176–204; Roscoe Cr. Ev. 580. [h]-6 C. & P. 349; 7 Id. 814, 850; 9 Id. 25. [i]-2 C. & R. 784; 2 Bishop Cr. L. § 582. [j]-5 Ired. 603. [k]-3 Pick. 26; 17 Id. 80; 1 Russ. Cr. (Greaves Ed.) 322. [l]-3 Pick. 26; 11 Curt. 600.

purpose of indiscriminate prostitution, she is guilty of keeping a house of ill-fame as much as if she were the proprietor of the whole house.[m] A married woman who lives apart from her husband, may be indicted alone, and punished for keeping a house of ill-fame.[n] The house need not be kept for lucre to constitute the offence.[o]

HOUSE OF REFUGE is an asylum or prison for juvenile delinquents.

HOUSEBREAKING is the breaking and entering the dwelling-house of another by night or by day, with intent to commit some felony within the same, whether such felonious intent is executed or not. Housebreaking by night is burglary. This crime is of a local character and the evidence respecting the place must correspond with the allegation in the indictment.

IMPEACHMENT is a written accusation by the State or federal house of representatives to the senate thereof against a State or federal officer. The cause for, mode of, and trial of impeachments is provided for by both State and federal constitutions.

INCEST is cohabitation or sexual commerce between persons related within the degrees wherein marriage is prohibited by the law.[p] It is punished by fine or imprisonment, or both, in the respective States.

INDECENCY is that which is unfit to be seen, offensive to modesty and delicacy.[q] The exposure by a man of his naked person on a balcony to public view, or bathing in public,[r] or the exhibition of bawdy pictures,[s] are examples of indecency. Such indecencies are punishable by indictment.

INDICTMENT is a written accusation or formal charge of a crime or misdemeanor preferred to a court by a lawfully constituted grand jury under oath.[t] The essential requisites of a valid indictment are: 1. That the indictment be presented to some court having jurisdiction of the offence stated therein. 2. That it appear to have been found by the grand jury of the proper county or district. 3. That it be found a true bill, and signed by the foreman of the grand jury, and when required by law the prosecuting attorney. 4. That it be framed with sufficient certainty, containing a description of the crime or misdemeanor charged, and of facts constituting the offence. Where the offence is created by statute, a description in the terms of the statute is sufficient. 5. It must be in the English language. But any document in a foreign language, as a libel, may be set out in the original tongue, and then the translation showing its application.[u] The formal requisites of an indictment are: 1. The name, which, at common law, should always be laid in the county where the offence has been committed, although the charge be in its nature transitory, as a battery.[v] The venue is stated in the margin (*i. e.*, at the beginning), thus: State of ——, county of ——, ss., or city and county of ——, to wit. See title AFFIDAVITS, ante.[w] 2. The presentment, which must be in the present tense, and is usually expressed as follows: "The grand jury of the State (or commonwealth) of ——, inquiring in and for the (city and) county of ——, aforesaid, upon their oaths and affirmations, present." 3. The name of the defendant. 4. The time when the offence was committed. 5. The place where the offence was committed. 6. The offence must be sufficiently described. If the offence be statutory, a description in the terms of the statute is sufficient. See ACCUSATION, above.

INDUCEMENT. See CONFESSIONS.

INFORMATION is in the nature of an indictment, with this exception: it is preferred by the attorney of the State instead of by a grand jury. The prosecuting witness or witnesses make oath in writing that a public offence has been committed, naming the accused, and stating the time and place of its commission. Upon this affidavit the prosecuting attorney bases his information—returning both affidavit and information to court.

See ACCUSATION, "Indictment," above.

INTENTION is aim, design, determination, or purpose. To render an act criminal, a wrongful intent must exist.[x] And this must be combined with a wrongful act; as mere intent is not punishable,[y] but a wrongful intent may render an act otherwise innocent criminal.[z]

Generally, where any wrongful act is committed, the law will infer conclusively that it was intentionally committed,[a] and also that the natural, necessary, and even probable consequences were intended.[b]

Where by the common law or by the provision of a statute, a particular intention is essential to an offence, or a criminal act is attempted but not accomplished, and the evil intent only can be punished, it is necessary to allege the

m-2 Ld. Raym. 1197. n-1 Met. (Mass.) 151; see 11 Mo. 27; 10 Mod. 63. o-21 N. H. 345; 2 Gray, 357; 18 Vt. 70. p-Bishop Marriage & Div. 214, 221. q-See 2 S. & R. 91. r-2 Campb. 89; 3 Day, 103; 1 Dev. & B. 208; 18 Vt. 574; 5 Barb. 203. s-2 Chitty Cr. L. 42; 2 S. & R. 91. t-4 Bl. Comm. 299; Co. Litt. 126; 1 Chitty Cr. L. 168. u-6 T. R. 162. v-Hawk. Pl. Cr. Bk. 2, Ch. 25, § 35. w-1 Ark. 171; 9 Yerg. 357; 6 Met. (Mass.) 225. x-Hob. 134; Ambl. 307; Russ. & R. 196, 154; 1 Leach Cr. Cas. (4th Ed.) 280, 284; 2 Id. 10, 19; 7 C. & R. 428; 8 Id. 136; 1 Den. Cr. Cas. 387; Paine C. C. 16; 2 McLean C. C. 14; 2 Ind. 207; 30 Me. 132; 1 Rice, 145; 4 Harring. 315; 19 Vt. 564; 3 Dev. 114; 1 Bishop Cr. L. § 221, *et seq.* y-Caldw. 397; 1 Str. 644; 8 Id. 1074; 9 Co. 81, *a.*; 1 El. & Bl. 435; 2 C. & P. 414; 7 Id. 156; 2 Mass. 138; 2 B. Mon. 417; 1 Dall. 33; 9 Ark. 42; 10 Vt. 353; 1 Dev. & B. 121; Gilp. Dist. Ct. 306; 5 Cranch, 311; but see Jebb. Cr. Cas. 48, *n.*; Russ. & R. 308; 1 El. & Bl. 435; 1 Lew. Cr. Cas. 42; 1 Russ. Cr. (Greaves Ed. 48. z-1 Carr. & K. 600; Carr. & M. 236; 2 Allen, 181; 1 East. Pl. Cr. 255; 1 Bishop Cr. L. § 229, 253. a-2 Gratt. 594; 4 Ga. 14; 2 Allen, 179. b-1 Greenl. Ev. § 18; 3 Id. 13; 3 Dowl. & R. 464; 2 Lew. Cr. Cas. 237; 3 Maule & S. 11, 15; 5 C. & P. 538; 8 Id. 143, 148; 9 Id. 258, 499; 3 Wash. C. C. 515; 13 Wend. 87; 3 Pick. 304; 15 Id. 337; 9 Met. (Mass.) 410; 2 Gratt. 594; 1 Bay, 245; 9 Humph. 66; 1 Overt, 305; see also 8 C. & P. 143, 274, 582; 2 C. & K. 356, 777; Baldw. C. C. 370; 4 N. H. 239; 8 Id. 240; 1 Ired. 76; 2 Id. 153; 5 Id. 350; 18 Johns. 115; 6 Blackf. 299; 3 Harring. 571; 13 Ala. N. S. 413.

intent with distinctness and precision, and to support the allegations with proof. On the other hand, if the offence does not rest merely in tendency or in attempt to do a certain act with a wicked purpose, but consists in doing an unlawful or criminal act, the evil intention will be presumed, and need not be alleged, or, if alleged, it is a mere formal averment which need not be proved.[e]

Proof of intention may be of external and visible acts and conduct from which the jury may infer the fact,[f] or it may be by proof of an act committed; as in the case of burglary with intent to steal; proof of burglary and stealing is conclusive.[g]

When a man intending one wrong fails, and accidentally commits another, he will, except where the particular intent is a substantive part of the crime, be held to have intended the act he did commit.[h]

JAIL. COUNTY JAIL is a place provided for the confinement of persons arrested upon civil or criminal process, and held in custody of the sheriff. It is the common place of confinement for persons confined for contempt of court, witnesses, and persons without bail awaiting trial, and those convicted of lesser offences. It is generally inhabited by the sheriff or keeper and his family, and is an inhabited dwelling-house within the statutes against arson.[i]

JEOPARDY is exposure to danger, death, hazard, or injury. This is the situation of a prisoner when a trial jury is impanelled and sworn to try his case upon a valid indictment. Such a jury has been charged with his deliverance.[j] And should the prosecution be abandoned at this stage of the case, and the jury be discharged, or otherwise, the prisoner cannot be again put upon his trial by the same jurisdiction, unless this privilege be waived by the defendant.[k]

JUSTIFIABLE HOMICIDE. See HOMICIDE, above.

KIDNAPPING is the act of stealing or forcible abduction of a human being from his own home or country.[n] It includes false imprisonment.[l] A carrying away is not essential.[m] This was a capital offence by the Jewish law; and is a highly penal offence in all the States. See ABDUCTION, above.

KNOWLEDGE is the power of knowing; it is a perception of that which exists; cognizance of truth and fact; information. Many acts are perfectly innocent when the party performing them is not aware of certain circumstances attending them: for example, a man may pass a counterfeit note, and be guiltless, if he did not know it was so; he may receive stolen goods, if he were not aware of the fact that they were stolen. In these, and like cases, it is the guilty knowledge which makes the crime. Such guilty knowledge is made by the statute a constituent part of the offence; and, therefore, it must be averred and proved as such. But it is, in general, true, and may be considered as a rule almost necessary to the restraint and punishment of crimes, that when a man does that which, by the common law or by statute, is unlawful, and, in pursuing his criminal purpose, does that which constitutes another and different offence, he shall be held responsible for all the legal consequences of such criminal act. When a man, without justifiable cause, intends to wound or maim another, and in doing it, kills him, it is murder, though he had no intention to take life. But, in general, such bad motive or criminal will and purpose—that disposition of the mind and heart which is designated by the generic and significant term "malice"—is implied from the criminal act itself. But if a man does an act which would be otherwise criminal, through mistake or accident, or by force or the compulsion of others, in which his own will and mind did not instigate him to the act or concur in it, it is a matter of defence, to be averred and proved on his part, if it does not rise out of the circumstances of the case adduced on the part of the prosecution.[o]

LARCENY is the unlawful or felonious taking and carrying away by one person of the personal goods and chattels of another with intent to convert them to his own use, and without the consent of the owner.[p] Larceny is either grand or petit. See GRAND LARCENY, above. The property of the owner taken may be either general[q] or special.[r] There must be a taking against the consent of the owner,[s] and the taking will not be larceny if consent be given, though obtained by fraud.[t] When the possession of an article is intrusted to a person who carries it away and appropriates it, this is no larceny;[u] but where the custody is merely parted with, such misappropriation is a larceny.[v] The taking must be in the county where the criminal is to be tried,[w] but when the taking is in the county or State, and the thief is caught with the stolen property in another county than that where the theft was committed, he may be

e-Bigelow, C. J.; 2 Allen, 180; see 1 Stark. C. & P. 165; 1 Chitty Cr. L. 233; 6 East. 474; 5 Cush. 306. f-8 Co. 146. g-1 Bishop Cr. L. §§ 250, 251; 5 C. & P. 510; 7 Id. 518; 9 Id. 729; 2 M. & R. Cr. Cas. 40. h-Eden. Pen. L. (3d Ed.) 229; 13 Wend. 159; 21 Pick. 515; 2 Met. (Mass.) 329; 1 Gall. C. C. 624; 1 Carr. & K. 746; Roscoe Cr. Ev. 272. i-2 W. Bl. 682; 1 Leach Cr. Cas. (4 Ed.) 69; 2 East. Pl. Cr. 1020; 2 Cox Cr. Cas. 65; 18 Johns. 115; 4 Coll. 109; 4 Leigh, 683. j-1 Bail. 655; 7 Blackf. 191; 1 Gray, 490; 38 Me. 574; 8 S. & R. 586; 23 Penn. St. 12; 12 Vt. 93; 1 Bishop Cr. L. § 660. k-6 Cush. 560; 37 Me. 156; 2 Hawks. 443; 3 Barb. 427; 4 Dev. 305; 16 Miss. 587; 1 Bishop Cr. L. § 672, *et seq.* l-2 Bishop Cr. L. § 671. m-8 N. H. 550. n-4 Bl. Comm. 219. o-Per Shaw, C. J.; 2 Met. (Mass.) 102. As to proof of guilty knowledge, see 1 Hen. & B. Lead. Cr. Cas. 185-191. p-2 East. Pl. Cr. 553; 4 Wash. C. C. 700. q-1 C. & K. 518; 2 Denio Cr. Cas. 449. r-10 Wend. 165; 14 Mass. 217; 13 Ala. 115; 4 Harring. 570; 6 Hill N. Y. 144; 9 C. & P. 44. s-8 C. & P. 291; 9 Id. 365; 1 Denio Cr. Cas. 381; Overt. 68; 9 Yerg. 198; 20 Ala. (N. S.) 428; 1 Rich. 30; 2 Nott. & M'Cord, 174; Coxe, 439. t-15 S. & R. 93; 9 C. & P. 741; 4 Taunt. 258; 7 Cox Cr. Cas. 289. u-24 Eng. L. & Eq. 562; 4 C. & P. 545; 5 Id. 533; 1 Pick. 375; 20 Ala. (N. S.) 428; 17 N. Y. 14. v-6 Monr. 130; 1 Denio, 120; 11 Q. B. 929; 1 Denio Cr. Cas. 584. w-9 C. & P. 29; Ry. & M. 349.

tried in the county where arrested with the goods; as, by construction of law, there is a fresh taking in every county in which the thief carries the stolen property.[v] There must be an actual taking away of the article,[w] but a very slight removal, if it amounts to a taking into possession, is sufficient.[x] The property must be personal,[y] and it must be of some value though but slight.[z] Things annexed to the freehold, as growing grain, grass, trees, and the like, or lead, or fixtures attached to a house, are not the subject of larceny until severed.[a] Nor can larceny be committed of things which are not the subject of property, such as the dead body of a human being. Animals of a wild nature unreclaimed, cannot be the subject of larceny, for there is no property in them absolute or qualified,[b] it is otherwise if they are reclaimed or confined.[c] And animals may be of so base a nature as not to be the subject of larceny, though tame and salable, as tame bears, cats, dogs, and monkeys.[d]

LEAGUE. See CONSPIRACY, above.

LEVYING WAR. See TREASON, below.

LIMITATION is a time within which an accusation may be made, or an indictment found or an information made against a person for the commission of a crime or misdemeanor. Limitation never expires during the life of the offender for treason or murder. Limitation in cases of felony varies from ten to two years; for misdemeanors or the lesser offences it is generally from two years to sixty days.

LYING IN WAIT is ambuscade for the purpose of murder. Lying in wait is evidence of premeditation, malice, intention, deliberation.

MAIM; see MAYHEM, below.

MAINTENANCE is an officious interference in a suit in which the offender has no interest, to assist one of the parties against the other, with money or advice, to prosecute or defend the action, without any authority or interest, at law.[e] It is the intermeddling of a stranger in a suit for the purpose of stirring up strife and continuing the litigation.[f] There are many acts in the nature of maintenance which become justifiable from the circumstances under which they are performed. They may be justified: 1. Because the party has an interest in the matter in variance; as, when he has a bare contingency in the lands in question, which possibly may never develop into being.[g] 2. Because the party is of kindred or affinity, as father, son; heir apparent, husband, wife, etc.[h] 3. Because the relation of landlord and tenant, master or servant, etc., subsists between the party to the suit and the person who assists him. 4. Because the money is given out of charity.[i] 5. Because the person assisting the party to the suit is an attorney or counsellor; the assistance to be rendered must, however, be strictly professional, for a lawyer is no more justified in giving his client money than another man.[j] See title CONTRACTS, "Maintenance," ante.

MALPRACTICE. See MEDICAL LAW, below.

MALICE is the intentional doing of an unlawful or felonious act without just cause or excuse.[k] Express malice exists when the party evinces an intention to commit the crime. Implied malice is that inferred by law from the facts proved.[l] Malice is implied in every case of intentional homicide; and the fact of killing being first proved, all the circumstances of accident, necessity, or informality are to be satisfactorily established by the party charged, unless they arise out of the evidence produced against him to prove the homicide, and the circumstances attending it. If there be in fact circumstances of justification, excuse, or palliation, such proof will naturally indicate them. But where the fact of killing is proved by satisfactory evidence, and there are no circumstances disclosed tending to show justification or excuse, there is nothing to rebut the natural presumption of malice. It is material to the just understanding of this rule, that it only applies where the killing, and nothing further, is shown. For if the circumstances disclosed tend to extenuate the act, the prisoner has the full benefit of such facts.[m] It is a general rule that when a man commits an act unaccompanied by any circumstances justifying its commission, the law presumes that he has acted advisedly, and with an intent to produce the consequences which have ensued. And therefore the intent to kill is conclusively inferred from the deliberate violent use of a deadly weapon.[n]

MALICIOUS INJURIES are those committed wilfully and wantonly without cause.[o]

MALICIOUS MISCHIEF is unlawful, wilful, wanton, or reckless destruction of property. In order to a conviction of the offence of malicious mischief, the jury must be satisfied that the injury was done either out of a spirit of wanton cruelty, or wicked revenge.[p]

MALICIOUS TRESPASS is a wilful, malicious, or mischievous injury of private or public property, real or personal.[q]

MANSLAUGHTER is the unlawful killing of one human being by another, without malice or intention.[r] The distinction between manslaughter and murder is, that in the former, though the act which occasions the death be

v-7 Met. (Mass.) 175. w-1 Leach Cr. Cas. (4 Ed.) 236, n. 320; 3 Greenl. Ev. 154; 7 C. & P. 552; 8 Id. 691; 8 Ala. (N. S.) 328; 12 Ired. 157; 9 Yerg. 98. x-2 East. Pl. Cr. 556, 617; 1 C. & K. 245; 1 Dearsl. Cr. Cas. 421. y-11 Ired. 70; 3 Hill, 395; 1 Mod. 89; 2 Rolle, 89; 7 Taunt. 188. z-4 Rich. 356; 3 Harring. 563; 7 Met. (Mass.) 475. a-1 Hale, 510. b-2 B. & C. 934; 4 D. & S. 518. c-1 Hale, 511. d-R. & R. 250; 1 Hale, 512. e-1 Russ. Cr. 176. f-2 Parsons' Contr. 266. g-Bac. Abr. Maintenance. h-3 Cow. 623. i-1 Bail. 401. j-1 Russ. Cr. 179; Bac. Abr. *Maintenance*; Broke. Abr. *Maintenance*. k-4 B. & C. 225; 9 Met. Mass. 104. l-11 Humphr. 172; 6 Blackf. 299; 1 East. Pl. Cr. 371. m-9 Met. 93; 5 Cush. 295; 3 Gray, 46. n-9 Met. (Mass.) 103; 5 Cush. 305. o-Chitty Pr. 136. p-Jac. L. Dict. Mischief, Malicious; Alison. Sc. L. 448; 3 Cush. 558; 2 Met. (Mass.) 21; 3 Dev. & B. 130; 5 Ired. 364; 8 Leigh. 719; 3 Me. 177. q-13 Ind. 375; 7 Blackf. 157; 5 Id. 314; 3 Id. 346; 2 Id. 371; 8 Ind. 499; 14 Id. 590; 21 Id. 206; 8 Id. 459; 7 Id. 270; 1 Id. 511; 2 Id. 377. r-4 Bl. Comm. 190; 1 Hale Pl. Cr. 466

unlawful, or likely to be attended with bodily mischief, yet the malice, express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter. In manslaughter there can be no accessories before the fact, because there has been no time for premeditation.[s] Involuntary manslaughter happens without intention to injure. Voluntary manslaughter happens from intention to produce the injury. Homicide may become manslaughter in consequence of provocation; by mutual combat; resistance to public officers, etc.; killing in the prosecution of an unlawful or wanton act; or killing in the prosecution of a lawful act improperly performed, or performed without lawful authority. The provocation which reduces the killing from murder to manslaughter is an answer to the presumption of malice, which the law raises in every case of homicide; it is, therefore, no answer where express malice is proved.[t] And to be available the provocation must have been reasonable and recent; for no words or slight provocation will be sufficient, and if the party has had time to cool, malice will be inferred.[u] In cases of mutual combat it is manslaughter only when one of the parties is killed.[v] When death ensues from duelling the rule is different; and such killing is murder. The killing of an officer by resistance to him while acting under lawful authority is murder; but if the officer be acting under a void or illegal authority, or out of his jurisdiction, the killing is manslaughter, or excusable homicide, according to the circumstances of the case.[w] When death ensues from the performance of a lawful act, it may in consequence of the negligence of the offender amount to manslaughter. For instance, if the death has been occasioned by negligent driving.[x] Again, when death ensues from the gross negligence of a medical or surgical practitioner, it is manslaughter. It is no crime for any person to administer medicine, but it is a crime to administer it so rashly and carelessly, or with such criminal inattention, as to produce death; and in this respect there is no difference between the most regular practitioner and the greatest quack.[y]

MAN-STEALING. See KIDNAPPING,[z] above.

MAYHEM. Simple mayhem consists in violently and unlawfully depriving another of the use of any bodily member, or in unlawfully and wilfully disabling the tongue or eye; slitting or biting the nose, ear, or lip of another. Malicious mayhem consists in the purposely, and with premeditation, committing any of the above acts. See GENERAL STATUTES.

At common law mayhem was an injury to any part of a man's body which might render him, in fighting, less able to defend himself, or annoy his adversary.[a] So, the cutting off the ear or nose was not held mayhem at common law.[b]

MENACE. See ABUSE; AFFRONT; ASSAULT, above.

MERGER is the absorption of a less offence in a greater. When a man commits a great crime which includes a lesser the latter is merged in the former. Murder when committed by blows necessarily includes the assault and battery; battery necessarily includes an assault; a burglary when accompanied with the felonious taking of personal property necessarily includes such larceny. In all these and similar cases the lesser crime is merged in or swallowed up by the greater. But when one offence is of the same character with the other, there can be no merger, as in case of a conspiracy to commit a misdemeanor, and the subsequent commission of the misdemeanor in pursuance of the conspiracy; the two crimes being of equal degree, there can be no legal merger.[c] Where the violation of a right admits of both a civil and criminal remedy, the right to prosecute is not merged in another. A defendant is liable in a civil action to the party injured either after his conviction,[d] or acquittal.[e]

MISDEMEANORS are offences punishable by fine, or imprisonment in the common jail, or both. They are all offences inferior to felonies.

MURDER is the act of unlawfully killing a human being with premeditated malice, by a person of sound mind or in possession of his reason.[f] See GENERAL STATUTES.

MUTILATION. See MAYHEM, above.

MUTINY is the unlawful insurrection or revolt of soldiers or seamen against the authority of their commanders; open resistance of officers or opposition to their authority. A mutiny is properly the act of numbers; but by statutes and ordinances for governing the army and navy, the acts which constitute mutiny are multiplied and defined; and acts of individuals, amounting to a resistance of the authority or lawful commands of officers, are declared mutiny. Officers beginning, causing, exciting, or joining mutiny are guilty of the offence. Mutiny is punishable in the navy by fine or imprisonment, or both.[g] And in the army by death or such other punishment as a court martial shall direct.[h]

NECESSITY is that which must not and cannot

s-1 Hale Pl. Cr. 218; Foster, 290; 5 Cush. 304. t-1 Russ. Cr. 440; Foster, 132; 1 East. Pl. Cr. 239. u-3 Wash. C. C. 515; 4 Penn. St. 264; 2 N. Y. 193; 25 Miss. 383; 3 Gratt. 594; 6 Blackf. 299; 8 Ired. 344; 18 Ala. (N. S.) 720; 15 Ga. 223; 10 Humphr. 141; 1 C. & K. 556; 5 C. & P. 324; 6 How. St. Tr. 769; 17 Id. 57; 1 Leach Cr. Cas. (4 Ed.) 151. v-J. Kel. 58, 119; 4 Dev. & B. 191; 1 Jones, 280; 2 C. & K. 814. w-1 Mood. Cr. Cas. 80, 132; 1 Hale Pl. Cr. 458; 1 East. Pl. Cr. 314; 2 Stark. N. P. Cas. 205. x-1 East. Pl. Cr. 263; 1 C. & P. 320; 6 Id. 129. y-1 Fost. & F. 519, 521; 3 C. & K. 202; 4 C. & P. 440; 1 Bennett & H. L. Cr. Cas. 46–48. z-4 Bl. Comm 219. a-1 How. Ch. 44, § 1; C. & M. 209. b-4 Bl. Comm. 205. c-4 Wend. 265. d-Latch, 144; Noy, 82; W Jones, 147; Styles, 346; 1 Mod. 282; 1 Hale Pl. Cr. 546. e-12 East 409, 1 Tayl. 58; 2 Hayw. 108. f-Co. 3d Inst. 47; 4 Bl. Comm. 195; 2 Chitty Cr. L. 724. g-Laws U. S. 1790, Vol. 1, Ch. 9, §§ 9, 12, pp 113, 115; Revision 1873-4, §§ 5359, 5360. h-Laws U. S. 1815, Vol. 3, Ch. 38, § 7; Revision 1873-4, § 1342, Arts. 21, 22, 23.

be otherwise, that which makes the contrary of a thing impossible. If man's actions are determined by causes beyond his control he acts from necessity, and is not responsible—nevertheless, no man can plead necessity in excuse for crime.

NIGHT WALKERS are those who sleep by day and walk by night for some unlawful pursuit. They are liable to arrest.[i]

OBSCENITY. See INDECENCY, above.

OBSTRUCTING PROCESS is any act by which one or more persons attempt to prevent, or do prevent the due execution of lawful process. This is an offence against public justice of a very high and presumptive nature; and more particularly so where the obstruction is upon criminal process; a person opposing an arrest upon criminal process becomes thereby an accessory in felony, and a principal in high treason.[j] The officer must be prevented by actual violence, or by threatened violence, accompanied by the exercise of force, or by those having capacity to employ it, by which the officer is prevented from executing his writ. The officer is not required to expose his person by a personal conflict with the offender.[k]

OBSTRUCTIONS TO HIGHWAYS; NAVIGATION; STREAMS; RAILWAYS; ETC. See GENERAL STATUTES.

OVERT ACTS are those which are open to view, apparent, unconcealed. Thus, an overt act of treason is distinguished from a secret design or intention not carried into effect; and even from words spoken. An overt act of treason is proof of the intention of the traitor, because it opens his designs; without an overt act, treason cannot be committed.[l]

PARDON is an act of grace proceeding from the power intrusted with the execution of the laws (or a body having power therefor) which exempts an individual upon whom it is bestowed from the punishment the law inflicts for a crime he has committed.[m] Absolute pardon frees the criminal unconditionally. Conditional pardon frees the criminal upon performance of the conditions annexed, and not otherwise.[n] General pardon extends to all offenders of the same kind; and is either express, as, when a general declaration is made that all offenders of a certain class shall be pardoned, or implied, as in case of the repeal of a penal statute.[o]

The pardoning power is lodged in the executive of the United States and of the various States, and in boards established by law. In some States a concurrence of one of the legislative bodies is required. It is to be exercised in the discretion of the power with whom it is lodged. In order to render pardon valid, it must express with accuracy the crime intended to be forgiven.[p] In case of a conditional pardon, if there be a breach of condition, the pardon is avoided.[q] The effect of pardon is to protect from punishment the criminal for the offence pardoned, but for no other.[r] But pardon for an assault and battery which afterwards becomes murder will not operate as a pardon of the murder.[s] In general, the effect of a full pardon is to restore the convict to all his rights; but to this there are some exceptions. 1. It does not restore civic capacity.[t] 2. It does not affect a status of other persons which has been altered, or a right which has accrued, in consequence of the commission of the crime or its punishment.[u] When pardon is general, either by an act of amnesty, or by the repeal of a penal law, it is not necessary to plead it; because the court is bound, *ex-officio*, to take notice of it;[v] and the criminal cannot waive such pardon, because by his admittance no one can give the court power to punish him when it judicially appears there is no law to do it. But when the pardon is special, to avail the criminal it must judicially appear that it has been accepted, and for this reason it must be specially pleaded,[w] and if he has obtained a pardon before arraignment, and instead of pleading it in bar he pleads the general issue, he is deemed and taken to have waived the benefit of it, and he cannot afterwards avail himself of it in arrest of judgment.[x]

All contracts made for buying or procuring a pardon for a convict are void.[y]

PENALTIES are pecuniary punishments for the commission of public offences. See FINES, above.

PERJURY is the act or crime of (wilfully and corruptly) making a false oath when lawfully administered[z] in any judicial proceeding.[a] The intention must be wilful; the oath must be taken and the falsehood asserted with deliberation and consciousness of the nature of the statement made; for if it has arisen in consequence of inadvertency, surprise or mistake of the import of the question, then there is no corrupt motive.[b] The oath must be false; the party must believe that what he is swearing is false. The party must be lawfully sworn; an oath therefore taken by a private person or before an officer having no jurisdiction will not amount to perjury. The proceedings must be judicial;[c] and perjury cannot

i-See 2 Hawk. Pl. Cr. 120; 3 Taunt. 14; Hammond N. P. 135. j-4 Bl. Comm. 128; Hawk. Pl. Cr. Ch. 17, § 1; 1 Russ. Cr. 360. k-2 Wash. C. C. 169; see 3 Id. 335; 12 Ala. (N. S.) 199. l-2 Chitty Cr. L. 40; Arch. Cr. Pl. 379; 4 Sharsw. Bl. Comm. 79; Co. 3d Inst. 12; 1 Dall. 33; 2 Id. 346; 1 Cranch, 75; 3 Wash. 234; 2 Gabbett Cr. L. 890, 891. m-7 Pet. 160. n-1 Bail. 283; 10 Ark. 284; 1 M'Cord, 176; 1 Park. Cr. Cas. 47. o-2 Overton, 423. p-4 Sharsw. Bl. Comm. 400; 3 Wash. C. C. 335; 7 Ind. 359; 1 Jones, 1. q-1 M'Cord, 176; 1 Bail. 283; 2 Id. 516; 2 Caines, 57; 1 Park. Cr. Cas. 47; see 3 Johns. Cas. 333; 9 Part. (Ind.) 20; 1 Bay, 234. r-10 Ala. 475; 1 Bay, 34. s-12 Pick. 496; see Plowd. 401; 1 Hall, 426. t-2 Leigh, 724; see 1 Strobh. 150; 2 Wheel. Cr. Cas. 451; 33 N. H. 388. u-10 Johns. 232; 4 Wash. C. C. 64; 2 Bay, 565; 5 Gilman, 214. v-1 Baldw. C. C. 91. w-7 Pet. 150, 162. x-1 Rolle, 297; see 1 Dyer, 34, *a*; Keilw. 58; T. Raym. 13; 3 Met. (Mass.) 453. y-4 Bouv. Inst. n. 3857. z-Co. a-2 Bishop Cr. L. § 860; 4 Blackf. 355; 7 Id. 25, 49; 8 Id. 452. b-Hawk. Pl. Cr. Bk. 1, Ch. 69, § 2; Coke Eliz. 492; 2 Shaw. 165; 4 McLean C. C. 113; 3 Dev. 114; 7 Dowl. & R. 665; 5 B. & C. 346; 7 C. & R. 17; 11 Q. B. 1028; 1 Rob. 729; 3 Ala. (N. S.) 602. c-5 Mo. 21; 1 Bail. 595; 11 Met. (Mass.) 406; 5 Humph. 83; 1 Johns. 49; Wright, 173; Russ. & R. 459.

be committed when the matter is not regularly before the court.[d] The assertion must be absolute; but if a man swears that he believes that to be true which he knows is false, it will be perjury,[e] and it is immaterial whether the testimony is given in answer to a question or voluntarily.[f] On a question of estimation of the value of a thing in question, there can be no perjury,[g] unless in some cases a false statement of opinion may become perjury.[h] The oath must be material to the question depending.[i] Perjury may be committed by making a false affirmation as well as a false oath, by an atheist, heathen, Jew, etc., as well as a Christian.

PERSONATION (false) is the assumption of the character of another without lawful authority, for the purpose of committing some act to the prejudice of him personated, without his consent. This was a misdemeanor at common law and punishable as such.[j] See GENERAL STATUTES.

PETIT LARCENY. See GRAND LARCENY, above.

PETIT TREASON. See OVERT ACT, above; TREASON, below.

PIRACY is the unlawful act, practice, or crime of robbery or forcible depredation on the high seas; a crime that answers to robbery on the land.[k] The penalty for this offence is death.[x] See title COPYRIGHT, above.

POLYGAMY. See BIGAMY, above.

PREMEDITATION. See INTENTION; MALICE, ETC., above.

PRESENTMENT. See INDICTMENT, above.

PRINCIPAL. See ACCESSORY, above.

PROFANITY. See GENERAL STATUTES.

PROSECUTOR. See ACCUSATION, above.

PROSTITUTION. See HOUSE OF ILL-FAME; LEWDNESS; NIGHT-WALKER, above.

PROVOCATION is that which excites anger; the cause for resentment. No words, epithets, or vituperation whatever will justify an assault, or assault and battery. Provocation simply, unaccompanied by a crime or misdemeanor, will not justify any breach of the peace. In case of homicide, provocation shown to be sufficient may reduce the offence from murder to manslaughter. But when the provocation is given for the purpose of justifying or excusing an intended murder, and the party provoked is killed, it is no justification.[m]

PUNISHMENT is some fine, forfeiture, or penalty prescribed or warranted by law, inflicted upon and suffered by a person for the commission of a public offence, or for the omission of some duty or act required by law, lawfully imposed by a competent judicial tribunal. The object of punishment is two-fold: to reform the offender, and deter him and others from committing like offences; and to protect society.[n]

Punishments may be corporal or otherwise: corporal by death, whipping, imprisonment, or banishment, etc.; otherwise by fine, forfeiture, or other deprivation or penalty imposed upon the goods of the offender, etc.

PUTTING IN FEAR. See PIRACY, above; ROBBERY, below.

QUARREL. See AFFRAY; DUELLING, above.

RAPE is the carnal knowledge of a woman by a man, forcibly and against her will. The knowledge of a woman's person must be forcibly and against her will; and if her consent has not been voluntarily and freely given, the offence is complete; nor will any subsequent acquiescence on her part do away with the guilt of the ravisher. A consent obtained from a woman by actual violence, by confinement, or threats of murder, or by the administration of stupefying drugs, is not such a consent as will shield the offender, or turn his crime into adultery or fornication; and if the connection took place when she was in a state of insensibility from liquor, having been made drunk by the prisoner, though the liquor was given only for the purpose of exciting her, it is a rape.[o] Having carnal knowledge with a woman by a fraud which induces her to suppose it is her husband does not amount to rape;[p] but the party may be indicted for assault. A husband cannot be guilty of a rape on the wife, for his act is not unlawful; but he may be a principal in the second degree of a rape committed on his wife, as where he held her while his servant committed the rape.[q] As a child under ten years of age is incapable, at law, of giving her consent, it follows that the offence may be committed on such child whether she consents or not.

A male infant under fourteen years of age is supposed by law incapable of committing the offence.[r] But not only can an infant under fourteen years, if of sufficient mischievous discretion, but even a woman may be guilty as principal in the second degree.

Above the age of fourteen years a male is always presumed capable of this offence.

Penetration alone, without emission, is sufficient.[s]

REPRIEVE is a withdrawal of sentence for an interval of time, and operates in delay of execution.[t] It is granted by the favor of the pardoning power. They are granted from a necessity of law; for example, when a woman is convicted of a capital offence, after judgment

[d]-4 Hawks. 182; 2 Hayw. 56; 3 M'Cord, 308; 8 Pick. 453; 1 Nott. & M'C. 546; 9 Mo. 824; 18 Barb. 407; 10 Johns. 167; 26 Me. 33; 7 Blackf. 25; 5 B. & Ald. 634; 1 C. & P. 258; 9 Id. 513. [e]-10 Q. B. 670; 3 Wils. 427; 2 W. Bl. 881; 1 Leach, 242; 6 Binn. 249; Gilbert Ev. (Lofft Ed.) 662. [f]-3 Zabr. 49; 12 Met. (Mass.) [g]-Sid. 146; 1 Kebl. 510. [h]-10 Q. B. 670; 15 Ill. 357; 3 Ala. (N. S.) 602; 3 Strobh. 147; 6 Blackf. 62; 1 Leach Cr. Cas. (4 Ed.) 325. [i]-1 T. R. 63; 12 Mass. 274; 3 Murph. 123; 4 Mo. 47; 2 Ill. 80; 9 Miss. 149; 6 Penn. St. 170; 2 Cush. 212. [j]-2 East. Pl. Cr. 1010; 2 Russ. Cr. 479. [k]-3 Wheat. 610; 5 Id. 153, 163; 3 Wash. C. C. 209; 1 Kent Comm. 183. [x]-Laws U. S. 1790, Vol. 1, Ch. 9, § 110, p. 114. [m]-2 Gilbert Ev. (Lofft) 753. [n]-See 4 Sharsw. Bl. Comm. 7; Rutherford Inst. Bk. 1, Ch. 18. [o]-1 Denio Cr. Cas. 89; 1 C. & K. 746. [p]-Russ. & R. 487; 6 Cox Cr. Cas. 412; Dearsl. Cr. Cas. 397; 8 C. & P. 265, 286; 1 C. & K. 415. [q]-1 Hargrave St. Tr. 388. [r]-1 Hale Pl. Cr. 631; 8 C. & P. 738. [s]-Addis. 143; 2 Const. 351; 1 Beck. Med. Jur. 140; 4 Chitty Bl. Comm. 213, n. 8. [t]-4 Bl. Comm. 394.

she may allege pregnancy, in delay of execution.[u] The court is also bound to grant a reprieve when the prisoner becomes insane.[v]

REQUISITION. See FUGITIVE FROM JUSTICE, above.

REPRIMAND is censure pronounced by a public officer against an offender. This species of punishment is used by legislative assemblies to punish members or others guilty of impropriety of conduct toward them or the presiding officer. It is usually delivered by the Speaker.

RESCUE. See ARREST, ESCAPE, above.

RESPITE. See REPRIEVE, above.

RIOTS are acts done in a violent and tumultuous manner, by three or more persons, to the terror of the people, whether the act intended was lawful or unlawful.[w] A riot cannot be committed by fewer than three persons;[x] a judgment against one person for a riot would be void.[y] It must be proved: 1. That there was an unlawful assembling,[z] or a lawful assembly converted into a riot.[a] 2. That there was actual violence and force on the part of the rioters, or such a tendency to force and violence as to strike terror to the public mind.[b] 3. That the defendants acted in the riot, and were participants in the disturbance.[c]

ROBBERY is the forcible and felonious taking, from the person of another, goods, money, personal property or any article of value, by violence or putting in fear.[d] The property must be taken by force or putting in fear,[e] and fear must be induced from apprehension of danger.[f] The knocking down of a man; the snatching of an ear-ring from the ear;[g] pulling out a watch from a fob, by the chain,[h] are examples of violence; but snatching property from a person unawares will not be robbery unless some injury is done to the person.[i] Presenting a pistol and demanding money;[j] threatening to take and kill another child;[k] to destroy one's house;[l] are examples of putting in fear.

Obtaining money by false pretences, misrepresentation or fraud, unaccompanied by violence or putting in fear, is not robbery.

If the property is once taken it will be no defence that the robber delivered it back to the owner.[m]

If a man under an impression that the property is his own obtain it by threats, it is merely trespass and not robbery.[n]

ROUT is a clamorous and tumultuous assembly. It is a disturbance of the peace by persons assembled to do a thing which, if executed, would have made them rioters. It generally agrees in all particulars with a riot, except only in this—that it may be a complete offence without the execution of the intended purpose.[o]

SUBORNATION OF PERJURY is the offence of procuring another to commit legal perjury, who, in consequence of the persuasion, takes the oath to which he has been incited.[p] To complete the offence the false oath must be actually taken, and no abortive attempt to solicit will complete the crime.[q] But the criminal solicitation to commit perjury, though unsuccessful, is a misdemeanor at common law.[r]

SURRENDER OF CRIMINAL. See FUGITIVE FROM JUSTICE, above.

SWEAR. See PERJURY; SUBORNATION OF PERJURY, above.

SWINDLER. See FALSE PRETENCES; FRAUD, etc., above.

SMUGGLING is the unlawful and fraudulent taking into a country or out of it any articles of merchandise prohibited by law, or to avoid the payment of duties upon the same.

SODOMY is a carnal copulation by human beings with each other against nature, or with a beast.[s] It may be committed between two persons, both of whom consent, even between husband and wife;[t] and both may be indicted.[u] Penetration of the mouth is not sodomy.[v]

STEALING. See LARCENY, above.

SECONDS. See DUELLING, above.

SELF-DEFENCE is the act of defending one's person and property from injury.

A man may defend himself and even commit a homicide for the prevention of any forcible and atrocious crime, which, if completed, would amount to a felony,[w] and, of course, under like circumstances, mayhem, wounding and battery would be excusable at common law.[x] A man may repel force by force in defence of his person, property, or habitation against any one who manifests, intends, attempts, or endeavors, by violence or surprise, to commit a forcible felony, such as murder, rape, robbery, arson, burglary, and the like. In these cases he is not required to retreat, but he may resist, and even pursue his adversary, until he has secured himself from all danger.[y]

A man may defend himself when no felony has been threatened or attempted: 1. When the assailant attempts to beat another, and there is no mutual combat; as where one meets another and attempts to commit or does commit an assault and battery on him, the person attacked may defend himself;[z] and in

u-See Co. 3d Inst. 17: 1 Hale Pl. Cr. 368; 2 Id. 413; 4 Bl. Comm. 395. v-4 Hargrave St. Tr. 205, 206; Co. 3d Inst. 4; Hawk. Pl. Cr. Bk. 1, Ch. 1, § 4; 1 Chitty Cr. L. 757. w-Hawk. Pl. Cr. Ch. 65, § 1; see 3 Blackf. 209; 4 Id. 72; 3 Rich. 337; 5 Penn. St. 83. x-3 Inst. 176. y-4 Blackf. 72. z-18 Me. 346; 2 Campb. 328. a-15 N. H. 169. b-2 Campb. 369: see 1 Hill (S. Ca.) 362. c-1 Morr. 142. d-4 Bl. Comm. 243; 1 Baldw. C. C. 102; see 12 Ga. 293. e-15 Ind. 288. f-Fost. 128. g-1 Leach Cr. Cas. 320, 335. h-R. & R. 419. i-2 East. Pl. Cr. 702, 709; 1 Leach, 290; 1 C. & P. 304. j-Fost. 129. k-2 East. Pl. Cr. 718, 735. l-Id. 731. m-1 Hawk. Ch. 34, § 2; 1 Hale, 533. n-3 C. & P. 409. o-Hawk. Pl. Cr. Ch. 65, § 14; 1 Russ. Cr. 253; 4 Bl. Comm. 140; Viner Abr. *Riots, etc.* (A. 2); Com. Dig. Forcible Entry, etc. (D. 9). p-Hawk. Pl. Cr. Bk. 1, Ch. 69, § 10. q-2 Show. 1; 5 Met. (Mass.) 241. r-2 East. 17; 6 Id. 464; 2 Chitty Cr. L. 317, 480. s-2 Bishop Cr. L. t-8 C. & P. 604. u-1 Denio Cr. Cas. 464: 2 C. & K. 869. v-Russ. & R. Cr. Cas. 331. As to emission, see 12 Co. 36; 1 Va. Cas. 307. w-17 Ala. (N. S.) 587: 5 Ga. 85; 1 Jones, 190; 30 Miss. 619; 14 B. Mon. 103, 614; 3 Wash. C. C. 515. x-1 East. Pl. Cr. 271; 4 Bl. Comm. 180. y-7 J. J. Marsh, 478; 4 Bingh. 628. A woman may defend her chastity by killing her assailant. z-4 Denio, 448; Hill & D. 229; 24 Vt. 218; 3 Harring. 22; 3 Brev. 515; 5 Gray, 475; 3 C. & P. 31; 9 Id. 474; see 10 Ired. 214.

case of an offer or attempt to strike another, when sufficiently near, so that there is danger, the person assailed may strike first, and is not required to wait until he has been struck.[a] 2. When there is a mutual combat upon a sudden quarrel. In these cases both parties are aggressors; and if in the fight one is killed, it will be manslaughter at least, unless the survivor can prove two things, viz., that before the mortal stroke was given, he had refused any further combat, and had retreated as far as he could with safety,[b] and that he killed his adversary from necessity, to avoid his own destruction.[c]

A man may defend himself against animals, and he may, during the attack, kill them, but not afterwards.[d]

TAKING. See ASSAULT, above.

TERROR. See AFFRAY; RIOT; ROUT, above.

THOUGHT. See INTENTION; MALICE.

TREASON is the actual levying war against the United States; adhering to their enemies and giving them aid and comfort. In England high treason affects the sovereign or state, such as offences above enumerated. Petit treason affects only individuals, as breach of fidelity. Treason is the highest crime of a civil nature of which a man can be guilty. It is punishable by death or imprisonment at hard labor, not less than five years, and fine not less than ten thousand dollars, and disqualification for any office under the United States.[e] No person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

TRESPASS. See MALICIOUS AND MISCHIEVOUS TRESPASS, above.

UNLAWFUL ASSEMBLY is a disturbance of the public peace by three or more persons, who meet together with an intent mutually to assist each other in some unlawful enterprise of a private nature with force and violence. If they move forward towards its execution it is then a rout; if they actually execute their design it amounts to a riot.[f]

VAGRANTS are described as follows:

1. "All persons who unlawfully return into any district whence they have been legally removed, without bringing a certificate from the proper authorities of the city or district to which they belong, stating that they have a settlement therein."

2. "All persons who refuse to perform the work which shall be allotted to them by the overseers of the poor, as provided by law."

3. "All persons going about from door to door, or placing themselves in streets, highways, or other roads, to beg or gather alms, and all persons wandering abroad and begging, who have no fixed place of residence in the township, ward, or district in which the vagrant is arrested."

4. "All persons who shall come from any place without the State or Commonwealth to any place within it and shall be found loitering or residing therein, and who follow no labor, trade, occupation, or business, and have no visible means of subsistence, and can give no reasonable account of themselves or their business in such place."

The punishment for this offence is labor upon the poor farm, upon the roads or highways, or confinement in the common jail, work-house, house of correction, or poor-house for a term of from ten days to six months. See GENERAL STATUTES.

DOMICIL—LAW OF.

DOMICIL is that place where a man has his true, fixed, and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.[h]

The law of the place of domicil governs as to all acts of the parties when not controlled by the law of the place where the contract was made or law of the place where the thing is situated. Personal property of the woman follows the law of domicil upon marriage. A divorce valid under the law of domicil of both parties is good everywhere.[i] But there must be an actual domicil of one party at least,[j] and personal jurisdiction over both parties to make a divorce binding extra territorially.[k]

The state and condition of the person, according to the law of his domicil, will generally, though not universally, be regarded in other countries as to acts done, rights acquired, or contracts made in the place of his native domicil; but as to acts, rights, and contracts done, acquired or made out of his native domicil, the law of place will generally govern in respect to his capacity and condition.[l] If a person goes into a foreign country and engages in trade there, he is, by the law of nations, to be considered a merchant of that country, and subject for all civil purposes, whether that country be hostile or neutral,[m] and this whether the effect be to render him hostile or neutral in respect to his *bona fide* trade.[n]

The disposition of, succession to, or distribution of the personal property of a decedent, wherever situated, is to be made in accordance

a-B. N. P. 18; 2 Roll. Abr. 547. b-8 N. Y. 396; 4 Dev. & B. 491; 15 Ga. 117; 17 Id. 465; 9 Ired. 485; 10 Id. 214; 1 Ohio St. 66; 1 Hawks. 78; 2 10 Selfridge's Case. c-32 Me. 279; 3 Halst. 220; 11 Humph. 200; 4 Barb. 460; 2 N. Y. 193; Coxe, 424; 25 Ala. (N. S.) 15; 8 B. Mon. 49; 16 Ill. 17. d-1 C. & P. 106; 10 Johns. 365; 13 Id. 12. e-Laws U. S. 1862, Vol. 12, Ch. 195, §§ 1, 3, p. 589; Revision 1873-4, §§ 5332-3. f-4 Bl. Comm. 140; 1 Russ. Cr. 254; Hawk. Pl Cr. Ch. 65, § 9, Com. Dig. Forcible Ent. (D. 10); Viner Abr. Riots, etc. (A.) h-See DOMICIL, ante. i-Story Confl. L. 230, 8; 9 Me. 140; 2 Blackf. 407; 8 Ala. (N. S.) 45, 11 Id. 826; 14 Mass. 227; 8 N. H. 160; 13 Johns. 192; 8 Paige Ch. 406; 12 Barb. 640; 7 Dana, 181; 3 W. L. Jour. 475; Bishop Marr. & Div. § 720. j-3 Hagg. Eccl. 639; Russ. & R. Cr. Cas. 237; 2 Clark. & F. Ho. L. 567; Furguson Marr. & Div. 68; 8 N. H. 160; 14 Mass. 227; 13 Johns. 192; 15 Id. 121; 13 Wend. 407. 8 Paige Ch. 406; 7 Dana, 181; 2 Blackf. 407. k-1 Dev. & B. Eq. 568, 15 Johns. 121, 7 Dana, 181; see 9 Me. 140. l-2 Kent Comm. 234; see *Lex loci*. m-8 T. R. 31, 3 B. & P. 113; 3 C. Rob. Adm. 12; 4 Id. 107, 1 Hagg. Adm. 103, 104; 1 Pet. C. C. 159, 2 Cranch. 64. n-1 Kent Comm. 75; 3 B. & P. 113; 1 C. Rob. Adm. 249.

to the law of his actual domicil at the time of his death;[o] the principle applies equally to cases of voluntary transfer, of intestacy, and of testaments.[p]

Wills are to be governed by the law of the domicil as to the capacity of the parties,[q] and as to their validity and effect in relation to the transfer of personal property,[r] but by the law of the place where the thing is situated as to the transfer of real property.[s] The forms and solemnities of the place of domicil must be observed.[t] The local law is to determine the character of property.[u] The interpretation of a will is to be according to the law of the place of actual domicil.[v] The succession to the personal property of an intestate is governed exclusively by the law of his actual domicil at the time of his death.[w] This includes the ascertainment of the person who is to be their heir.[x] The question as to whether debts are to be paid by the administrator from the personalty or realty is to be decided by the law of his domicil.[y]

An assignment of property for the benefit of creditors, valid by the law of the domicil, is generally recognized as valid everywhere,[z] in the absence of a positive statute to the contrary;[a] but not to the injury of citizens of the foreign state in which property is situated.[b] But a compulsory assignment by force of statute is not of extra territorial operation.[c] Distribution of the effects of insolvent or bankrupt debtors is to be made according to the law of the domicil, subject to the same qualifications.[d]

EX POST FACTO LAW.

Ex post facto is, after the act. An *ex post facto* law is a statute which would render an act punishable in a manner in which it was not punishable when it was committed.[e] A law made to punish acts committed before the existence of such law, and which had not been declared crimes by preceding laws.[f] By the Constitution of the United States Congress is forbidden to pass *ex post facto* laws.[g] And by Section X., Subdiv. 1, of the same instrument, as well as by our own constitution, a similar restriction is placed upon the State legislature. Such law is void as to those cases in which, if given effect, it would be *ex post facto;* but so far only. In cases arising under it, it may have effect; for as a rule for the future it is not *ex post facto*. There is a distinction between *ex post facto* laws and *retrospective* laws; every *ex post facto* law must necessarily be retrospective, but every retrospective law is not *ex post facto* law; the former only are prohibited. It is fully settled that the term *ex post facto*, as used in the Constitution, is to be taken in a limited sense, as referring to criminal or penal statutes alone, and that the policy, the reason, and the humanity of the prohibition against passing *ex post facto* laws do not extend to civil cases, to cases that merely affect the private property of citizens. Some of the most necessary acts of legislation are, on the contrary, founded upon the principles that private rights must yield to public exigencies.[h]

Laws under the following circumstances are to be considered *ex post facto* laws within the words and intent of the prohibition:

1. Every law that makes an act done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

2. Every law that aggravates a crime, or makes it greater than it was when it was committed.

3. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed; though it would be otherwise of a law mitigating the punishment.[i]

4. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence, in order to convict the offender; though it might be otherwise of a law merely modifying the remedy or mode of procedure.[j]

The right to pass retrospective laws, with the exceptions above mentioned, become obligatory, unless prohibited by the constitution of the State.[k] And laws should never be consid-

o-2 Kent Comm. 429; 8 Sim. Ch. 310; 3 Story C. C. 755; 11 Miss. 617; 1 Speers Eq. 3; 4 Bradf. Surr. 127; 15 N. H. 137. p-5 B. & C. 451; 3 Story C. C. 755; 3 Hagg. Eccl. 273; 3 Curt. Eccl. 468; 1 Binn. 336; 9 Pet. 503; Story Confl. L. § 381; 4 Johns. Ch. 460; 2 Harr. & G. 191; 6 Pick. 286; 9 N. H. 137; 8 Paige Ch. 519; 1 Mas. C. C. 381; 6 Monr. 52; 17 Ala. (N. S.) 286; 29 Id. 72; 6 Vt. 374. Stocks are considered as personal property in this respect; 1 Crompt. & J. 151; Bligh (N. S.) 15; 1 Jarman Wills, 3. q-1 Jarman Wills, 3. r-4 Black. 53; 22 Me. 304; 2 Ill. 373; 2 Bail. 436; 5 Pet. 519; 2 B. Mon. 582; 8 Paige Ch. 519; 3 Curt. Eccl. 468; 11 N. H. 88; 1 M'Cord, 354; 5 Gill. & J. 483. s-1 Blackf. 372; 6 Monr. 527; 22 Me. 303; 8 Ohio, 239; 4 Me. 138; see *Lex rei Sitæ*. t-2 Ves. & B. Ch. 127; 3 Ves. Ch. 192; 8 Sim. Ch. 279; 4 Hagg. Eccl. 346; 4 Mylne & C. 76; 2 Harr. & J. 191; 1 Binn. 336; 4 Johns. Ch. 460; 1 Mas. C. C. 381; 12 Wheat. 169; 9 Pet. 483. u-6 Paige Ch. 630; Story Confl. L. § 447; Erskine Inst. *b*, 3, tit. 9, § 4. v-3 Clark & F. Ho. L. 544, 570; 4 Bligh, 502; 3 Sim. Ch. 298; 2 Brown Ch. 38; Story Eq. Jur. § 1068; 9 Pet. 483. w-2 Ves. Ch. 35; 2 Bos. P. 229 5 B. & C. 438; 8 Sim. Ch. 310; 14 Mart. 99; 3 Paige Ch. 182; 2 Harr. & J. 193; 4 Johns. Ch. 460; 1 Mas. C. C. 418; 15 N. H. 137.

x-Story Confl. L. § 481; 2 Ves. Ch. 35; 2 Hagg. Eccl. 455; 2 Keen, 293. y-Story Confl. L. § 528; 9 Mod. 66; Chanc. Prec. 511; 2 Ves. & B. Ch. Ir. 131; 2 Keen. 293. z-4 Johns. Ch. 471; 2 H. Bl. 402; 4 T. R. 182; 2 Rose. Bank, 97; 8 Ves. Ch. 82; 1 Cr. M. & R. 296; see 6 Pick. 312. a-6 Pick. 286; 14 Martin, 93, 100; 6 Binn. 353; Story Confl. L. § 411. b-5 East. 131; 17 Mart. 596; 6 Binn. 360; 5 Cranch. 289; 12 Wheat. 213; 5 N. H. 213; 1 Paige Ch. 237; 1 Harr. & M'H. 236. c-20 Johns. 229; 6 Binn. 353; 6 Pick. 286. d-Story Confl. L. §§ 323–328, 423, *a.*; see CONFLICT OF LAWS, above. e-6 Cranch. 138; 1 Kent Comm. 408. f-Lieber Encyc. Am.; 10 Mass. 188; 11 La. 175; 5 Met. (Mass.) 187; 4 Barb. 505; Wall Jr. C. C. 217; 9 Ired. 99; 1 Texas, 673; 13 Me. 255; 27 Miss. 704; 1 Bosw. 673. g-U. S. Const. Art. 1, § 9. h-3 Dall. 386; 8 Wheat; 89; 17 How. 463; 6 Cranch. 87; 8 Pet. 88; 11 Id. 421; see 1 Cranch. 109; 9 Id. 374; 1 Gall. C. C. 105; 2 Pet. 380, 523, 627; 3 Story Const. 212; Sergeant Const. L. 356; 2 Pick. 172; 11 Id. 28; 9 Mass. 363; 2 Root, 350; 5 Monr. 133; 1 J. J. Marsh. 563; 3 N. H. 475; 7 Johns. 488; 6 Binn. 271; 2 Pet. 681. i-3 Story Const. § 212. j-3 Dall. 390. k-4 S. & R. 364; 3 Dall. 396; 1 Bay, 179; 7 Johns. 477; see 3 S. & R. 169; 2 Cranch. 272; 2 Pet. 414; 8 Id. 110; 11 Id. 420; 1 Baldwin C. C. 74; 5 Penn. St. 149.

ered as applying to cases which arose previously to their passage, unless the legislature have clearly declared such to be their intention.[l]

FOREIGN LAW.

FOREIGN LAWS are the laws of a foreign country,[m] not the laws of the different States of this country.

The courts do not judicially take notice of foreign laws; and they must, therefore, be proved as facts.[n] The manner of proof varies according to circumstances. As a general rule, the best testimony or proof is required; for no proof will be received which presupposes better testimony attainable by the party who offers it. When the best testimony cannot be obtained, secondary evidence will be received.[o]

Exemplified or sworn copies of written laws and other public documents must, as a general thing, be produced, when they can be procured; but should they be refused by the competent authorities, then inferior proof may be admitted.[o] Where our own government has promulgated a foreign law or ordinance of a public nature as authentic, that is held sufficient evidence of its existence.[p] When foreign laws cannot be proved by some mode which the law respects as being of equal authority to an oath, they must be verified by the sanction of an oath. The usual modes of authenticating them are by an exemplification under the great seal of the State, or by a copy proved by oath to be a true copy, or by a certificate of an officer authorized by law, which must itself be duly authenticated.[q] Foreign unwritten laws, customs, and usages may be proved, and are ordinarily proved, by parol evidence; and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show that fact.[r] Witnesses in Cuba, examined under a commission touching the execution of a will, testified, in general terms, that it was executed according to the law of that country; and, it not appearing from the testimony that there was any written law upon the subject, the proof was held sufficient.[s] A defendant pleaded infancy in an action upon a contract governed by the law of Jamaica; held, that the law was to be proven as a matter of fact, and that the burden lay upon him to show it.[t]

Proof of such unwritten law is usually made by the testimony of witnesses learned in the law and competent to state it correctly under oath.[u] The public seal of a foreign sovereign or state affixed to a writing, purporting to be a written edict, or law, or judgment, is of itself the highest evidence, and no further proof is required of such public seal.[v] But the seal of a foreign court is not, in general, evidence without further proof, and must, therefore, be established by competent testimony.[w]

The acts of the legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto.[x] But the rules prescribed by acts of Congress do not exclude every other mode of authentication, and courts may admit proof of the acts of the legislatures of the several States, although not authenticated under the acts of Congress. Accordingly, a printed volume, purporting on its face to contain the laws of a sister State, is admissible as *prima facie* evidence to prove the statute law of that State.[y]

The effect of foreign laws when proved is properly referable to the court. The object of the proof of foreign laws is to enable the court to instruct the jury what is, in point of law, the result from foreign laws to be applied to the matters in controversy before them. The court is, therefore, to decide what is the proper evidence of the laws of a foreign country; and when evidence is given of those laws, the court is to judge of their applicability to the matter in issue.[z]

FORUM—LAW OF.

The law of the forum (*lex fori*) is the law of the country, to the tribunal of which appeal is made,[a] or where the action or proceeding is instituted, or the remedy sought.

The forms of remedies, modes of proceeding, and execution of judgments are to be regulated solely and exclusively by the laws of the place where the action is instituted.[f] The law of the forum governs as to the nature, extent, and character of the remedy,[g] as in case of instruments considered sealed where made, but not in the country where sued upon,[h] and decides as to the deprivation of the remedy. The law of the forum is to decide who are proper parties to a suit.[h] Foreign corporations may sue[i] and be sued, when they have property within the jurisdiction.[j] Arrest and imprisonment may be allowed by the law of

l-12 La. 352; see Barrington Stat. 466, *n.*; 7 Johns. 477; 1 Kent Comm. 455; Taylor Civ. L. 168; Code, 1, 14, 7; Bracton. 1, 4, *f*, 228; Story Const. § 1393; 1 McLean C. C. 40; 1 Meigs, 437. 3 Dall. 391; 1 Blackf. 193; 2 Gall. C. C. 139; 1 Yerg. 360; 5 Id. 320; 12 S. & R. 330. m-See ante, EVIDENCE. n-Cowp. 144; 3 Esp. Cas. 163; 3 Campb. 166; 2 Dow. & C. Ho. L. 171; 1 Cranch, 38; 2 Id. 187, 236, 237; 6 Id. 274; 2 Harr. & J. 193; 3 Gill. & J. 234; 4 Conn. 517; 4 Cow. 515, 516, *n.*; 1 Pet. C. C. 229; 8 Mass. 99; 1 Paige Ch. 220; 10 Watts, 158. o-2 Cranch. 237. p-1 Cranch, 38; 1 Dall. 462; 6 Binn. 321; 12 S. & R. 203. q-2 Cranch, 238; 2 Wend. 411; 6 Id. 475; 5 S. & R. 523; 15 Id. 84; 2 Wash. C. C. 175. r-15 S. & R. 87; 2 La. 154. s-8 Paige Ch. 446. t-8 Johns. 190. u-2 Cranch, 237; 1 Pet. C. C. 225; 2 Wash. C. C. 175; 15 S. & R. 84; 4 Johns. Ch. 520; Cowp. 174; 2 Hagg. Adm. App. 15-144. In England certificates of persons in high authority have been allowed as evidence in such cases. 3 Hagg. Eccl. 767, 769. v-2 Cranch, 238; 2 Conn. 85; 1 Wash. C. C. 363; 4 Dall. 413, 416; 6 Wend. 475; 9 Mod. 66. w-3 Johns. 310; 2 Harr. & J. 193; 4 Cow. 526, *n.*; 3 East. 221. x-Act of Congr. May 26, 1790. y-4 Cranch, 384; 12 S. & R. 203; 6 Binn. 321; 5 Leigh. 571. z-Story Confl. L. § 638; 2 Harr. & J. 193; 3 Id. 234, 242; 4 Conn. 517; Cowp. 174. a-5 Clark & F. Ho. L. 1. f-8 Id. 121; 11 M. & W. 877; 10 B. & C. 903; 5 La. 295; 2 Rand. 303; 6 Humph. 45; 2 Ga. 158; 13 N. H. 321; 24 Barb. 68; 4 Zabr. 333; 9 Gill. 1; 17 Penn. St. 91; 18 Ala. (N. S.) 248; 4 McLean C. C. 540; 5 How. 83; 11 Ind. 385; 33 Miss. 423. g-17 Conn. 500; 37 N. H. 86; 2 Pat. & H. 144. h-4 Cow. 508; 5 Johns. 239; 2 Caines, 362; 1 B. & P. 360; 8 Pet. 361; 2 Gill. & J. 234; 3 Conn. 523; 4 Id. 47, 49; 8 How. 451; 9 Mo. 56, 157. i-11 Ind. 485; 33 Miss. 423; Merlin Rep. Etrang, § ii; Westlake Priv. Int. L. 121. j-8 B. & C. 427; 9 Ves. Ch. 347; 4 Johns. Ch. 370; 13 Pet. 519. j-9 N. H. 394; 3 Met. (Mass.) 420 16 Beav. Rolls, 287.

the forum, though they are not by the law of the place where the contract was made.[l] Where the debt is discharged by the law of the place creating it, such a discharge will amount to a discharge everywhere.[m] It must be a discharge from the debt, and not an exemption from the effect of particular means of enforcing the remedy.[n] The forms of judgment and execution are to be determined by the law of the forum.[o] For the LAW OF INTEREST, as affected by the law of the forum, see CONFLICT OF LAWS, above. For DAMAGES, see title, DAMAGES, ante.

Statutes of limitation affect the remedy only, and, hence, the law of the forum will be the governing law.[p] But these statutes restrict the remedy for citizens and strangers alike.[q] The restriction applies to a suit on a foreign judgment.[r]

The right of set-off is to be determined by the law of the forum.[s] Liens, implied hypothecations and priorities of claim generally, are matters of remedy.[t] A prescriptive title to personal property acquired in a former domicil will be respected by the law of the forum.[u]

Questions of the admissibility and effect of evidence are to be determined by the law of the forum.[v]

The law of the place is presumed to be that of the forum till the contrary is shown,[w] and also the law of the place where the thing is situated.[x]

INTERNATIONAL LAW is that existing and regulating the mutual intercourse between different nations. It is distinguished as the rights among nations and the rights of nations. The natural law, or the doctrine of rights and of state, forms the scientific basis of international law; for nations, like lesser communities, and like individuals, have rights and correlative obligations, moral claims, and duties. The particular sources of international law are jural and moral. The jural elements are: 1. The rights of states or nations as such, deducible from its nature and its office as protector of those who live under its law. 2. The right which the state or nation shares with individuals, and in part with artificial persons, as the rights of property, contract, and reputation; and, 3. The rights which arise when it is wronged, as those of self-protection and redress. To these have been joined by some the rights of punishments and of conquest—the latter, at least, without good reason; for there is and can be no naked right of conquest, irrespective of redress and self-protection. The moral elements are the duties of humanity, comity, and intercourse.

Nations are voluntary: 1. In deciding the question what intercourse they will hold with each other; 2. That they are voluntary in defining their rights and obligations, moral claims and duties, although these have an objective existence beyond the control of the will of nations; and, 3. That when international law has arisen by the free assent of those who enter into certain arrangements, obedience to its provisions is as truly in accordance with natural law—which requires the observance of contracts—as if natural law had been intuitively discerned or revealed from heaven and no consent had been necessary at the outset.

ALIENS. It cannot be affirmed that a state is obligated, in strict right, to admit foreigners into or to allow them transit across its territory, or even to hold intercourse with them. All this may be its duty, and perhaps, when its territory affords the only convenient pathway to the rest of the world or its commodities are necessary to others of mankind, transit and intercourse may be enforced. But, aside from these extreme cases, intercourse is only a duty, and not definable with precision, as is shown by the endless varieties of commercial treaties. It can only be said that the practice of Christian states is growing more and more liberal, both as regards admitting foreigners into their territories, and to the enjoyment of those rights of person and property which the natives possess, and as regards domiciliating them, or even incorporating them, afterwards, if they desire it, into the body politic. The multiplied and very close relations which have arisen between nations in modern times, through domiciled or temporary residents, have given rise to the question, What law, in particular cases involving personal status, property, contracts, family rights, and succession, shall control the decisions of the courts? Shall it be always the *lex loci*, or sometimes some other? The answers to these questions are given in *private international law*, or the *conflict of law*, as it is sometimes called,—a very interesting branch of law, as showing how the Christian nations are coming from age to age nearer to one another in their views of the private relations of men.

INTERCOURSE requires its agents, both those whose office it is to attend to the relations of states and the rights of their countrymen in

l-2 East. 453; 2 Burr. 1089; 5 Clark & F. Ho. L. 1; 1 B. & Ad. 284; 14 Johns. 346; 3 Mass. C. C. 88; 5 Id. 378; 1 Pet. 317; 1 Wash. C. C. 376; 10 Wheat. 1. m-5 East. 124; 12 Wheat. 360; 1 W. Bl. 258; 13 Mass. 1; 16 Mart. 297; 6 Rob. (La.) 15; 7 Cush. 15; 1 Buck. 57, 61; 1 Woodb. & M. 115; 23 Wend. 87; 5 Binn. 332; 16 Johns. 233; 7 Johns. Ch. 297; 16 Me. 206. n-5 Binn. 381; 14 Johns. 346; 10 Id. 300; 8 B. & C. 479; 1 Atk. Ch. 255; 2 H. Bl. 553; 7 Me. 337; 11 Mart. 730; 15 Mass. 419; 5 Mas. C. C. 378. o-3 Mas. C. C. 88; 5 Id. 378; 4 Conn. 47; 14 Pet. 67. p-6 Dowl. Parl. Cas. 116; 5 Clark & F. Ho. L. 1–16; 8 Id. 121, 140; 11 Pick. 36; 7 Ind. 91; 2 Paine C. C. 437; 36 Me. 362; see 9 B. Mon. 518; 16 Ohio, 145. q-10 B. & C. 903; 2 Bingh. (N. C.) 202, 216; 5 C. & F. Ho. L. 1; 3 Johns. Ch. 190; 6 Wend. 475; 9 Mart. 526. For the effect of a discharge by statutes of limitation, where they are so drawn as to effect a discharge in a foreign state, see Story Confl. L. § 582; 11 Wheat. 361; 2 Bingh. (N. C.) 202; 6 Rob. La. 15. r-5 Clark & F. Ho. L. 1–21; 13 Pet. 312; 2 B. & Ad. 413; 4 Cow. 528, n. 10; 1 Gall. C. C. 371; 9 How. 407. s-2 N. H. 296; 3 Johns. 263. t-12 La. An. 289; Story Confl. L. § 575. u-17 Ves. Ch. 8; 3 Hen. & M. 57; 5 Cranch, 358; 11 Wheat. 361; but see Ambl. 113. v-12 La. An. 410; 2 Bradf. Surr. 339; see EVIDENCE. w-4 Iowa, 464; 10 Me. 247; 6 N. Y. 447; 13 Md. 392; 12 La. An. 673; 9 Gill. 1; 3 Bosw. 333. x-1 Harr. & J. 687; see FOREIGN LAWS, ante.

general, and those who look after the commercial interests of individuals. The former share with public vessels, and with sovereigns travelling abroad, certain exemptions from the law of the land to which they are sent. Their persons are ordinarily inviolate; they are not subject to foreign, civil, or criminal jurisdiction; they are generally exempt from imposts; they have liberty of worship, and a certain power over their trains, who likewise share their exemptions. Only within five centuries have ambassadors resided permanently abroad—a change which has had an important effect on the relations of states. Consuls have almost none of the privileges of ambassadors, except in countries beyond the pale of Christianity.

RIGHTS IN GENERAL. The rights of the state or nation, as such, may be comprised under the term sovereignty, or be divided into sovereignty, independence, and equality; by which latter term is intended equality of rights. Sovereignty and independence are two sides of the same property, and equality of rights necessarily belongs to sovereign states, whatever be their size or constitution; for no reason can be assigned why all states, as they have the same powers and destination in the system of things, should not have identically the same rights. States are thus, as far as other states are concerned, masters over themselves and over their subjects, free to make such changes in their laws and constitutions as they may choose, and yet incapable by any change, whether it be union, or separation, or whatever else, of escaping existing obligations. With regard to every state, international law only asks whether it be such in reality, whether it actually is invested with the properties of a state. With forms of government international law has nothing to do. All forms of government, under which a state can discharge its obligations and duties to others, are, so far as this code is concerned, equally legitimate. Thus, the rule of non-intervention in the affairs of other states is a well-settled principle of international law. In the European system, however, there is an acknowledged exception to this rule, and also a claim on the part of certain states to a still wider departure from the rule of non-intervention, which other states have not as yet admitted. It is conceded that any *political* action of any state or states which seriously threatens the existence or safety of others, any disturbance of the balance of power, may be resisted and put down. This must be regarded as an application of the primary principle of self-preservation to the affairs of nations. But when certain states claim a right to interfere in the internal affairs of others in order to suppress constitutional movements and the action of a people without its own sphere, this is as yet an unauthorized ground of interference. The plea here is, on the part of those states which have asserted such a right, especially of Austria, Prussia, Russia, and at times of France, that internal revolutions are the result of widespread conspiracies, and if successful anywhere are fatal to the peace and prosperity of all absolute or non-constitutional governments. The right, if admitted, would destroy by an international law all power of the people in any state over their government, and would place the smaller states under the tutelage of two or three of the larger. England has always protested against this enlargement of the right of interference, and France has established more than one revolutionary government in spite of it.

TERRITORY. As to the question of territory, international law is tolerably clear. Beside the land and water included within the line of boundary separating one state from another, it regards as territory the coast-water to the distance of a marine league, and the portions of sea within lines drawn between headlands not very remote, or, in other words, those parts of the sea which are closely connected with a particular country when it needs to defend itself against attack, and its laws are exposed to violation. The high sea, on the other hand, is free, and so is every avenue from one part of the sea to another, which is necessary for the intercourse of the world. It has been held that rivers are exclusively under the jurisdiction of countries through which they flow, so that the dwellers on their upper waters have no absolute right of passage to and from the sea; but practically, at present, all the rivers which divide or run through different states, are free for all those who live upon them, if not for all mankind. It has been claimed that ships are territory; but it is safer to say that they are under the jurisdiction of their own state until they come within that of another state. By comity, public vessels are exempt from foreign jurisdiction, whether in foreign ports or elsewhere.

TREATIES. Nations, like individuals, have the rights of contract, and their treaties are subject to the same rules of interpretation and of morality which govern in municipal law. An interesting description of treaties are those of guaranty, by which sometimes a right of intervention in the affairs of other states is secured beforehand. But treaties may be broken, and all other rights invaded; and there is no court of appeal where wrongs done by states can be tried. The rights of self-defence and of redress now arise, and are of such importance that but for redress by force or war, and to prevent war, international law would be a very brief science.

WARFARE. The laws and usages of modern warfare show a great advance of the nations in humanity since the middle ages. The following are among the leading principles and usages:

That declarations of war, as formerly practised, are unnecessary; the change in this respect being due chiefly to the intimate knowledge which nations now have, through resident ambassadors and in other ways, of each other's movements and dispositions.

That at the opening of war the subjects of one hostile state within the territory of another are protected in their persons and property, and this notwithstanding it is conceded that by strict right such property is liable to confiscation.

That war is waged between states, and by the active war agents of the parties, but that non-combatants are to be uninjured in person and property by an invading army. Contributions or requisitions, however, are still collected from a conquered or occupied territory, and property is taken for the uses of armies at a compensation.

That combatants, when surrendering themselves in battle, are spared, and are to be treated with humanity during their captivity, until exchanged or ransomed.

That even public property, when not of a military character, is exempt from the ordinary operations of war, unless necessity requires the opposite course.

That in the storming of inhabited towns great license has hitherto been given to the besieging party; and this is one of the blots of modern as well as of ancient warfare. But humane commanders avoid the bombardment of fortified *towns* as far as possible; while mere fortresses may be assailed in any manner.

The laws of sea-warfare have not as yet come up to the level of those of land-warfare. Especially is capture allowed on the sea in cases where it would not occur on the land. Yet there are indications of a change in this respect; privateering has been abandoned by many states, and there is a growing demand that all capture upon the sea, even from enemies, except for violations of the rules of contraband, blockade, and search, shall cease.

When captures are made on the sea, the title, by modern law, does not fully vest in the captor at the moment, but needs to pass under the revision of a competent court. The captured vessel may be ransomed on the sea, unless municipal law forbids, and the ransom is of the nature of a safe-conduct. If a vessel is recaptured, or rescued from other perils, a compensation is due to the rescuer, which is called salvage; which see.

In modern international law, questions of neutrality play a great part. A neutral is one, strictly, who affords assistance to *neither* party; for assistance afforded to *both alike*, in almost every case, would benefit one party and be of little use to the other. The neutral territory, on land and sea, must be untouched by the war; and for all violations of this rule the neutral can take or demand satisfaction.

The principal liabilities of neutral trade are the following:

In regard to the nationality of goods and vessels, the rule, *on the whole*, has been that enemy's goods were exposed to capture on any vessel, and neutral's safe on any, and that the neutral vessel was not guilty for having enemy's goods on board. Owing to the declaration of the peace of Paris in 1856, the humane rule that free ships make free goods will no doubt become universal.

Certain articles of especial use in war are called contraband, and are liable to capture. But the list has been stretched by belligerents, especially by England, so as to include naval stores and provisions; and then, to cure the hardship of the rule, another—the rule of pre-emption—has been introduced. The true doctrine with regard to contraband seems to be that nothing can be so called unless nations have agreed so to consider it; or, in other words, that articles cannot become occasionally contraband owing to the convenience of a belligerent.

An attempt of a neutral ship to enter a blockaded place is a gross violation of neutrality; and, as in cases of contraband trade the goods, so here the guilty vessel, is confiscated. But blockade must exist in fact, and not alone upon paper, must be made known to neutrals, and, if discontinued, must be resumed with a new notification.

To carry out the rights of war, the right of search is indispensable; and such search ought to be submitted to without resistance. Search is exclusively a war right, excepting that vessels in peace can be arrested near the coast on suspicion of violating revenue laws, and anywhere on suspicion of piracy. The slave-trade not being piracy by the law of nations, vessels of other nations cannot be searched on suspicion of being engaged in this traffic. And here comes in the question which has agitated the two leading commercial states of Christendom: How shall it be known that a vessel is of a nationality which renders search unlawful? The English claim, and justly, that they have a right to ascertain this simple fact by detention and examination; the United States contend that if in so doing mistakes are committed, compensation is due, and to this England has agreed.

LAW MERCHANT. See title AGENCY; BAILMENTS; BONDS, NOTES, AND BILLS; CONTRACTS, etc., ante.

LEX FORI. See FORUM—LAW OF.

LEX LOCI. See PLACE—LAW OF, PLACE OF SITUATION OF THE THING, below.

LEX REI SITÆ. See PLACE OF SITUATION OF THE THING, below.

MARITIME LAW. See ADMIRALTY, above.

MARTIAL LAW. See MILITARY LAW, below.

MEDICAL LAW is that branch of the law which is affected by medical facts, and in which the principles and practice of medicine is required for the elucidation and settlement of doubtful questions arising in the course of judicial proceedings. These questions are embraced in five different classes: they arise: 1. From the relations of sex; as, delivery, hermaphroditism, impotency, legitimacy, pregnancy, rape, sterility. 2. From injuries inflicted upon the living organization; as, infanticide, poisons, wounds, persons found dead.

3. From disqualifying diseases; as, different forms of mental alienation or derangement. 4. From deceptive practices; as, feigned diseases. 5. From miscellaneous causes; as, age, identity, life insurance, presumption of seniorship, and medical evidence.

ABORTION is the act of miscarrying or producing young before the natural time, or before the fœtus is perfectly formed. The expulsion of the fœtus during utero-gestation, and before it has acquired the power of sustaining an independent life.

The criminal and unnatural means of producing abortion are of two kinds. *General*, or those which seek to produce the expulsion through the constitution of the mother, which are cathartics,[a] diuretics,[b] emetics,[c] ammenagogues,[d] and venesection.[e] *Local or mechanical means*, which consist either of external violence applied to the abdomen or loins, or of instruments introduced into the uterus for the purpose of rupturing the membranes, and thus bringing on premature action of the womb. These local or mechanical means not unfrequently produce the death of the mother, as well as that of the fœtus.

The innocent or natural causes of producing abortion are of two kinds. *In the mother*, as great debility, disease, excessive venereal indulgence, habit of miscarriage, malformation of the pelvis,[f] plethora,[g] or irritable or nervous temperament *in the fœtus*[h] or its dependencies; usually disease existing in the ovum,[i] the membranes, placenta,[j] or the fœtus itself.

See DEATH, below.

ACCOUCHMENT is delivery in child-bed; the act of giving birth to a child. When it is necessary to prove the filiation of an individual by the accouchment, it may be proven by the direct testimony of one who was present, as a physician, midwife, or other person.[k]

APOPLEXY AND PARALYSIS imply an affection of the brain; supposed to be only different degrees of the same affection. In apoplexy the patient is suddenly deprived of consciousness and sensibility, and so continues for a period varying from a few hours to a few days, when he dies or begins to recover. The recovery may, however, be imperfect, leaving some mental impairment, or loss of power in the muscles of voluntary motion, remaining for a time, if not for life. In paralysis there is a loss of power in some of the voluntary muscles —those of the arms, eyes, face, or legs; it may be the sequel of apoplexy, or it may be the primary affection; occurring very much like an attack of apoplexy. Apoplexy is the abolition of sense and voluntary motion, from suspension of the functions of the cerebrum;[l] apparent death; suspended animation, as fainting, swooning. Paralysis is an abolition of function, whether of intellect, general or special sensation, sympathetic or voluntary motion.

In cases where wills are made in that equivocal condition which sometimes follows an attack of apoplexy or paralysis, and their validity is contested on the score of mental incompetency, there are generally two questions at issue, viz.: 1. The absolute amount of mental impairment; and 2. The degree of foreign influence exerted upon the testator. These questions cannot be considered independently of each other; neither of them alone might be sufficient to invalidate an act, while together they might have that effect.

In testing the mental capacity of paralytics, reference should be had to the nature of the act in question. The question is, "Had the testator sufficient mental capacity to make the will in dispute?" and not "Had he sufficient capacity to make a will?" In order to arrive at correct conclusions on this point, we must remember, among other things, that the power to appreciate the terms of a proposition must not be confounded with the power to discern its consequences and relations.

In testing the mental capacity of one who has lost the power of speech, it is difficult, and often impossible, to arrive at correct results. If the person is able and willing to communicate his thoughts in writing, his mental capacity may be clearly revealed. If not disposed to write he may communicate by constructing sentences by the help of the alphabet, block letters, or dictionary; failing in this, resort must be had to the expression of assent or dissent by signs to propositions made by others. If the act in question is complicated in its relations, unreasonable in its dispositions, or bears the slightest trace of foreign influence, it will be regarded with suspicion; for a will thus drawn is not absolutely the will of the testator, since every disposition originated in the minds of others.[m]

ASPHYXY is suspended animation, particularly from suffocation or drowning, or the inspiration of irrespirable gases; a temporary suspension of the motion of the heart and arteries; cessation of breathing and pulsation; fainting; swooning. Where the cause of asphyxy becomes the subject of legal inquiry, it is necessary to ascertain whether the person

a-Medicines that produce alvine (pertaining to the lower belly or intestines) discharges, or preternatural discharges of the intestines, purges, purgatives, purifiers. **b**-Medicines that produce discharges of urine, that increase the discharge of, or possess the power to provoke urine. **c**-Medicines that produce or provoke vomiting by exciting the stomach to discharge its contents through the œsophagus (or gullet) and mouth. **d**-Medicines that produce or promote the menstrual (or monthly) discharge. **e**-Bleeding, blood-letting. **f**-A cavity of the body formed by the *os coccygis*, *os sacrum*, and *ossa innominata*. **g**-Fulness or excess of blood. The state of the vessels of the human body when they are too full, or overloaded with fluids. **h**-Young in the womb, from the time it is distinctly formed until its birth. Before this distinct formation it is called *embryo*. **i**-That body formed by the female, in which, after impregnation, the development of the fœtus takes place. **j**-The substance that connects the ovum to the womb, a soft, roundish mass by which the principal connection is maintained between the parent and the fœtus. Coxe, Quincy. **k**-1 Bouv. Inst. n. 314. **l**-The front and larger part of the brain. **m**-For phenomena and legal consequences of paralytic afflictions, see 1 Paige Ch. 171; 1 Hagg. Eccl. 502, 577; 2 Id. 84; 1 Curt. Eccl. 782; Parish Will Case, 4 Vols. N. Y. 1858.

has been deprived of his senses by accident, by his own act, or as the victim of another. See DEATH, below.

BARRENNESS. See STERILITY, below.

BIRTH is the act of bringing forth a human being, or of its coming into life, of its being wholly born. The conditions of live birth are not satisfied when a part of the body is born; the whole body must be brought into the world, and detached from that of the mother (but it is not necessary that there should be a separation of the umbilical cord; that may still connect the child with its mother);[m] and after this event the child must be alive.[n] The circulating system must also be changed, and the child must have an independent circulation.[o]

Breathing, though a usual sign of life, is not conclusive that a child was *wholly* born alive, as breathing may take place before the whole delivery of the mother is complete.[p]

Delivery or child-birth; the act of a woman in giving birth to a child.

The usual signs of delivery are:

If the female be examined within three or four days after the occurrence of delivery, the following circumstances will generally be observed: greater or less weakness, a slight paleness of the face, the eye a little sunken and surrounded by a purplish or dark-brown colored ring, and a whiteness of the skin like that of a person convalescing from disease. The belly is soft, the skin of the abdomen is lax, lies in folds, and is traversed in various directions by shining reddish and whitish lines, which especially extend from the groin and pubes to the navel. These lines have sometimes been termed *lineæ albicantes*, and are particularly observed near the umbilical region, where the abdomen has experienced the greatest distension. The breasts become tumid and hard, and, on pressure, emit a fluid, which at first is serous and afterwards gradually becomes whiter; and the presence of this secretion is generally accompanied with a full pulse and soft skin, covered with a moisture of a peculiar and somewhat acid odor. The areolæ round the nipples are dark-colored. The external genital organs and vagina are dilated and tumefied throughout the whole of their extent, from the pressure of the fœtus. The uterus may be felt through the abdominal parietes, voluminous, firm, and globular, and rising nearly as high as the umbilicus. Its orifice is soft and tumid, and dilated so as to admit two or more fingers. The fourchette, or anterior margin of the perinæum, is sometimes torn, or 't is lax, and appears to have suffered considerable distension. A discharge (termed the lochial) commences from the uterus, which is distinguished from the menses by its pale color, its peculiar and well-known smell, and its duration. The lochia are at first of a red color, and gradually become lighter until they cease.

These signs may generally be relied upon as indicating the state of pregnancy: yet it requires much experience in order not to be deceived by appearances.

The lochial discharge might be mistaken for menstruation, or fluor albus, were it not for its peculiar smell; and this it has been found impossible, by any artifice, to destroy.

Relaxation of the soft parts arises as frequently from menstruation as from delivery; but in these cases the os uteri and vagina are not so much tumefied, nor is there that tenderness and swelling. The parts are found pale and flabby when all signs of contusion disappear after delivery; and this circumstance does not follow menstruation.

The presence of milk, though a usual sign of delivery, is not always to be relied upon; for this secretion may take place independent of pregnancy.

The wrinkles and relaxation of the abdomen which follow delivery may be the consequence of dropsy, or of lankness following great obesity. This state of the parts is also seldom striking after the birth of the first child, as they shortly resume their natural state.

—— *Concealed delivery* generally takes place when the woman either has destroyed her offspring or it was born dead. In suspected cases the following circumstances should be attended to: 1. The proofs of pregnancy which arise in consequence of the examination of the mother. When she has been pregnant, and has been delivered, the usual signs of delivery, mentioned above, will be present. A careful investigation as to the woman's appearance before and since the delivery will have some weight; though such evidence is not always to be relied upon, as such appearances are not unfrequently deceptive. 2. The proofs of recent delivery. 3. The connection between the supposed state of parturition and the state of the child that is found; for if the age of the child do not correspond to that time it will be a strong circumstance in favor of the mother's innocence. A redness of the skin and an attachment of the umbilical cord to the navel indicate a recent birth. Whether the child was living at its birth, belongs to the subject of infanticide, which see below.

—— *Pretended delivery* may present itself in three points of view. 1. When the female who feigns has never been pregnant. When thoroughly investigated, this may always be detected. There are signs which must be present and cannot be feigned. An enlargement of the orifice of the uterus, and a tumefaction of the organs of generation, should always be present, and if absent are conclusive against the fact.[q] 2. When the pretended pregnancy and delivery have been preceded by one or more deliveries. In this case attention should be given to the following circumstances: the mystery, if any, which has been affected with regard to the situation of the female; her age; that of her husband; and particularly, whether

m-7 C. & P. 814; 9 Id. 25. n-5 C. & P. 329; 7 Id. 814. o-5 C. & P. 539; 9 Id. 154. p-5 C. & P. 329. q-2 Annales d'Hygiène, 227.

aged or decrepit. 3. When the woman has been actually delivered, and substitutes a living for a dead child. But little evidence can be obtained on this subject from a physical examination.

Monsters. (Beings contrary in conformation to the order of nature; unnatural creations.)[q] Although born of women in lawful wedlock, cannot inherit. Those who have, however, the essential parts of the human form, and have merely some defect of conformation, are capable of inheriting if otherwise qualified.[r] See DELIVERY, below.

No living human birth, however much it may differ from human shape, can be lawfully destroyed.[s] *The killing* of a child, though joined to its mother by the umbilical cord, is murder.[t]

BRUISES are injuries produced by violence upon the person without breaking the continuity of the skin. It is nearly synonymous with contusion.[u]

See CONTUSIONS; WOUNDS, below.

COMMON-SENSE is the common association, judgment, and perception in relation to persons and things which agrees with that of the generality of mankind. When a particular individual differs from the generality of mankind or persons in these respects, he is said not to have common sense, or not to be in his senses.[v]

CONTUSIONS are injuries arising from shocks of the body with large surfaces, which presents no loss of substance and no apparent wound. If the skin be divided, the injury takes the name of a contused wound.[w]

See BRUISES, above; WOUNDS, below.

DELIRIUM FEBRILE is a mental aberration incident to fevers, and sometimes in the last stages of chronic diseases.

The aberration is mostly of a subjective character, maintained by the inward activity of the mind rather than by outward impressions. "Regardless of persons or things around him, and scarcely capable of recognizing them when aroused by his attendants, the patient retires within himself, to dwell upon the scenes and events of the past, which pass before it in wild and disorderly array, while the tongue feebly records the varying impressions, in the form of disjointed, incoherent discourse, or of senseless rhapsody."[x] It comes on gradually, being first manifested by talking while asleep, and by a momentary forgetfulness of persons and things on waking. Fully aroused, however, the mind becomes clear and tranquil, and so continues until the return of sleep, when the same incidents recur. Gradually the mental disorder becomes more intense, and the intervals between its returns of shorter duration, until they disappear altogether. Occasionally the past is revived with wonderful vividness, and acquirements are displayed which the patient before his illness had entirely forgotten. Instances are related of persons speaking in a language which, though acquired in youth, had long since passed from their memory.

The only acts which can possibly be affected by delirium are wills, which are often made in the last illness during the periods when the mind is apparently clear. Under such circumstances it may be questioned whether the apparent clearness was or was not real; and it is a question not always easily answered. In the early stages of delirium the mind may be quite clear, no doubt, in the intervals, while it is no less certain that there comes a period at last when no really lucid interval occurs and the mind is reliable at no time. The person may be still, and even answer questions with some degree of pertinence, while a close examination would show the mind to be in a dreamy condition and unable to appreciate any nice relations. In all these cases the question to be met is, whether the delirium which confessedly existed before the act left upon the mind no trace of its influence; whether the testator, calm, quiet, clear, and coherent as he seemed, was not quite unconscious of the nature of the act he was performing. The state of things implied in these questions is not fanciful. In every case it may possibly exist, and the questions must be met.

After obtaining all the light which can be thrown on the mental condition of the testator by nurses, servants, and physicians, then the character of the act itself and the circumstances which accompany it require a careful investigation. If it should appear that the mind was apparently clear, and that the act was a rational act rationally done, consistent one part with another, and in accordance with wishes or instructions previously expressed, and without any appearance of foreign influence, then it would be established. A different state of things would to that extent raise suspicion and throw discredit on the act. Yet at the very best it will occasionally happen, so dubious sometimes are the indications, that the decision will be largely conjectural.[y]

DELIRIUM TREMENS (*Mania-a-potu*) is a mental disorder induced by the excessive and prolonged use of intoxicating liquors. It generally appears as a sequel to a few days abstinence.

The nature of the connection between this disease and abstinence is not yet clearly understood. Where the former succeeds a broken limb, or any other severe accident that confines the patient to his bed and obliges him to abstain, it would seem as if its development were

q-2 Dunglinson Hum. Phys. 422. r-2 Bl. Comm. 246; 1 Beck Med. Jur. 366; Co. Litt. 7, 8; Dig. 15, 14: 1 Swift Syst. 331; Fred. Code, Pt. 1, Bk. 1, t. 4, § 4. s-Traill Med. Jur. 47; see Briand Méd. Lég. Pt. 1, Ch. 6, Art. 2, § 3; 1 Foderé Méd. Lég. §§ 402-405. t-7 C. & P. 814; 9 Id. 25; see 1 Beck Med. Jur. 478; 1 Chitty Med. Jur. 438. u-1 Ch. Pr. 38; see 4 C. & P. 381, 487, 558, 565. v-1 Chitty Med. Jur. 334. w-See 1 Ch. Pr. 38; 4 C. & B. 381, 487, 558, 565; 6 Id. 684; 2 Beck Med. Jur. 178. x-Ray, Med. Jur. 346. y-1 Hagg. Eccl. 146, 256, 502, 577; 2 Id. 142; 2 Id. 790; 1 Lee Eccl. 130; 2 Id. 289.

favored by the constitutional disturbance then existing. In other cases, where the abstinence is apparently voluntary, there is some reason to suppose that it is really the incubation of the disease, and not its cause.

Its approach is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end of which time they have usually increased in severity, the patient ceases to sleep altogether, and soon becomes delirious at intervals. After a while the delirium becomes constant, as well as the utter absence of sleep. This state of watchfulness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which at first appears in uneasy and irregular naps, and lastly in long, sound, and refreshing slumbers. When sleep does not supervene about this time, the disease proves fatal.

Delirium tremens is marked by some peculiar characters. Almost invariably the patient manifests feelings of fear and suspicion, and labors under continual apprehension of being made the victim of sinister designs and practices. He imagines that people have conspired to rob and murder him, and insists that he can hear them in an adjoining room arranging their plans and preparing to rush upon him, or that he is forcibly detained and prevented from going to his own home. One of the most common hallucinations in this disease is that of constantly seeing devils, snakes, or vermin around him and on him. Under the influence of the terrors inspired by these notions, the wretched patient often endeavors to cut his throat, or jump out of the window, or murder his wife, or some one else whom his disordered imagination identifies with his enemies.

Delirium tremens must not be confounded with other forms of mental derangement which occur in connection with intemperate habits. Hard drinking may produce a paroxysm of maniacal excitement, or a host of hallucinations and delusions, which disappear after a few days' abstinence from drink and are succeeded by the ordinary mental condition.[a] For instance, a prisoner was defended on the plea that the homicide for which he was indicted was committed in a fit of delirium tremens. There was no doubt that he was laboring under some form of insanity; but the fact, which appeared in evidence, that his reason returned before the recurrence of sound sleep, rendered it very doubtful whether the trouble was delirium tremens, although in every other respect it looked like that disease.

Delirium tremens annuls responsibility for any act that may be committed under its influence; provided, of course, that the mental condition can stand the tests applied in other forms of insanity. The law does not look to the remote causes of the mental affection; and the rule on this point is that if the act is not committed under the immediate influence of intoxicating drinks, the plea of insanity is not invalidated by the fact that it is the result of drinking at some previous time. Such drinking may be morally wrong; but the same may be said of other vicious indulgences which give rise to much of the insanity which exists in the world.[a]

It was held that delirium tremens was not a valid defence, because the prisoner knew, by repeated experience, that indulgence in drinking would probably bring on an attack of the disease.

It is not quite certain what the rule of law is in England. Two cases are cited where the plea of delirium tremens was admitted in excuse for crime.[b]

DEATH is the total and permanent cessation of all the vital functions; when all the organs have not only ceased to act, but have lost their susceptibility of renewed action. Actual death is distinguished from apparent death by several signs, some more conclusive than the others. 1. Cessation of the circulation. 2. Cessation of the respiration. 3. The *facies Hippocratii*[c] —wrinkled brow, hollow eyes, pointed nose, hollow, wrinkled temples, elevated ears, relaxed lips, sunken cheek bones, and wrinkled and pointed chin. 4. Collapsed and softened state of the eye. 5. Pallor and loss of elasticity of the skin. 6. Insensibility and immovability. 7. Extinction of muscular irritability. 8. Extinction of animal heat. 9. Muscular rigidity; and 10. The supervening of putrefaction, which depends something upon age, sex, condition of the body, and cause of death; also upon period, place, and mode of interment. The process is increased by a high temperature, moisture, and access to air.

Various indications as to whether the death is the act of God or the result of violence may be gathered from the position and circumstances in which the body is found, and the condition of the place where the body is found. 1. Whether it be a case of homicide, suicide, or visitation of God; and, 2. Whether, if one of homicide, the murder occurred there, or some other place, the body having been brought there and left. The points to be noted are whether the ground appears to have been disturbed from its natural condition; whether there are any, and what, indications of a struggle; whether there are any marks of footsteps, and, if any, their size, number, the direction to which they lead, and whence they came; whether any traces of blood or hair can be found; and whether any, or what, instruments or weapons, which could have caused death,

a-1 Curt. C. C. 1. a-1 Curt. C. C. 1; 5 Mas. C. C. 28; State *vs.* Wilson, Ray Med. Jur. 520. b-Reg. *vs.* Watson, and Reg. *vs.* Simpson, Taylor Med. Jur. 656.

c-Pale, sunken, and contracted features. The explanation more minutely follows the phrase above.

are found in the vicinity; and all such instruments should be carefully preserved, so that they may be identified.[c]

As thorough an examination as possible should be made of the body before changing its position, or that of any of the limbs, or varying in any respect its relations with surrounding bodies. So, also, of the wounds, if any, in order from their nature, character, form, and appearance, to determine the instrument by which they were inflicted, and also their agency in causing the death, the direction from which they were dealt, their extent, depth, vessels severed, etc. So, also, of the clothes worn by the deceased, and any parts torn, or presenting any unusual appearance. A memorandum should be made of the color of the skin, the temperature of the body, the existence and extent of cadaveric rigidity of the muscular system, the state of the eyes and sphincter muscles, noting at the same time whatever swellings, ecchymosis, or livid, black, or yellow spots, wounds, ulcers, contusions, fractures, or luxation may be present. The fluids which have exuded from the nose, mouth, ears, sexual organs, etc., should be carefully noted; and when the deceased is a female, it will be proper to examine the sexual organs with care, with a view of ascertaining whether before death the crime of rape had or had not been committed. The amount of decomposition should also be noted, with a view of determining when the death took place.

Evidences of Death by Violence. This involves the inquiry as to the cause of death in all cases of the finding of bodies divested of life through unknown agencies. It seeks to gather all the evidence furnished by the body and surrounding circumstances bearing upon this difficult, and, at best, doubtful subject; it more immediately concerns the duties of the coroner; but is liable to come up subsequently for a more thorough and searching investigation. Hence, its briefness here needs no comment.

The first point for determination is, whether the death was the act of God, or the result of violence. Sudden death is generally produced by a powerful invasion of the living forces that develop themselves in the heart, brain, or lungs; the first is called[d] syncope,[e] the second, apoplexy,[f] and the third, asphyxia.[g] The two last are the most important to be understood in connection with the subject of persons found dead.

In death from apoplexy, the sudden invasion of the brain destroys innervation, by which the circulation is arrested, each side of the heart containing its due proportion of blood, and the cavities are all distended from loss of power to propel its contents. Death by apoplexy is disclosed by a certain apopletic make, or form of body, consisting of a large head, short neck, and plethoric frame, from the posture in which the body is found, and the appearances revealed by dissection, particularly in the head.

Death by asphyxia is more important to be understood. It is limited to cases where the heart's action is made to cease through the interruption of the respiration, or breathing. It is accomplished by all the possible modes of excluding atmospheric air from the lungs. The appearance in the body indicating death by asphyxia are: violent discolorations, eyes prominent, firm, and brilliant; cadaveric rigidity early and well marked; venous system of the brain full of blood; lungs distended with thick, dark-colored blood; liver, spleen, and kidneys gorged; right cavities of the heart distended, the left almost empty.

Death by burning presents a narrow white line surrounding the burnt spot; external to that, one of a deep-red tint, running by degrees into a diffused redness. This is succeeded in a few minutes by blisters filled with serum.

Death by cold leaves few traces in the system. Pale surface, general congestion of internal organs, sometimes effused serum in the ventricles of the brain.

Death by drowning is caused by asphyxia from suffocation by nervous, or syncopal asphyxia, or, by asphyxia from cerebral congestion. In the first, besides other indications of asphyxia, the face is pale or violet, a frothy foam at the mouth, froth in the larynx, trachea, and bronchi, water in the trachea, and sometimes in the ramifications of the bronchia, and also in the stomach. In the second, the face and skin are pale, the trachea empty, lungs and brain natural, and no water in the stomach. In the third, the usual indications of death by apoplexy are found on examination of the brain.

Death by hanging is produced by asphyxia suspending respiration by compressing the larynx, by apoplexy pressing upon the veins and preventing the returning of blood from the head, by fracture of the cervical vertebræ, laceration of trachea or larynx, or rupture of the ligaments of the neck, or by compressing the nerves of the neck. The signs and indications depend upon the cause of death. Among these are: face livid and swollen, lips distorted, eyelids swollen, eyes red and projecting, tongue enlarged, livid, compressed, froth about the lips and nostrils, a deep ecchymosed marked cord about the neck, sometimes ecchymosed patches on different parts of the body, fingers contracted or clenched, and the body retaining its animal heat longer than in other modes of death.

Death by lightning usually exhibits a contused or lacerated wound where the electric fluid en-

c-Dean Med. Jur. 257; Beck Med Jur. 107, n. 136, 520.
d-Dean Med. Jur. 426, *et seq.* e-Syncope is a fainting or swooning; a diminution, or interruption of the motion of the heart, and of respiration, accompanied with a suspension of the action of the brain, and a temporary loss of sensation, volition, and other faculties, Webst. Dict.

f-Apoplexy is an abolition of sense and voluntary motion, from suspension of the functions of the cerebrum. The cerebrum is the front and larger part of the brain. Id.
g-Asphyxia is apparent death, or suspended animation, particularly from suffocation or drowning, or the inhalation of irrespirable gases; applied also to the collapsed state in cholera, with want of pulse, Id.

tered and passed out. Sometimes an extensive ecchymosis appears,[h] more commonly on the back, along the course of the spinal marrow.

Death by strangulation presents much the same appearance as death by hanging, the mark of the cord being lower on the neck, more horizontal, and plainer and more distinctly ecchymosed.

Death by starvation produces general emaciation; eyes and cheeks sunken; bones projecting; face pale and ghastly; eyes red and open; skin, mouth, and fauces dry; gall bladder large and distended; body exhaling a fetid odor; heart, lungs, and large vessels collapsed; early commencement of putrefactive process.

DELIVERY. See BIRTH, above.

DELUSION is a diseased state of the mind, in which persons believe things to exist which exist only, or in the degree they are conceived of only, in their own imaginations, with a persuasion so fixed and firm that neither evidence nor argument can convince them to the contrary. The individual is, of course, insane. For example, should a parent unjustly persist, without the least ground, in attributing to his daughter a course of vice, and use her with uniform unkindness, there not being the slightest pretence or color of reason for the supposition, a just inference of insanity or delusion would arise in the minds of a jury; because a supposition long entertained and persisted in, after argument to the contrary, and against the natural affections of a parent, suggests that he must labor under some morbid mental delusion.[i]

DEMENTIA is a mild form of insanity characterized by mental weakness and decrepitude, and a total inability to reason correctly or incorrectly. The mind dwells only in the past, and the thoughts succeed one another without any obvious bond of association. Delusions, if they exist, are transitory, and leave no permanent impression; and for everything recent the memory is exceedingly weak. In mania, the action of the mind is marked by force, hurry, and intensity; in dementia, by slowness and weakness. It is mostly the sequel of mania, of which, in fact, it is the natural termination. Occasionally it occurs in an acute form in young subjects; and here only it is curable. In old men, in whom it often occurs, it is called senile dementia, and it indicates the breaking down of the mental powers in advance of the bodily decay. It is this form of dementia only which gives rise to litigation; for in the others the incompetency is too patent to admit of question. It cannot be described by any positive characters, because it differs in the different stages of its progress, varying from simple lapse of memory to complete inability to recognize persons or things. And it must be borne in mind that often the mental infirmity is not so serious as might be supposed at first sight. Many an old man who seems to be scarcely conscious of what is passing around him, and is guilty of frequent breaches of decorum, needs only to have his attention aroused to a matter in which he is deeply interested, to show no lack of vigor or acuteness. In other words, the mind may be damaged superficially, while it may be sound at the core. And therefore it is that one may be quite oblivious of names and dates, while comprehending perfectly well his relations to others and the interests in which he was concerned. It follows that the impressions made upon casual or ignorant observers in regard to the mental condition are of far less value than those made upon persons who have been well acquainted with his habits and have had occasion to test the vigor of his faculties.

The wills of old men are often contested on the ground of senile dementia, and the conflicting testimony of observers, the proofs of foreign influence, and the indications of mental capacity all combine to render it no easy task to arrive at a satisfactory conclusion. The only general rule of much practical value is that competency must be always measured, not by any fancied standard of intellect, but solely by the requirements of the act in question. A small and familiar matter would require less mental power than one complicated in its details and somewhat new to the testator's experience. Less capacity would be necessary to distribute an estate between a wife and child than between a multitude of relatives with unequal claims upon his bounty. Such is the principle; and the ends of justice cannot be better served than by its correct and faithful application. Of course, there will always be more or less difficulty; but generally, by discarding all legal and metaphysical subtleties and following the leading of common sense, it will be satisfactorily surmounted.

The legal principles by which the courts are governed are not essentially different whether the mental incapacity proceed from dementia or mania. If the will coincides with the previously expressed wishes of the testator, if it recognizes the claims of those who stood in near relation to him, if it shows no indications of undue influence—if, in short, it is a rational act rationally done—it will be established, and very properly so, though there may have been considerable impairment of mind.[j] See INSANITY, below.

DRUNKENNESS is the condition of a person who is under the immediate influence of intoxicating liquors.

This condition presents various degrees of intensity, ranging from a simple exhilaration to a state of utter unconsciousness and insensibility. In the popular phrase, the term drunkenness is applied only to those degrees of it in which the mind is manifestly disturbed in its operations. In the earlier stages it frequently happens that the mind is not only not disturbed,

[h]-An appearance of livid spots on the skin, occasioned by the blood being forced out of its proper vessels.
[i]-Connolly, Insan. 384; Ray Med. Jur. Prel. Views, §§ 20, 22; 1 Powell Dev. Jarman ed. 130, n.; Shelford Lun. 296; 3 Add. Eccl. 70, 90, 180; 1 Hagg. Eccl. 27; 2 Bouvier Inst. nn. 2104–2110. [j]-2 Phil. Eccl. 449; 3 Wash. C. C. 580; 4 Id. 262.

but acts with extraordinary clearness, promptitude, and vigor. In the latter the thoughts obviously succeed one another without much relevance or coherence, the perceptive faculties are active, but the impressions are misconceived, as if they passed through a distorting medium, and the reflective powers cease to act with any degree of efficiency. Some of the intermediate stages may be easily recognized; but it is not always possible to fix upon the exact moment when they succeed one another. In some persons peculiarly constituted, a fit of intoxication presents few if any of these successive stages, and the mind rapidly loses its self-control, and for the time is actually frenzied, as if in a maniacal paroxysm, though the amount of the drink may be comparatively small. The same phenomenon is observed sometimes in persons who have had some injury of the head, who are deprived of their reason by the slightest indulgence.

The habitual abuse of intoxicating drinks is usually followed by a pathological condition of the brain, which is manifested by a degree of intellectual obtuseness, and some insensibility to moral distinctions once readily discerned. The mind is more exposed to the force of foreign influences, and more readily induced to regard things in the light to which others have directed them. In others it produces a permanent mental derangement, which, if the person continues to indulge, is easily mistaken by common observers for the immediate effects of hard drinking. These two results—the mediate and the immediate effects of drinking—may co-exist; but it is no less necessary to distinguish them from each other, because their legal consequences may be very different. Moved by the latter, a person goes into the street and abuses or assaults his neighbors; moved by the former, the same person makes his will, and cuts off those who have the strongest claims upon his bounty with a shilling. In a judicial investigation, one class of witnesses will attribute all his extravagances to drink, while another will see nothing in them but the effect of insanity. The medical jurist should not be misled by either party, but be able to refer each particular act to its proper source.

Another remarkable form of drunkenness is called dipsomania. Rather suddenly, and perhaps without much preliminary indulgence, a person manifests an insatiable thirst for strong drink, which no considerations of propriety or prudence can induce him to control. He generally retires to some secluded place, and there, during a period of a few days or weeks, he swallows enormous quantities of liquor, until his stomach refuses to bear any more. Vomiting succeeds, followed by sickness, depression, and disgust for all intoxicating drinks. This affection is often periodical, the paroxysms recurring at periods varying from three months to several years. Sometimes the indulgence is more continuous and limited, sufficient, however, to derange the mind, without producing sickness, and equally beyond control. Dipsomania may result from moral causes, such as anxiety, disappointment, grief, sense of responsibility; or physical, consisting chiefly of some anomalous condition of the stomach.[k]

The common law shows but little disposition to afford relief, either in civil or criminal cases, from the immediate effects of drunkenness. It has never considered drunkenness alone as a sufficient reason for invalidating any act. When carried so far as to deprive the party of all consciousness, strong presumption of fraud is raised; and on that ground courts may interfere.[l] Drunkenness in such a degree as to render the testator unconscious of what he is about, or less capable of resisting the influence of others, avoids a will.[m] In action for torts, drunkenness is not regarded as a reason for mitigating damages.[n] And courts of equity decline to interfere in favor of parties pleading intoxication in the performance of a civil act.[o] The law does, however, recognize two kinds of inculpable drunkenness, viz.: that which is produced by the "unskilfulness of his physician," and that which is produced by the "contrivance of enemies."[p] To this may be added cases where a party drinks no more liquor than he has habitually used without being intoxicated, and which exerts an unusually potent effect on the brain in consequence of certain pathological conditions.[q]

ECCHYMOSIS. See DEATH, above.

EMISSION is the act of sending out or throwing from the body any matter whatever, as the emission of urine, emission of semen, etc. Emission is not necessary in the commission of a rape to complete the offence.[r] It is, however, essential in the offence of sodomy.[s]

EMMENAGOGUES. See ABORTION, above.

ENCIENTE. See PREGNANCY, above.

EPILEPSY is the falling sickness; so called because the patient falls suddenly to the ground; it is a disease characterized by general muscular agitation occasioned by clonic spasms (that is, spasms in which the muscles, or muscular fibres, contract and relax alternately in quick succession, producing the appearance of agitation without sensation or consciousness, and commonly recurring at intervals.) When long continued and violent, this disease is very apt to end in dementia. It gradually destroys the memory, and impairs the intellect, and is one of the causes of an unsound mind.[t]

FŒTICIDE is the act by which a criminal abortion is produced.[u]

k-Esquirol, Mal. Men. ii. 73; Marc. de la Folie, ii. 605: Ray, Med. Jur. 497; Macnish, Anatomy of Drunkenness, chap. 14. l-1 Ves. Ch. 19; 18 Id. 12. m-Shelford Lun. 274, 304. n-Co. Litt. 247, *a*. o-1 Story Eq. § 232. p-Russ. Cr. 8. q-See 5 Gray, 86; 11 Cush. 479; 1 Bennett & H. L. Cr. Cas. 113–124. r-1 Hale Pl. Cr.; 4 C. & P. 249; 5 Id. 297; 4 C. & P. 249; 5 Id. 297; 6 Id. 251; 9 Id. 31; see 1 East. Pl. Cr. 346-440. s-12 Co. 36; but see 1 Va. Cas. 307. t-8 Ves. Ch. 87; see Dig. 50, 16, 123; 21, 1, 4, 5. u-Beck. Med. Jur 288; Grey Med. Jur. 133.

FŒTUS is the human being from the time its parts are distinctly formed until its birth; an unborn child; an infant in its mother's womb.

Until about the middle of the fourth month it is called embryo. At that time the development of the principal organs begins to be evident and they present something of their mature form.

Although it is often important to know the age of the fœtus, there is great difficulty in ascertaining the fact with the precision required in courts of law. Nothing on this subject can be learned solely from its weight, size, or progress towards maturity.

The great difference between children at birth, as regards their weight and size, is an indication of their condition while within the womb, and is a sufficient evidence that nothing can be decided as to the age of the fœtus by its weight and size at different periods of its existence.

Thousands of healthy infants have been weighed immediately after birth, and the extremes have been found to be two and eighteen pounds. It is very rare indeed to find any weighing as little as two pounds, but by no means uncommon to find them weighing four pounds. So it is with the length, which varies as much as that of the adult does from the average height of the race.

Neither can anything positive be learned from the progress of development; for although the condition of the bones, cartilages, and other parts will generally mark with tolerable accuracy the age of a healthy fœtus, yet an uncertainty will arise when it is found to be unhealthy. It has been clearly proved, by numerous dissections of new-born children, that the fœtus is subject to diseases which interfere with the proper formation of parts, exhibiting traces of previous departure from health, which had interfered with the proper formation of parts and arrested the process of development.

Interesting as the different periods of development may be to the philosophical inquirer, they cannot be of much value in legal inquiries, from their extreme uncertainty in denoting precisely the age of the fœtus by unerring conditions.

GESTATION is the period during which a woman carries young in her womb, from conception to delivery; it is pregnancy. This directly involves the question of the duration of pregnancy, questions concerning which most frequently occur in cases of contested legitimacy. That which is termed the *usual period* of pregnancy is ten lunar months, forty weeks, two hundred and eighty days, equal to about nine calendar months and one week. One question that has here been much discussed is whether the period of gestation has a fixed limit, or is capable of being contracted or protracted beyond the usual term. Many have claimed that the laws of nature on this subject are immutable, and that the fœtus, at a fixed period, has received all the nourishment of which it is susceptible from the mother, and becomes as it were a foreign body. Its expulsion is, therefore, a physical necessity. Others claim, and with stronger reasons, that as all the functions of the human body that have been carefully observed are variable, and sometimes within wide limits, and as many observations and experiments in reference to the cow and horse have established the fact that in the period of utero-gestation there is more variation with them than in the human species, there should remain no doubt that this period in the latter is always liable to variation. There are some women to whom it is peculiar always to have the normal time of delivery anticipated by two or three weeks, so that they never go beyond the end of the thirty-seventh or thirty-eighth week, for several pregnancies in succession.[v] So, also, there are many cases establishing the fact that the usual period is sometimes exceeded by one, two, or more weeks, the limits of which it is difficult or impossible to determine. Lord Coke seems inclined to adopt a peremptory rule that forty weeks is the longest time allowed by law for gestation.[w] But although the law of some countries prescribes the time from conception within which the child must be born to be legitimate, that of England and America fixes no precise limit, but admits the possibility of the birth's occurring previous or subsequent to the usual time. The following are cases in which this question will be found discussed.[x] See BIRTH, above; PREGNANCY, below.

GOUT is an inflammation of the fibrous and ligamentous parts of the joints; it is a chronic disease occurring by paroxysms; the paroxysms exacerbating (increasing its violence) and remitting. It consists essentially in a perfectly specific and topical (local) inflammation, having its regular seat in the largest joint of the great toe; and an equally specific and peculiar constitutional febrile (fever) affection. The forms of this disease are very irregular, numerous, and various. In cases of insurance on lives, when there is warranty of death, a man subject to gout is capable of being insured, if he has no sickness at the time to make it an unequal contract.[y]

HALLUCINATION is the faulty sense of erroneous imagination. Hallucinations of the senses arise from some defect in the organs of sense, or from some unusual circumstances attending the object. They are sometimes symptoms of general disease, as in fevers. Maniacal hallucinations arise from some imaginary or mistaken idea; similar hallucinations occur in revery. This state of the mind is sometimes called delusion, or waking dreams. An attempt has been made to distinguish hallucinations from illusions; the former are said to be dependent upon the state of the intellectual organs, and the latter on that of sense.[z] An instance is given

v-Montgomery Preg. 264. w-Coke Litt. 123 *b*. x-3 Brown Ch. 349; Gardner Peerage case, Le Marchant Report; Croke Jac. 686; 7 Hazard, Register of Pennsylvania, 363. y-2 Park. Ins. 583. z-Ray Med. Jur. § 99; 1 Beck Med. Jur. 538.

of a temporary hallucination of Ben Jonson. He told a friend that he had spent many a night in looking at his great toe, about which he had seen Turks and Tartars, Romans and Carthagenians, fight in his imagination.[a] This example is unfair both to Jonson and the reader, for it seems tortured out of merely casual remarks of this eminent poet. If, instead of being temporary, this affection is permanent, then it may be considered insanity.

HERMAPHRODITES are human beings who have in appearance the sexual organs of both sexes, having the parts of generation of both male and female. Hermaphrodites are adjudged to belong to that sex which prevails in them.[b] The several characteristics of the human species are widely separated, and the two sexes are never, perhaps, united in the same individual.[c] Cases of malformation, however, sometimes are found, in which it is very difficult to decide to which sex the person belongs.[d]

HUNGER. See DEATH FROM, above.

IDIOCY is a natural defect of the understanding; a form of insanity resulting either from congenital (natural) defect or some obstacle to the development of the faculties in infancy. It always implies some defect or disease of the brain, which is generally smaller than the standard size and irregular in its shape and proportions. Occasionally the head is unnaturally large, being distended by water. The senses are very imperfect at best, and one or more are often entirely wanting. None can articulate more than a few words; while many utter only cries or muttered sounds. Some make known their wants by signs or sounds which are intelligible to those who have charge of them. The head, the features, the expression, the movements, all convey the idea of extreme mental deficiency. The reflective faculties are entirely wanting, whereby they are utterly incapable of any effort of reasoning. The perceptive faculties exist in a very limited degree, and hence they are rendered capable of being improved somewhat by education, and redeemed, in some measure, from their brutish condition. They have been led into habits of propriety and decency, have been taught some of the elements of learning, and have learned some of the coarser industrial occupations. The moral sentiments, such as self-esteem, love of approbation, veneration, benevolence, are not unfrequently manifested; while some propensities, such as cunning, destructiveness, sexual impulse, are particularly active.

In some parts of Europe a form of idiocy prevails endemically (in a manner peculiar to a people or nation), called cretinism. It is associated with disease or defective development of other organs besides the head. Cretins are short in stature, their limbs are attenuated, the belly tumid, the neck thick. The muscular system is feeble, and their voluntary movements restrained and undecided. The power of language is very imperfect, if not entirely wanting. In the least degraded forms of this disease, the perceptive powers may be somewhat developed, and the individual may evince some talent at music or construction. In Switzerland they make parts of watches. Unlike idiocy, cretinism is not congenital, but is gradually developed in the early years of childhood. It is owing chiefly to atmospherical causes, and is transmitted from one generation to another. Both idiocy and cretinism exhibit various degrees of mental deficiency, but they never approximate to any description of men supposed to be rational, nor can any amount of education efface the chasm which separates them from their better-endowed fellow-men. The older law-writers, whose observation of mental manifestations was not very profound, thought it necessary to have some test of idiocy; and accordingly Fitzherbert says, "If he have sufficient understanding to know and understand his letters, and to read by teaching or information, he is not an idiot."[e] Again, he says, "A man is not an idiot if he hath any glimmering of reason, so that he can tell his parents his age, or the like common matters." The inference was, no doubt, that such a man is responsible for his criminal acts. At the present day such an idea would not be entertained for a moment, nor are we aware of any case on record of an idiot suffering capital punishment. Of course, they are totally incapable of any civil acts; but in this country—in some of the States, at least—they would not be debarred from exercising the right of suffrage. See INSANITY, below.

ILLUSION is deceptive appearance; it is a species of mania, in which the sensibility of the nervous system is altered, excited, perverted, or weakened. The patient is deceived by the false appearance of things, and his reason is not sufficiently active and powerful to correct the error; and this last particular is what distinguishes the sane from the insane. Illusions are not unfrequent in a state of health, but reason corrects the errors and dissipates them. A square tower, seen from a distance, may appear round, but on approaching it the error is corrected. A distant mountain may be taken for a cloud, but as we approach we discover the truth. To a person in the cabin of a vessel under sail, the shore appears to move; but reflection and a closer examination soon destroy this illusion. An insane individual is mistaken on the qualities, connections, and causes of the impressions he actually receives, and he forms wrong judgments as to his internal and external sensations; and his reason does not correct the error.[f] See HALLUCINATION, above.

a-1 Collyer Lun. 34. b-Co. Litt. 2, 7: Domat Lois. Civ. Liv. 1, t. 2, § 1, n. 9. c-2 Dunglinson Hum. Physiol. 304; 1 Beck Med. Jur. 94-110. d-See 2 Med. Exam. 314: 1 Briand Med. Leg. Ch. 2, Art. 2, § 2, n. 2; Grey Med. Jur. 42, 47; 1 Beck Med. Jur. (11 Ed.) 164, *et seq.*; Wharton & S. Med. Jur. (2d Ed.) 408, *et seq.* e-Natura Brevium, 583. f-1 Beck. Med. Jur. 538; Esquirol Maladies Mentales, prém. partie, iii, tome 1, p. 202; Dict. des. Sciences Médicales, *Hallucination*, tome 20, p. 64.

IMBECILITY is weakness; want of strength; feebleness of body and mind; not possessing the vigor that usually belongs to men, and which is necessary to the due performance of the functions of the body and intellect. It may be natural, or induced by violence or disease. It may be congenital (natural) or resulting from an obstacle to the development of the faculties, supervening in infancy.

Generally, it is manifested both in the intellectual and moral faculties; but occasionally it is limited to the latter, the former being but little, if at all, below the ordinary standard. Hence it is distinguished into intellectual and moral. In the former there are seldom any of the repulsive features of idiocy, the head, face, limbs, movements, being scarcely distinguishable, at first sight, from those of the race at large. The senses are not manifestly deficient, nor the power of articulation; though the use of language may be very limited. The perceptive faculties exhibit some activity; and thus the more obvious qualities of things are observed and remembered. Simple industrial operations are well performed, and, generally, whatever requires but little intelligence is readily accomplished. Occasionally a solitary faculty is prominently, even wonderfully developed,—the person excelling, for instance, in music, in arithmetical calculations, or mechanical skill, far beyond the ordinary measure. For any process of reasoning, or any general observation or abstract ideas, imbeciles are totally incompetent. Of law, justice, morality, property, they have but a very imperfect notion. Some of the affective faculties are usually active, particularly those which lead to evil habits, thieving, incendiarism, drunkenness, homicide, assaults on women.

The kind of mental defect here mentioned is universal in imbecility, but it exists in different degrees in different individuals, some being hardly distinguishable, at first sight, from ordinary men of feeble endowments, while others encroach upon the line which separates them from idiocy.

The various grades of imbecility, however interesting in a philosophical point of view, are not very closely considered by courts. They are governed in criminal cases solely by their tests of responsibility, and in civil cases by the amount of capacity, in connection with the act in question, or the abstract question of soundness or unsoundness.

Touching the question of responsibility, the law makes no distinction between imbecility and insanity.[a]

In civil cases, the effect of imbecility is differently estimated. In cases involving the validity of the contracts of imbecile persons, courts have declined to gauge the measure of their intellects, the only question with them being one of soundness or unsoundness, and "no distinction being made between important and common affairs, large or small property."[b]

Courts of equity, also, have declined to invalidate the contracts of imbeciles, except on the ground of fraud.[c] Of late years, however, courts have been governed by other considerations. If the contract were for necessaries, or showed no mark of fraud or unfair advantage, or if the other party, acting in good faith and ignorant of the other's mental infirmity, cannot be put into *statu quo*, the contract is valid.[d]

The same principles have governed the courts in cases involving the validity of the marriage contract. If suitable to the condition and circumstances of the party, and manifestly tending to his benefit, it has been confirmed, notwithstanding a considerable degree of incompetency. If, on the other hand, it has been procured by improper influences, manifestly for the advantage of the other party, it has been invalidated.[e] The law has always showed more favor to the wills of imbeciles than to their contracts. "If a man be of a mean understanding, neither of the wise sort nor of the foolish, but indifferent, as it were, betwixt a wise man and a fool—yea, though he rather incline to the foolish sort, so that for his dull capacity he might worthily be called *grossum caput* (a dull pate), or a dunce—such a one is not prohibited to make a testament."[x] Whether the testament be established or not, depends upon the circumstances of the case; and the English ecclesiastical courts have always assumed a great deal of liberty in their construction of these circumstances. The general principle is that if the will exhibits a wise and prudent disposition of property, and is unquestionably the will of the testator, and not another's, it should be established in the face of no inconsiderable deficiency.[f] Very different views prevailed in a celebrated case in New York.[g] The mental capacity must be equal to the act; and if that fact be established, and no unfair advantage have been taken of the mental deficiency, the will, the marriage, the contract, or whatever it may be, is held to be valid.

The term moral imbecility is applied to a class of persons who, without any considerable, or even appreciable, deficiency of intellect, seem to have never been endowed with the higher moral sentiments. They are unable to appreciate fully the distinctions of right and wrong, and, according to their several opportunities and tastes, they indulge in mischief as if by an instinct of their nature. To vice and crime they have an irresistible proclivity, though able to discourse on the beauties of virtue and the claims of moral obligation. While young, many of them manifest a cruel and quarrelsome disposition, which leads them to torture brutes and bully their companions. They set all law and admonition at defiance, and become a pest and a terror to the neighborhood. It is worthy of notice, because the fact throws much light

a-See 1 Carr. & K. 129. b-4 Dane Abr. 561; see 4 Cow. N. Y. 207. c-1 Story Eq. Jur. § 238. d-Chitty Contr. 112; Story Contr. § 27; 4 Exch. 17. e-1 Hagg. 355; Ray Med. Jur. 100. x-Swinburne, Wills, Part 2, s. 4. f-1 Hagg. 384. g-26 Wend. N. Y. 256.

on the nature of this condition, that a very large proportion of this class of persons labor under some organic defect. They are scrofulous, rickety, or epileptic, or, if not obviously suffering from these diseases themselves, they are born of parents who did. Their progenitors may have been insane, or eccentric, or highly nervous, and this morbid peculiarity has become, unquestionably, by hereditary transmission, the efficient cause of the moral defect under consideration. Thus lamentably constituted, wanting in one of the essential elements of moral responsibility, they are certainly not fit objects of punishment; for though they may recognize the distinctions of right and wrong in the abstract, yet they have been denied by nature those faculties which prompt men more happily endowed to pursue the one and avoid the other. In practice, however, they have been regarded with no favor by the courts.[h] See INSANITY, below.

IMPOTENCE is the incapacity for copulation or for propagating the species. It differs from sterility, though these terms have been used synonymously. Impotence may be considered as accidental or temporary, curable or incurable. Absolute or incurable impotence is that for which there is no known relief, principally originating in some malformation or defect of the genital organs. Where this defect existed at the time of marriage and was incurable, by the ecclesiastical law and the law of many of the States, the marriage may be declared void from the beginning.[i] But the party naturally impotent cannot allege that fact for the purpose of obtaining a divorce.[j]

INFANTICIDE is the murder of a new-born infant. It is distinguished from abortion and fœticide, which is the destruction of life while in the mother's womb. The criminal modes most commonly resorted to to destroy the life of an infant are: 1, suffocation; 2, drowning; 3, cold and exposure; 4, starvation; 5, wounds, fractures, and injuries of various kinds; a mode not unfrequently resorted to is the introduction of sharp-pointed instruments in different parts of the body; also, luxation and fracture of the neck, accomplished by forcibly twisting the head of the child, or pulling it backwards; 6, strangulation; 7, poisoning; 8, intentional neglect to tie the umbilical cord; and, 9, causing the child to inhale air deprived of its oxygen, or gases positively deleterious. All these modes of destroying life, together with the natural or accidental ones, will be found fully discoursed by the writers on medical jurisprudence.[k]

Birth. The crime of infanticide can be committed only after the child is wholly born.[l] This question involves an inquiry: 1. Into the signs of maturity, the data for which are, the length and weight of the fœtus, the relative position of the centre of its body, the proportional development of its several parts as compared with each other, especially of the head as compared with the rest of the body, the degree of growth of the hair and nails, the condition of the skin, the presence or absence of the *membrana pupillaris*, and, in the male, the descent or non-descent of the testicles.[m]

Life, etc. 2. Was it born alive? This second point presents an inquiry of great interest both to the legal and medical professions and to the community at large. In the absence of all direct proof, what organic facts proclaim the existence of life subsequent to birth? These facts are derived principally from the circulatory and respiratory systems. From the former the proofs are gathered—from the *character of the blood*, that which is purely fœtal being wholly dark, like venous blood, destitute of fibrous matter, and forming coagula much less firm and solid than that which has been subjected to the process of respiration; so, also, the coloring-matter is darker, and contains no phosphoric acid, and its proportion of serum and red globules is comparatively small. *From the condition of the heart and blood vessels.* The circulation anterior and subsequent to birth must necessarily be entirely different. That anterior, by means of the fœtal openings—the *foramen ovale*, the *ductus arteriosus*, and the *ductus venosus*—is enabled to perform its circuit without sending the entire mass of the blood to the lungs for the purpose of oxygenation. When the extra-uterine life commences, and the double circulation is established, these openings gradually close; so that their closure is considered clear evidence of life subsequent to birth.[n] *From the difference in the distribution* of the blood in the different organs of the body. The two organs in which this difference is most perceptible are the liver and the lungs —especially the latter. The circulation of the whole mass of the blood through the lungs distends and fills them with blood, so that their relative weight will be nearly doubled, and any incision into them will be followed by a free effusion.

From the respiratory system proofs of life subsequent to birth are derived. *From the thorax.* Its size, capacity, and arch are increased by respiration. *From the lungs.* They are increased in size and volume, are projected forward, become rounded and obtuse, of a pinkish-red hue, and their density is inversely as their volume.[o] The fact of the specific gravity of the lungs being diminished in proportion to their diminution in density gives rise to a celebrated test—the hydrostatic—the relative weight of the lungs with water.[p] The rule is, that lungs which have not respired are specifically heavier than water, and if placed within it

h-Ray Med. Jur. 112–130. i-Com. Dig. *Baron & F.* (C. 3); Bac. Abr. *Marriage, etc.* (E. 3); 1 Bl. Comm. 440; 1 Beck. Med. Jur. 67; Code, 5, 17, 10; Paynter Marr. & D. Ch. 8; 5 Paige Ch. 554; Merlin Rep. *Impuissance.* j-3 Phil. Eccl. 147; 1 Eng. Eccl. 384. k-1 Beck Med. Jur. 509, *et seq.*; Dean Med. Jur. 179, *et seq.*; Ryan Med. Jur. 137; Dr. Cummins, Proof of Infanticide Considered. l-5 Carr. & P. 329; 6 Id. 349. m-Dean Med. Jur. 140. n-1 Beck Med. Jur. 478, *et seq.*; Dean Med. Jur. 142, *et seq.* o-Dean Med. Jur. 149, *et seq.* p-1 Beck Med. Jur. 459, *et seq.*

will sink to the bottom of the vessel. If they have respired, their increase in volume and decrease in density render them specifically lighter than water, and when placed within it they will float. There are several objections to the sufficiency of this test; but it is fairly entitled to its due weight in the settlement of this question.[q] *From the state of the diaphragm.* Prior to respiration it is found high up in the thorax. The act of expanding the lungs enlarges and arches the thorax, and, by necessary consequence, the diaphragm descends.

The fact of life at birth being established, the next inquiry is, how long did the child survive? The proofs here are derived from three sources. *The fœtal openings*, their partial or complete closure. The more perfect the closure, the longer the time. *The series of changes* in the umbilical cord. These are: 1. The *withering* of the cord. 2. Its *desiccation* or *drying*. 3. Its *separation* or *dropping off*—occurring usually four or five days after birth. 4. *Cicatrization of the umbilicus*—occurring usually from ten to twelve days after birth. *The changes in the skin*, consisting in the process of exfoliation of the epidermis, which commences on the abdomen, and extends thence successively to the chest, groin, axillæ, interscapular space, limbs, and, finally, to the hands and feet.

INSANITY is unsoundness of the mind; derangement of the intellect; it is any degree of mental derangement, from a slight degree of wandering to distraction. This term is rarely used to express slight temporary delirium. Of late years this word has been used to designate all mental impairments and deficiencies formerly embraced in the terms *lunacy*, *idiocy*, and *unsoundness of mind*. Even to the middle of the last century the law recognized only two classes of persons requiring its protection on the score of mental disorder, viz.: *lunatics* and *idiots*. The former were supposed to embrace all who had lost the reason which they once possessed, and their disorder was called *dementia accidentalis;* the latter, those who had never possessed any reason, and this deficiency was called *dementia naturalis*. Lunatics were supposed to be much influenced by the moon; and another prevalent notion respecting them was that in a very large proportion there occurred *lucid intervals*, when reason shone out, for a while, from behind the cloud that obscured it, with its natural brightness. It may be remarked, in passing, that lucid intervals are far less common than they were once supposed to be, and that the restoration is not so complete as the descriptions of the older writers would lead us to infer. In modern practice, the term lucid interval signifies merely a remission of the disease, an abatement of the violence of the morbid action, a period of comparative calm; and the proof of its occurrence is generally drawn from the character of the act in question. It is hardly necessary to say that this is an unjustifiable use of the term, which should be confined to the genuine lucid interval that does occasionally occur. It began to be found at last that a large class of persons required the protection of the law, who were not idiots, because they had reason once, nor lunatics in the ordinary signification of the term, because they were not violent, exhibited no very notable derangement of reason, were independent of lunar influences, and had no lucid intervals. Their mental impairment consisted in a loss of intellectual power, of interest in their usual pursuits, of the ability to comprehend their relations to persons and things. A new term—*unsoundness of mind*—was, therefore, introduced to meet this exigency; but it has never been very clearly defined.

The law has never held that *all* lunatics and idiots are absolved from all responsibility for their civil or criminal acts. This consequence was attributed only to the severest grades of these affections,—to lunatics who have no more understanding than a brute, and to idiots who cannot number twenty pence nor tell how old they are. Theoretically the law has changed but little, even to the present day; but practically it exhibits considerable improvement: that is, while the general doctrine remains unchanged, it is qualified, in one way or another, by the courts, so as to produce less practical injustice.

Insanity implies the presence of disease or congenital defect in the brain, and though it may be accompanied by disease in other organs, yet the cerebral affection is always supposed to be primary and predominant. It is to be borne in mind, however, that bodily diseases may be accompanied, in some stage of their progress, by mental disorder which may affect the legal relations of the patient.

For all practical purposes, however, a definition is unnecessary, because the real question at issue always is, not what constitutes insanity in general, but wherein consists the insanity of this or that individual. Neither sanity nor insanity can be regarded as an entity to be handled and described, but rather as a condition to be considered in reference to other conditions. Men vary in the character of their mental manifestations, insomuch that conduct and conversation perfectly proper and natural in one might in another, differently constituted, be indicative of insanity. In determining, therefore, the mental condition of a person, he must not be judged by any arbitrary standard of sanity or insanity, nor compared with other persons unquestionably sane or insane. He can properly be compared only with himself. When a person, without any adequate cause, adopts notions he once regarded as absurd, or indulges in conduct opposed to all his former habits and principles, or changes completely his ordinary temper, manners, and dispositions—the man of plain practical sense indulging in speculative theories and projects, the miser becoming a spendthrift and the

[q] Dean Med. Jur. 154, *et seq.*

staid, quiet, unobtru-
sy, restless, and bois-
us becoming dull and
verge of despair; the
business plunging into
culation; the discreet
mefully reckless and
roof of insanity can be
of these traits, in and
by itself alone, disconnected from the natural traits of character, could be regarded as conclusive proof of insanity. In accordance with this fact, the principle has been laid down, with the sanction of the highest legal and medical authority, that it is the prolonged departure, without any adequate cause, from the states of feeling and modes of thinking usual to the individual when in health, which is the essential feature of insanity.[r]

Insanity in some of its forms annuls all criminal responsibility, for there can be no crime nor offence if the accused were in a state of madness at the time of the act,[x] and in other forms disqualifies its subject from the performance of certain civil rights. A kind and degree of insanity which will not excuse a person for a criminal act may render him legally incompetent to the management of himself or his affairs.[s]

LUCID INTERVALS are those intervals bright with the natural radiance of intellect, not darkened or confused by delirium or madness; those intervals marked by the natural and regular operations of reason. It must not be a superficial tranquillity, a shadow of repose, but, on the contrary, a profound tranquillity, a real repose. "It must not be a mere ray of reason, which makes its absence more apparent when it is gone—not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal—not a glimmering which joins the night to the day,—but a perfect light, a lively and continued lustre, a full and entire day interposed between the two separate nights of the fury which precedes and follows it; and, to use another image, it is not a deceitful and faithless stillness which follows or forebodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity. In fine, without looking for so many metaphors to represent our idea, it must not be a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked as in every respect to resemble the restoration of health."[t] So Lord Thurlow says, by a perfect interval, "I do not mean a cooler moment, an abatement of pain or violence, or of a higher state of torture,—a mind relieved from excessive pressure; but an interval in which the mind, having thrown off the disease, had recovered its general habit."[u] That there sometimes occurs an intermission in which the person appears to be perfectly rational, restored, in fact, to his proper self, is an unquestionable fact. It is equally true that they are of rare occurrence, that they continue but for a very brief period, and that with the apparent clearness there is a real loss of mental force and acuteness. In most cases of insanity there may be observed, from time to time, a remission of the symptoms, in which excitement and violence are replaced by quiet and calm, and, within a certain range, the patient converses correctly and properly. A superficial observer might be able to detect no trace of disease; but a little further examination would show a confusion of ideas and singularity of behavior, indicative of serious, though latent, disease. In this condition the patient may hold some correct notions, even on a matter of business, and yet be quite incompetent to embrace all the relations connected with a contract or a will, even though no delusion were present to warp his judgment. The revelations of patients after recovery furnish indubitable proof that during this remission of the symptoms the mind is in a state of confusion utterly unreliable for any business purpose.[v]

Of late years—whatever may have been the earlier practice—courts have not required that proof of a lucid interval which consists of complete restoration of reason, as described above. They have been satisfied with such proof as was furnished by the transaction in question. They cared less to consider the general state of mind than its special manifestations on a particular occasion. "The strongest and best proof that can arise as to a lucid interval is that which arises from the act itself;" if that "is a rational act, rationally done, the whole case is proved;"[w] "if she could converse rationally, that is a lucid interval."[x] This is a mere begging of the question, which is whether the act so rational and so rationally done—and not for that reason necessarily incompatible with insanity—was or was not done in a lucid interval. Persons very insane, violent, and full of delusions frequently do and say things evincing no mark of disease, while no one supposes that there is any lucid interval in the case. "It is clear that persons essentially insane may be calm, may do acts, hold conversations, and even pass in general society, as perfectly sane. It often requires close examination by persons skilled in the disorder, to discover and ascertain whether or not the mental derangement is removed and the mind become again perfectly sound. Where there is calmness, where there is rationality on ordinary subjects, those who see the party usually conclude that his recovery is perfect. . . . When there is not actual recovery, and a return to the management of himself and his concerns by the unfortunate individual, the proof of a lucid interval is extremely difficult."[y]

r-Gooch, Lond. Quart. Rev. xliii. 355; Combe Ment. Derang. 196; Meidway *vs.* Croft, 3 Curt. Eccl. 671. x-Code Fr. Art. 64. s-Bellinghan's Case, Collinson, 657. t-Pothier, Obl. Evans ed. 579. u-3 Brown Ch. 234. v-Georget Des Mal. Men. 46; Reid, Essays on Hypochondriacal Affections, 21 Essay; Combe Men. Derang. 241; Ray Med. Jur. 376. w-1 Phill. Lect. 90. x-Proctor, 2 Carr. & P. 415. y-2 Hagg. 433.

In criminal cases, the proof of a lucid interval must be still more difficult, in the very nature of the case. For although the mental manifestations may be perfectly right, it cannot be supposed that the brain has resumed its normal condition. In its outward expression, insanity, like many other nervous diseases, is characterized by a certain periodicity, whereby the prominent symptoms disappear for a time, only to return again within a very limited period. An epileptic, in the intervals between his fits, may evince to the closest observer not a single trace of mental or bodily disease; and yet, for all that, nobody supposes that he has recovered from his malady. No more does a lucid interval in a case of insanity imply that the disease has disappeared because its outward manifestations have ceased. There unquestionably remains an abnormal condition of the brain, by whatever name it may be called, whereby the power of the mind to sustain provocations, to resist temptations, or withstand any other causes of excitement, is greatly weakened.

Lucid intervals, properly so called, should not be confounded with those periods of apparent recovery which occur between two successive attacks of mental disease, nor with those transitions from one phasis of insanity to another, in which the individual seems to be in his natural condition. They may not be essentially different, but the suddenness and brevity of the former would be likely to impart to an act a moral complexion very different from that which it would bear if performed in the larger and more indefinite intermissions of the latter. Still, great forbearance should be exercised towards persons committing criminal acts while in any of these equivocal conditions. Those who have suffered repeated attacks of mental disease habitually labor under a degree of nervous irritability, which renders them peculiarly susceptible to many of those incidents and influences which lead to crime. The law may make no distinction, but executive and judicial tribunals are generally intrusted with discretionary powers, whereby they are enabled to apportion the punishment according to the moral guilt of the party.[z]

It is the duty of the party who contends for a lucid interval, to prove it; for a person once insane is presumed so, until it is shown that he had a lucid interval, or has recovered,[a] and yet "were they to run into nicety, proof might be demanded of one's insanity at the precise moment when the act was committed." See INSANITY, above.

MALPRACTICE is bad or unskilful practice; practice in a physician, or other professional person, whereby the health or members of the patient is injured; practice contrary to established rules. Ignorant malpractice is the administration of medicines calculated to do injury, which do harm, and which a well-educated and scientific man would know were not proper in the case.[b] This offence is a misdemeanor (whether it be occasioned by curiosity and experiment, or neglect), because it breaks the trust which the patient has put in a physician, and tends directly to his destruction.[c] Negligent malpractice comprehends those cases where there is no criminal or dishonest object, but gross negligence of that attention which the situation of the patient requires, as if a physician should administer medicines while in a state of intoxication from which injury would arise to his patient. Wilful malpractice takes place when the physician purposely administers or performs an operation which he knows and expects will result in the death to the individual under his care, as in the case of a criminal abortion.[d] To the performance of all surgical operations the surgeon is bound to bring at least ordinary skill and knowledge. He must apply without mistake what is settled in his profession. He must possess and practically exercise that degree and amount of knowledge and science which the leading authorities have pronounced as the result of their researches and experience up to the time, or within a reasonable time before the issue or question to be determined is made.[e]

Besides the criminal remedy for malpractice, the injured party may in many cases bring a civil action.[f] Civil cases of malpractice are of very frequent occurrence on those occasions where surgical operations are rendered necessary, or supposed to be so, by disease or injury, and are so performed as either to shorten a limb or render it stiff, or otherwise prevent the free, natural use of it, by which the party ever after suffers damages. This may embrace almost every kind of surgical operation; but nine-tenths of all such cases arise from amputations, fractures, or dislocation.[g]

MEDICAL EVIDENCE. See title EVIDENCE, ante.

MIDWIFE is a woman who assists other women in childbirth. A midwife is required to perform the business she undertakes with proper skill; and if she is guilty of any malpractice she is liable to an action or an indictment for the misdemeanor.[h]

MISCARRIAGE. See ABORTION, above.

MONOMANIA is the derangement of a single faculty, or with regard to a particular subject, the other faculties being in their natural and regular exercise. The most simple form of this disorder is that in which the patient has imbibed some single notion, contrary to common sense and to his own expense, and which seems,

z-Ray Med. Jur. chap. *Luc. Int.* a-Swinb. 77; Coke Litt. 185, *n.*; 3 Brown Ch. 443; 1 Const. So. C. 225; 1 Pet. 163; 1 Litt. Ky. 102. b-Elwell Malpr. 198, *et seq.*; 7 B. & C. 493, 497; 6 Bingh. 440; 6 Mass. 134; 5 C. & P. 333; 1 M. & R. 405; 5 Cox Cr. Cas. 587. c-1 Ld. Raym. 213. d-Elwell Malpr. 243, *et seq.*; 2 Barb. 216. e-Elwell Malpr. 55; see 8 East. 347; 1 Wils. 259; 1 H. Bl. 61; Wright, 466; 22 Penn. St. 261. 27 N. H. 460; 13 B. Mon. 219. f-5 Day, 260; 9 Conn. 209; 3 Watts, 355; 7 N. Y. 397. g-Elwell Malpr. 55. h-See Viner Abr. *Physician*; Com. Dig. *Physician*; 8 East. 348; 2 Wils. 350; 4 C. & P. 398, 407, *a.*; 2 Russ. Cr. 288.

and no doubt really is, dependent on errors of sensation. It is supposed that the mind in other respects retains its natural intellectual powers; in order to avoid any civil act done, or criminal responsibility incurred, it must manifestly appear that the act in question was the effect of monomania.[i] See DELUSION, above.

MONSTER. See BIRTH, above.

PARTURITION. See ACCOUCHMENT; BIRTH, above.

PATHOLOGY is that branch of the medical science which explains the nature of diseases, their causes, and symptoms; or, the doctrine of the causes and nature of diseases, comprehending etiology (causes of disease), nosology (names and definitions of diseases, their class, genus, order, and species), symptomatology (symptoms of diseases), and therapeutics (the use of diet and of medicines). Some degree of the knowledge of pathology is of great consequence to the legal practitioner.[j]

PHYSICIAN is a person skilled in the art of medicine; one whose profession is to prescribe remedies for diseases; one lawfully engaged in the practice of medicine. Every person who offers his services to the public generally impliedly contracts with the employer that he is in possession of the ordinary skill and experience which are possessed by those who practice or profess to understand the art or science, and which are generally regarded by those most conversant with the profession as necessary to qualify one to engage in the business successfully. This ordinary skill may differ according to locality and means of information.[k] A physician's responsibility is the same when he is negligent as when he lacks ordinary skill, although the measure of indemnity and punishment may be different.[l] Although a physician is civilly and criminally responsible for his conduct while discharging the duties of his profession, he is in no sense a warrantor or insurer of a favorable result, without an express contract to that effect.[m]

POISON is any agent capable of producing a morbid, noxious, or dangerous effect upon any object endowed with life; of producing death. A substance having an inherent deleterious property which renders it, when taken into the system, capable of destroying life.[n]

Gaseous substances are classed as poisons.

Irritant poisons, when taken in ordinary doses, occasion speedily violent vomiting and purging, preceded, accompanied, or followed by intense pain in the abdomen, commencing in the region of the stomach. The corrosive poisons, as distinguished from those in a more limited sense termed irritant, generally produce their result more speedily, and give chemical indications; but every corrosive poison acts as an irritant in the sense here adopted.

Irritant poisons are:

1. MINERAL:—*Metallic:* Acids; alkalies and their salts; metalloids. *Non-metallic:* arsenic.
2. VEGETABLE:—*Savin.*
3. ANIMAL:—*Cantharides.*

Narcotic poisons act chiefly on the brain or spinal marrow. Either immediately or some time after the poison has been swallowed, the patient suffers from headache, giddiness, paralysis, stupor, delirium, insensibility, and, in some instances, convulsions.

Narcotic poisons are:

1. CEREBRAL:—*Morphia.*
2. SPINAL:—*Strychnia.*
3. CEREBRO-SPINAL:—*Conia; aconitina.*

The effects of one class are, however, sometimes produced by the other—more commonly as secondary, but sometimes even as primary, symptoms.

The evidence of poisoning, as derived from *symptoms*, is to be looked for chiefly in *the suddenness of their occurrence;* this is perhaps the most reliable of all evidence derived from symptoms in cases of criminal poisoning;[o] though none of this class of evidence can be considered as furnishing anything better than a high degree of probability; *the regularity of their increase;* this feature is not universal, and exists in many diseases; *uniformity in their nature;* this is true in the case of comparatively few poisons; *the symptoms begin soon after a meal;* but sleep, the manner of administration, or certain diseases, may affect this rule in the case of some poisons; *when several partake at the same time of the same poisoned food, all suffer from similar symptoms;*[p] *the symptoms first appearing while the body is in a state of perfect health.*[q]

Appearances which present themselves on post-mortem examinations are of importance in regard to some classes of irritant poisons;[r] but many poisons leave no traces which can be so discovered.

Chemical analysis often results in important evidence, by discovering the presence of poisons, which must then be accounted for; but a failure to detect it by no means proves that it has not been given.[s]

The evidence derived from *circumstances* differs in nothing in principle from that in case of commission of other crimes.

Homicide by poisoning is generally accidental (and therefore not murder), or deliberate.[t]

i-Cyclop. Pr. Med. *Sound and unsound of mind;* Ray Ins. 203; 13 Ves. Ch. 89; 3 Brown Ch. 444; 1 Add. Eccl. 283; 2 Id. 102; Haag. 18; 2 Add. 79, 94, 209; 5 C. & P. 168; Burrows Ins. 484, 485. j-2 Chitty Pr. 42, *n.* k-Elwell Malpr. 22–24, 201; Story Bailm. 433; 3 C. & P. 629; 8 Id. 475. l-Elwell Malpr. 27; Arch. Cr. Pl. (2 Ed.) 411; 2 Ld. Raym. 1583; 3 M. & S. 14, 15; 5 Id. 198; 1 Law Cr. Cas. 169; 2 Stark. Ev. 526; Broom Max. 168, 169; 4 Denio, 464; 19 Wend. 345, 346. m-Elwell Malpr. 20; 7 C. & P. 81. n-Wharton & Stille Med Jur. § 493; Taylor Poisons (2 Am. Ed.) 18. The history of poisoning, and many remarkable early instances of a wide-spread use of poisons, are recorded in works on medical jurisprudence; see these, and also, especially, Taylor Poisons; Archbold Cr. Pr. (Waterman's ed.) 940: Wharton & Stille Med. Jur.; 1 Beekman Hist. Jur. 74, *et seq.* o-See Taylor Pois. 107; Christison Pois. 42. p-2 Park. Cr. Cas. N. Y. 235; Taylor Poisons, 118. q-Archbold Cr. Pl. (Waterman ed.) 948. r-See the Hersey Case, Mass. 1861; Palmer's Case, Taylor Poisons, 697. s-Christison Poisons, 61, 62. t-See 19 Conn. 388.

PREGNANCY is the state of a female who has within her ovary or womb a fecundated germ, which gradually becomes developed in the latter receptacle;[t] the state of a female who has conceived, or is with child.

The signs of pregnancy acquire a great importance from their connection with the subject of *concealed*, and also of *pretended*, pregnancy. The first may occur in order to avoid disgrace, and to accomplish in a secret manner the destruction of offspring. The second may be attempted to gratify the wishes of a husband or relations, to deprive the legal successor of his just claims, to gratify avarice by extorting money, and to avoid or delay execution.

These signs and indications have a twofold division. *First*, those developed through the general system, and hence termed constitutional; *Second*, those developed through the uterine system, termed local or sensible.

The first, or constitutional, indications regard—1. The mental phenomena, or change wrought in the temperament of the mother, evidenced by depression, despondency, rendering her peevish, irritable, capricious, and wayward; sometimes drowsiness and occasionally strange appetites and antipathies are present.

2. The countenance exhibits languor, and what the French writers term decomposition of features,—the nose becoming sharper and more elongated, the mouth larger, the eyes sunk and surrounded with a brownish or livid areola, and having a languid expression.

3. The vital action is increased; a feverish heat prevails, especially in those of full habit and sanguine temperament. The body, except the breasts and abdomen, sometimes exhibits emaciation. There are frequently pains in the teeth and face, heartburn, increased discharge of saliva, and costiveness.

4. The mammary sympathies give enlargement and firmness to the breasts; but this may be caused by other disturbances of the uterine system. A more certain indication is found in the areola, which is the dark-colored circular disk surrounding the nipple. This, by its gradual enlargement, its constantly deepening color, its increasing organic action evidenced by its raised appearance, turgescence, and glandular follicles, is justly regarded as furnishing a very high degree of evidence.

5. Irritability of stomach, evidenced by sickness at the stomach, usually in the early part of the day.

6. Suppression of the menses, or monthly discharge arising from a secretion from the internal surface of the uterus. This suppression, however, may occur from diseases or from a vitiated action of the uterine system.

The second, termed *local* or *sensible* signs and indications, arise mainly from the development of the uterine system consequent upon impregnation. This has reference—

1. To the change in the uterus itself. The new principle introduced causes a determination of blood to that organ, which develops at first at its fundus, second in its body, and lastly in its cervix or neck. The latter constantly diminishes until it has become almost wholly absorbed in the body of the uterus. The os uteri in its unimpregnated state feels firm, with well-defined lips or margins. After impregnation the latter becomes tumid, softer, and more elastic, the orifice feeling circular instead of transverse.

2. To the state of the umbilicus, which is first depressed, then pushed out to a level with the surrounding integuments, and at last, towards the close of the period, protruded considerably above the surface.

3. To the enlargement of the abdomen. This commences usually by the end of the third month, and goes on increasing during the period of pregnancy. This, however, may result from morbid conditions not affecting the uterus, such as disease of the liver, spleen, ovarian tumor, or ascites.

4. To quickening, as rendered evident by the fœtal motions. By the former we understand the feeling by the mother of the self-induced motion of the fœtus in utero, which occurs about the middle of the period of pregnancy. But as the testimony of the mother cannot be always relied upon, her interest being sometimes to conceal it, it is important to inquire what other means there may be of ascertaining it. These movements of the fœtus may sometimes be excited by a sudden application of the hand, having been previously rendered cold by immersion in water, on to the front of the abdomen. Another method is to apply one hand against the side of the uterine tumor, and at the same time to impress the opposite side quickly with the fingers of the other hand

But the most reliable means consists in the application of auscultation, or the use of the stethoscope. This is resorted to for the purpose of discovering—

First, The souffle, or placental sound.

Second, The pulsations of the fœtal heart. The first is a low, murmuring, or cooing sound, accompanied by a slight rushing noise, but without any sensation of impulse. It is synchronous with the pulse of the mother, and varies not in its situation during the course of the same pregnancy. Its seat in the abdomen does vary in proportion to the progressive advance of the pregnancy, and it is liable to intermissions.

The second is quite different in its characteristics. It is marked by double pulsations, and hence very rapid, numbering from one hundred and twenty to one hundred and sixty in a minute. These pulsations are not heard until the end of the fifth month, and become more distinct as the pregnancy advances. Their source being the fœtal heart, their seat will vary with the varying position of the fœtus. Auscultation, if successful, not only reveals the fact of pregnancy, but also the life of the fœtus.

[t] Dunglinson Med. Dict. *Preg.*

There is still another indication of pregnancy; and that is a bluish tint of the vagina, extending from the os externum to the os uteri. It is a violet color, like lees of wine, and is caused by the increased vascularity of the genital system consequent upon conception. But any similar cause other than conception may produce the same appearance.

Independent of what may be found on this subject in works on medical jurisprudence and midwifery, that of Dr. Montgomery on the "Signs and Indications of Pregnancy" is the fullest and most reliable.

The laws relating to pregnancy concern the circumstances under and the manner in which the fact is ascertained. There are two cases where the fact whether a woman is or has been pregnant is important to ascertain. The one is when it is supposed she pretends pregnancy, and the other when she is charged with concealing it.

Pretended pregnancy may arise from two causes: the one when a widow feigns herself with child in order to produce a supposititious heir to the estate. The presumptive heir may in such case have a writ *de ventre inspiciendo* (of examining the abdomen), by which the sheriff is commanded to have such made, and the fact determined whether pregnancy exists or not, by twelve matrons, in the presence of twelve knights. If the result determine the fact of pregnancy, then she is to be kept under proper guard until she is delivered. If the pregnancy be negatived, the presumptive heir is admitted to the inheritance.[u] A practice quite similar prevailed in the civil law.

The second cause of pretended pregnancy occurs when a woman is under sentence of death for the commission of a crime. At common law, in case this plea be made before execution, the court must direct a jury of twelve matrons, or discreet women, to ascertain the fact, and if they bring in their verdict *quick with child* (for barely *with child*, unless it be alive in the womb, is not sufficient), execution shall be stayed, generally till the next session of the court, and so from session to session, till either she is delivered or proves by the course of nature not to have been with child at all.[v]

In Scotland, all that is necessary to be proved, to have execution delayed, is the fact of pregnancy, no difference being made whether she be quick with child or not. This is also the provision of the French penal code upon this subject. In this country, there is little doubt that clear proof that the woman was pregnant, though not quick with child, would at common law be sufficient to obtain a respite of execution until after delivery. The difficulty lies in making the proof sufficiently clear, the signs and indications being all somewhat uncertain, some of them wanting, all liable to variation, and conviction of the fact only fastening upon the mind when a number of them, inexplicable upon any other hypothesis, concur in that one result. In New York there is a statute regulation,[w] by which the sheriff is authorized to summon a jury of six physicians when a pregnant female convict is under sentence of death, and, if the inquisition by them executed find that such convict is quick with child, execution shall be suspended, and the inquisition transmitted to the governor; and whenever he shall become satisfied that she is no longer quick with child, he shall issue his warrant for her execution.

Pregnancy is seldom concealed except for the criminal purpose of destroying the life of the fœtus in utero, or of the child immediately upon its birth. Infant life is easily extinguished; while proof of the unnatural crime is hard to be furnished. This has led to the passage of laws, calculated to facilitate the proof and also to punish the very act of concealment of pregnancy and death of the child, when, if born alive, it would have been illegitimate.

PROLICIDE. See FŒTICIDE; INFANTICIDE, above.

PULSATION is the beating or throbbing of the heart, or of an artery in process of carrying on the circulation of the blood; beating without pain, as distinguished from verberation, or beating with pain.[x]

QUICKENING is becoming alive; the sensation a mother has of the motion of the child she has conceived. The period when quickening is first experienced varies from the tenth to the twenty-fifth, but is usually about the sixteenth week from conception.[y] It was formerly supposed that either the child was not alive until the time of quickening, or that it had acquired some new kind of existence that it did not possess before; hence the presumption of law that dates the life of the child from that time. The child is, in fact, alive from the first moment of conception, and, according to its age and state of development, has different modes of manifesting its life, and, during a portion of the period of gestation, by its motion. By the growth of the embryo the womb is enlarged until it becomes of too great a size to be contained in the pelvis; it then rises into the abdomen, when the motion of the fœtus is for the first time felt. Quickening, as indicating a distinct point in the existence of the fœtus, has no foundation in physiology; for it arises merely from the relation which the organs of gestation bear to the parts that surround them; it may take place early or late, according to the condition of these different parts, but not from any inherent vitality for the first time manifested by the fœtus.

As life, by law, is said to commence when a woman first becomes quick with child, so pro-

u-1 Sharswood, Blackst. Comm. 456; Croke Eliz. 566; 4 Brown Ch. 90; 2 P. Will. Ch. 591; Cox Cr. Cas. 297. v-4 Sharswood, Blackst. Comm. 394, 395; 1 Bay, So. C. 487. w-See 3 Rev. Stat. ch. 37, §§ 20–22 of the 5th edition. x-3 Sharsw. Bl. Comm. 120,* Calvinus Lex. *Pulsare*. y-Denman Midw. 129.

curing an abortion after that period is a misdemeanor. Before this time, formerly the law did not interfere to prevent a pregnant woman convicted of a capital offence from being executed.[a] If, however, the humanity of the law of the present day would not allow a woman to be executed who is *privément enceinte*,[a] *i. e.*, pregnant, although not quick, it would be but carrying out the same desire to interfere with long-established rules, to hold that the penalty for procuring abortion should also extend to the whole period of pregnancy.

SOMNAMBULISM is the act or practice of walking in sleep; sleep-walking. The mental condition of this affection is not very unlike that of dreaming. Many of their phenomena are the same; and the former differs from the latter chiefly in the larger number of the functions involved in the abnormal process. In addition to the mental activity common to both, the somnambulist enjoys the use of his senses in some degree, and the power of locomotion. He is thereby enabled to perform manual operations as well, frequently, as in his waking state. The farmer goes to his barn and threshes his grain; the house-servant lights a fire and prepares the breakfast for the family; and the scholar goes to his desk and writes or reads. Usually, however, the action of the senses is more or less imperfect, many of the impressions being incorrectly or not at all perceived. The person walks against a wall, or stumbles over an object in his path; he mistakes some projection for a horse, strides across it, and imagines himself to be riding; he hears the faintest sound connected with what he is doing, while the voices of persons near him, even the blast of a trumpet, are entirely unnoticed. Occasionally the power of the senses is increased to a degree unknown in the waking state. For the most part the operations of the somnambulist consist in getting up while asleep, groping about in the dark, endeavoring to make his way out of the house through doors or windows, making some inarticulate sounds, perhaps, and all the while unconscious of persons or things around him. The power of the perceptive faculties, as well as that of the senses, is sometimes increased in a wonderful degree.

The somnambulist always awakes suddenly, and has but a faint conception, if any, of what he has been thinking and doing. If conscious of anything, it is of an unpleasant dream imperfectly remembered. This fact, not being generally known, will often enable us to detect simulated somnambulism. If the person on waking continues the same train of thought and pursues the same plans and purposes which he did while asleep, there can be no doubt that he is feigning the affection. When a real somnambulist, for some criminal purpose, undertakes to simulate a paroxysm, he is not at all likely to imitate one of his own previous paroxysms, for the simple reason that he knows less than others how he appeared while in them. If, therefore, somnambulism is alleged in any given case, with no other proof than the occurrence of former paroxysms unquestionably genuine, it must be viewed with suspicion if the character of the alleged paroxysm differs materially from that of the genuine ones. In one way or another, a case of simulation would generally be detected by means of a close and intelligent scrutiny, so difficult is it to imitate that mixture of consciousness and unconsciousness, of dull and sharp perceptions, which somnambulism presents. The history of the individual may throw some light on the matter. If he has had an opportunity of witnessing the movements of a somnambulist in the course of his life, this fact alone would rouse suspicion, which would be greatly increased if the alleged paroxysm presented many traits like those of the paroxysms previously witnessed.

The legal consequences of somnambulism should be precisely those of insanity, which it so nearly resembles. The party should be exempt from punishment for his criminal acts, and be held amenable in damages for torts and trespasses. The only possible exception to this principle is to be found in those cases where the somnambulist, by meditating long on a criminal act while awake, is thereby led to commit it in his next paroxysm. Such being generally the fact, too much indulgence ought not to be shown to the criminal acts of the somnambulist.[b] But this is rather refined and hazardous speculation, and seems like punishing men solely for bad intentions, because the acts, though ostensibly the ground of punishment, are actually those of a person deprived of his reason. The truth is, however, that criminal acts have been committed in a state of somnambulism by persons of irreproachable character.[c]

STERILITY is barrenness; unfruitfulness; inability to produce young; inability to impregnate or conceive. When incurable at the time of marriage, and arising from impotency, it is a good cause for dissolving a marriage.[d] See IMPOTENCY, above.

SUICIDE is self-destruction; self-murder; the act of designedly destroying one's own life. To constitute suicide, the person must be of years of discretion, and of sound mind.[e] This was once regarded by the common law as exclusively a felonious act; of late, however, it has been often treated as the result of insanity, to be followed by all the legal consequences of that disease, so far as it is practicable. That suicide may be committed by a person in the full enjoyment of his reason there can be no doubt; nor can there be any doubt that it is often the result of unquestionable insanity. Between the two kinds of suicide here indicated, the medical jurist is obliged to discrimi-

a-2 Hale Pl. Cr. 413. a-Bl. Comm. 129. b-Hoffbauer; Die Psychologie, etc. c. 4, art. 2. c-See Gray Med. Jur. 265; Wharton & S. Med. Jur.; Tirrell's case, Mass. d-1 Fœderé Méd. Lég. § 254. e-4 Bl. Comm. 190.

nate, and in performing this duty the facts on the subject should be carefully considered.

The instinct of self-preservation is not so strong as to prevent men entirely from being tired of life and seeking their own destruction. They may have exhausted all their sources of enjoyment, their plans of business or of honor may have been frustrated, poverty or dishonor may be staring them in the face, the difficulties before them may seem utterly insurmountable, and, for some reason like these, they calmly and deliberately resolve to avoid the evil by ending their life. The act may be unwise and presumptuous, but there is in it no element of disease. On the other hand, it is well known that suicidal desires are a very common trait of insanity—that a large proportion of the insane attempt or meditate self-destruction. It may be prompted by a particular delusion, or by a sense of irresistible necessity. It may be manifested in the shape of a well-considered, persistent intention to seize upon the first opportunity to terminate life, or of a blind, automatic impulse acting without much regard to means or circumstances. As the disease gives way and reason is restored, this propensity disappears, and the love of life returns.

Besides these two forms of the suicidal propensity, there are other phases which cannot be referred with any degree of certainty to either of them. Persons, for instance, in the enjoyment of everything calculated to make life happy, and exhibiting no sign of mental disease, deliberately end their days. Another class, on approaching a precipice or a body of water, are seized with a desire, which may be irresistible, to take the fatal plunge. Many are the cases of children who, after some mild reproof, or slight contradiction, or trivial disappointment, have gone at once to some retired place and taken their lives. Every case must be judged by the circumstances accompanying it, always allowing the benefit of the doubt to be given to the side of humanity and justice.

By the common law suicide was treated as a crime, and the person forfeited all chattels, real or personal, and various other property.[f] This result can be avoided by establishing the insanity of the party; and in England, of late years, courts have favored this course whenever the legal effect of suicide would operate as a punishment. On the other hand, where the rights and interests of other parties are involved, the question of insanity is more closely scrutinized; and ample proof is required of the party on whom the burden of proof lies.

In regard to wills made just before committing suicide, the prevalent doctrine on this point, both in the United States and in England, is that the act of self-destruction may not necessarily imply insanity, and that if the will is a rational act, rationally done, the sanity of the testator is established.[g]

In life-insurance, in every case of intentional suicide, whatever may have been the mental condition, the policy becomes void.[h]

In cases of persons found dead, the cause may not be always perfectly obvious, and it becomes necessary to determine whether death was an act of suicide, or murder. This is often one of the most difficult questions in the whole range of medical jurisprudence, requiring for its solution the most profound knowledge of surgery and physiology, and great practical sagacity. In case of death caused by wounds, the kind and situation of the weapon, the extent, direction, and situation of the wounds, their connection with marks of blows, the temper and disposition of the person, all these and many other circumstances must be carefully and intelligently investigated. The frequency with which cases of suicide strongly resemble, in their external characters, those of murder, renders necessary the highest degree of skill and careful discrimination. If one counsels another to commit suicide, and is present at the consummation of the act, it is murder in the principal.[i]

SUPERFŒTATION is the conception of a child by a woman already pregnant with another, during the time of such pregnancy. It is a doctrine that seems to be established by numerous cases.[j]

VERBERATION. See PULSATION, above.

WOUNDS are any lesions of the body whereby blood is drawn, including contusions, gunshot wounds, incisions, lacerations, punctures, etc. To constitute a wound the continuity of the skin must be broken,[k] and not merely the cuticle, but the true skin must be divided.[l] If the skin be broken the means by which it was done are not material. A kick may give a wound.[m] See DEATH, above.

MERCANTILE LAW. See titles AGENCY; BAILMENTS; BONDS, NOTES, AND BILLS; CONTRACTS; INSURANCE; INTEREST, ETC., ETC., ante.

MILITARY LAW is a system of regulations for the government of an army.[n] It is to be distinguished from martial law, which extends to all persons. Martial law supercedes and suspends all civil law; but military law is superadded and subordinate to the civil law.[o]

MUNICIPAL LAW is that governing a single nation, state, district, city, town, community, etc. It is distinguished from international law.

PLACE—LAW OF.

The law of the place, *lex loci*, and is, in general, only used for law of the place where the contract was made, or where the act was performed or to be performed.

f-4 Blackstone Comm. 190. g-7 Pick. Mass. 94; 1 Hagg. Eccl. 109; 2 Harr. Del. 583; 2 Eccl. 415. h-3 Mann. & G. 437; 5 Id. 639; 4 All. Mass. 96; see Wharton, Mental Unsoundness; Phillips Ins. i-13 Mass. 359; Russ. & R. Cr. Cas. 523. j-1 Beck Med. Jur. 193; Cassan, Superfœtation; 1 Briand Méd. Lég. prem. Parlie Ch. 3, Art. 4; 1 Fœderé Méd. Lég. § 299; Buffon Hist. Nat. del'homme, *Puberté*. k-1 Moody C. C. 278. l-8 C. & P. 365, 173; 1 M. & R. 526. m-1 Moody C. C. 318. n-1 Kent Comm. 377, n. o-See 2 Kent. Comm. 10; 34 Me. 126.

In Contracts. It is a general principle applying to contracts made, rights acquired, or acts done, relative to personal property, that the law of the place of making the contract or doing the act is to govern it, and determine its validity or invalidity, as well as the rights of parties under it in all matters touching the modes of execution and authentication of the form or instrument of contract; and also in relation to the use and meaning of the language in which it is expressed, the construction and interpretation of it, the legal duties and obligations imposed by it, and the legal rights and immunities acquired under it.[a] This principle, though general, does not, however, apply where the parties at the time of entering into the contract had the law of another kingdom in view, or where the law of place is in itself unjust, against good morals, or contrary to the public law of the State, as regarding the interests of religion or morality, or the general well-being of society.[b] And where the place of performance is different from the place where the contract is made, it is presumed the parties had the law of the former in mind.

The law of place is presumed to be the same as that of the forum unless shown to be otherwise.[c]

The Interpretation, Formalities, etc.; Construction and Obligation of Contracts, etc. The interpretation of contracts is to be governed by the law of the country where the contract was made.[d] The law of place governs as to the formalities and authentication requisite to the valid execution of contracts.[e] But in proving the existence of, or seeking remedies for the breach, as well as all questions relating to the competency of witnesses, course of procedure, etc., the law of the forum must govern.[f] The law of place governs as to the construction of contracts,[g] unless from their tenor it must be presumed they were entered into with a view to the laws of some other State.[h] This presumption arises where the place of performance is different from the place of making.[i] An obligation may be incurred under the law of place which there is no means of enforcing in that country, and which may be enforced in another country.[j]

A lien or privilege created by the law of place will generally be enforced wherever the property may be found,[k] but not necessarily in preference to claims arising under the law of the forum.[l]

A discharge from the performance of a contract under the law of place is a discharge everywhere.[m] A distinction is to be taken between discharging a contract and taking away the remedy for a breach.[n]

Contracts Made Partly in one State and Partly in Another. Where a contract is made partly in one country and partly in another, it is a contract of the place where the assent of the parties first concurs and becomes complete.[o] As between the place of making and the place of performance, where the place of performance is specified, the law of the place of performance governs as to obligation, interpretation, etc.[p] Where the contract is to be performed generally, the law of the place of making governs.[q] If the contract is to be performed partly in one state and partly in another, it will be affected by the law of both states.[r] In cases of indorsement of negotiable paper, every indorsement is a new contract, and the place of each indorsement is its place of contract.[s] The place of payment is the place of contract, however, as between indorsee and drawer.[t] The place of acceptance of a draft is regarded as the place of contract.[u]

The legality or illegality of a contract will be determined by the *lex loci*, unless it affects injuriously the public morals or rights, contravenes the policy, or violates a public law of the country where it is to be enforced.[v] A contract illegal by the law of the place of its making and performance will generally be held so

a-1 Bingh. (N. C.) 154, 159; 8 Clark & F. Ho. L. 121; 1 Pet. 317; 13 Id. 378, 379; 2 N. H. 42; 5 Id. 401; 13 Id. 321; 6 Vt. 102; 2 Mass. 88, 89; 8 Cush. 30; 3 Conn. 253, 472; 14 Id. 583; 22 Barb. 118; 17 Penn. St. 91; 2 Harr. & J. 193; 3 Gill. & J. 234; 9 Gill. 1; 3 Dev. 161; 8 Mart. 95; 4 Ohio St. 241; 14 B. Mon. 556; 19 Mo. 84; 22 Id. 550; 4 Fla. 404; 23 Miss. 42; 12 La. An. 607; 3 Story C. C. 465; Ware Dist. Ct. 402; Story Confl. L. § 242, *et seq.*; Bayley Bills (5th Ed) 78; Parsons' Notes & B.; 2 Kent Comm. Lect. 39. **b**-Ferguson Marr. & Div. 385; 2 Burr. 1077; 9 N. Y. 271; 6 Pet. 172; 1 How. 169; 5 Id. 295; 8 Paige Ch. 261; 17 Johns. 511; 13 Mass. 23; 5 Clark & F. Ho. L. 11, 13; 8 Id. 121; 6 Whart. 331; 2 Met. (Mass.) 8; 1 B. Mon. 32; 5 Ired. 590; 2 Kent Comm. 458; Story Confl. L. § 280. **c**-46 Me. 247; 13 La. An. 673; 13 Md. 392; 9 Gill. 1; 4 Iowa, 464; but see 1 Iowa, 388. **d**-Dougl. 201, 207; 2 B. & Ad. 746; 6 T. R. 224; 1 Bingh. (N. C.) 151–159; 1 B. & Ad. 284; 10 B. & C. 903; 2 Hagg. Cons. 60, 61; 8 Pet. 361; 13 Id. 378; 30 Ala. (N. S.) 253; 4 McLean C. C. 540; 2 Sharsw. Bl. Comm. 141; Story Confl. L. § 270; Chitty Bills, 474. **e**-Story Confl. § 123, 260; 11 La. 14; 2 Hill, 227; 37 N. H. 86; 30 Vt. 42. **f**-11 Ind. 385; 9 Gill. 1; 17 Penn. St. 91; 18 Ala. N. S. 248; 4 McLean C. C. 540; 3 Id. 545; 5 How. 83; 6 Humph. 75; 17 Conn. 500; 9 Mo. 56, 157; 4 Gilm. (Va.) 521; 26 Barb. 177; Story Confl. L. §§ 567, 634. **g**-11 Pick. 32; 8 Vt. 325; 12 N. H. 520; 12 Wheat. 213; 2 Keen, 293; 1 B. & P. 138; 12 Wend. 439; 22 Barb. 118; 13 Mart. 202; 14 B. Mon. 556; 15 Miss. 798.

h-13 Mass. 1. **i**-31 Eng. L. & Eq. 433; 17 Johns. 511; 13 Pet. 65; 9 La. An. 185; 13 Mass. 23; 1 How. 169. **j**-1 B. & Ad. 284; 2 Cow. 626; 2 Johns. 345; 1 Pet. 317; 1 Wash. C. C. 376; 10 Wheat. 1; Henry Foreign L. § 81–86; Story Confl. L. § 571. **k**-8 Mart. 95; 5 La. 295; Story Confl. L. §§ 322, 402. **l**-5 Cranch, 289, 298; 12 Wheat. 361. **m**-5 Mass. 509; 13 Id. 1, 7; 7 Cush. 15; 4 Wheat. 122, 209; 12 Id. 213; 2 Mas. C. C. 161; 2 Blackf. 394; 3 Caines, 154; 24 Wend. 43; 2 Kent Comm. 394. **n**-3 Mass. C. C. 88; 5 Id. 378; 4 Conn. 47; 14 Pet. 67; 12 Wheat. 347; 8 Pick. 194; 9 Conn. 314; 2 Blackf. 394; 9 N. H. 478. **o**-2 Parsons' Contr. 94; 27 N. H. 217, 244; 11 Ired. 303; 3 Strobh. 27; 1 Gray, 336. **p**-5 East. 124; 2 Caines, 154; 1 Gall. C. C. 371; 12 Vt. 648; 12 Pet. 456; 13 Id. 65; 1 How. 182; 8 Paige, 261; 8 Johns. 189; 17 Id. 511; 5 McLean C. C. 448; 27 Vt. 8; 14 Ark. 189; 7 B. Mon. 575; 8 Id. 306; 9 Mo. 56, 157; 4 Gilm. (Va.) 521; 21 Ga. 135; 30 Miss. 52; 7 Ohio, 134; 4 Mich. 450; 2 Kent Comm. 459; Story Confl. L. § 233; but see 11 Texas, 54. **q**-2 B. & Ald. 301; 5 Clark & F. Ho. L. 1, 12; 1 B. & C. 16; 1 Met. (Mass.) 82; 6 Cranch, 221; 6 Ired. 107; 17 Miss. 220. **r**-14 B. Mon. 556. **s**-2 Kent Comm. 460; Prec. in Chanc. 128; 17 Johns. 511; 9 B. & C. 208; 13 Mass. 1; 25 Ala. (N. S.) 139; 19 N. Y. 436; 17 Texas, 102. **t**-See 19 N. Y. 436. **u**-3 Gill. 430; 1 Q. B. 43; 1 Cow. 103; 4 Pet. 111; 12 Wend. 439; 6 Duer, 34; 8 Met. (Mass.) 107; 4 Dev. 124; 6 McLean C. C. 622; 9 Cush. 46; 13 N. Y. 290; 18 Conn. 138; 17 Miss. 220; see ante, BONDS NOTES, AND BILLS. **v**-2 Kent Comm. 458.

everywhere.[w] A contract legal by the *lex loci* will be so everywhere,[x] unless:

1. It is injurious to public rights or morality.[y]

2. It contravenes the policy,[z] and it is generally held that the claims of citizens are to be preferred to those of foreigners in case of a conflict of rights. Assignments under the insolvent laws of a foreign state are usually held inoperative as against claims in the state in regard to personal property in the jurisdiction of the *lex fori*.[a]

3. Or violates a positive law of the *lex fori*. The application of the *lex loci* is a matter of comity, and that law must, in all cases, yield to the positive law of the place of seeking the remedy.[b]

Statutes of limitation apply to the remedy, but do not discharge the debt.[c]

The validity or invalidity of a contract as affected by the *lex loci* may depend upon the capacity of the parties, or the legality of the act to be done. The capacity of the parties as affected by questions of minority or majority, guardianship and other personal qualities or disabilities, is to be decided by the law of the place of making the contract.[d] Personal disqualifications not arising from the law of nature, but from positive law, and especially such as are penal, are strictly territorial, and are not to be enforced in any other country than where they originate.[e] Natural disabilities, such as insanity, imbecility, etc., are everywhere recognized, so that the question whether they are controlled by the *lex loci* or *lex domicilli* seems to be theoretic rather than practical.

IN TORTS. Damages for the commission of a tortuous act are to be measured by the law of the place where the act was done.[f]

PLACE OF SITUATION OF THE THING.

Lex rei sitæ is law of the place or situation of the thing.

It is the universal rule of the common law that any title or interest in land, or in other real estate, can only be acquired or lost agreeably to the law of the place where the same is situate,[g] and the law is the same in this respect in regard to all methods whatever of transfer, and every restraint upon alienation.[h]

PROSPECTIVE LAW

is that which is applicable to the future; it is used in contradistinction to retrospective. To be just a law ought always to be prospective.[i]

REPORT LAW.

REPORTS are printed or written collections of accounts or relations of cases judicially argued and determined. Prior to the year 1800 there were but one or two American reports, while in England there were very many. In the jurisprudence of nearly every civilized country, the force of adjudicated precedents is to a greater or less degree acknowledged. But in no countries are they so deferentially listened to, and, indeed, so implicitly obeyed as in England and in those countries which, like our own, derive their systems of judicial government from her. The European systems are composed, much more than either ours or the English, of codes; and their courts rely far more than ours upon the opinions of eminent text writers. With us, we pay no implicit respect to anything but a "case in point," and, supposing the case to be by an authoritative court, when that is cited it is generally taken as conclusive on the question in issue. Hence both the English and American jurisprudence is filled with books of reports; that is to say, with accounts of cases which have arisen, and the mode in which they have been presented, considered, argued, and decided. It is of late years usual, in the United States at least, for the courts to write out their opinions and deliver them to the reporter, so that usually the opinion of the court is correctly given. Nothing can be so various, as respects their grade of merit, as the English reports prior to about the year 1776, and the lawyer should never rely upon any one of them without knowing the character of the volume which he cites. Great judicial mistakes have arisen, even with the most able courts, from want of attention to the different characters of the old reporters.[j]

RETROSPECTIVE LAW is that having reference to matters or things existing before its passage. Laws which operate upon some subject, contract, or crime which existed before their passage, are generally unjust, and are to a certain extent forbidden by that article of the Constitution of the United States which prohibits the passage of *ex post facto* laws, or laws

w-1 Gall. C. C. 375; 2 Mass. 88, 89; 2 N. H. 42; 5 Id. 401; 2 Mas. C. C. 459; 13 Pet. 65, 78; 2 Johns. Cas. 355; 1 Nott. & M'Cord, 173; 2 Harr. & J. 193, 221, 225; 17 Ill. 328; 16 Texas, 344· 2 Burr. 1077; 7 T. R. 237; 2 Kent Comm. 458; Henry Foreign L. 37, 50; Story Confl. L. § 243. An exception is said to exist in case of contracts made in violation of the revenue laws. Cas. *temp*. Hardw. 85; 2 C. Rob. Adm. 6; 1 Dougl. 251; 1 Cowp 341; 2 Cr. M. & R. 311; 2 Kent Comm. 458. x-13 La. An. 117. y-3 Burr. 1568; Cowp 37; 2 Carr. & P. 347; 4 B. & Ald. 650; 1 Bos. & P. 340; 6 Mass. 379; 2 Harr & J. 193. z-2 Bingh. 314; 2 Sim. Ch. 194; 1 Turn & R. 299; 1 Dowl. & C. 342; 16 Johns. 438; 5 Harring. 31; 1 Green Ch. 326. 17 Ga. 253. a-1 Green Ch. 326; 5 Harring. 31; 32 Miss. 246; 13 La An. 280; 21 Barb. 198; but see 12 Md 54; 13 Id. 392. b-13 Mass. 6; 18 Pick. 193; 1 Green Ch. 326; 12 Barb 631; 17 Miss. 247; see 10 N. Y. 53. c-11 Wheat 361; 9 How. 407; 20 Pick. 310; 11 Id. 36; 17 Mass. 55; 2 Paine C. C. 437; 2 Mas. C. C. 751; 6 N. H. 557; 6 Vt. 127; 8 Port. (Ala.) 84; but see 5 Clark & F. Ho. L. 1–17; 9 B. Mon. 513; 2 Texas, 414; see LIMITATIONS. d-Story Confl. L. § 103; 1 Grant Cas. 51. The question of disability to make a contract on account of infancy is to be decided by the *lex loci*. 3 Esp. 163, 597; 17 Mart. 597; 8 Johns. 189; 1 Grant. Cas. 51; 2 Kent Comm. 233. So, also, as to contracts made by married women. Alleyn, 72; 8 Johns. 189; 13 La. 177; 5 East. 31; 2 Parsons' Contr. 84, 111. e-Story Confl L. §§ 91, 92, 104, 620–625; 2 Kent Comm. 459. f-1 P. Wms. 395; 1 Pet. C. C. 225; Story Confl. L. § 307. g-1 Pick. 81; 6 Id. 286; 1 Paige Ch. 220; 2 Ohio, 124; 1 H. Bl. 665; 2 Rosc. Bank. 29; 2 Ves. & B. Ch. 130; 5 B. & C. 438; 6 Madd. Ch. 16; 1 Young & C. 114; 7 Cranch, 115; 10 Wheat. 192, 465; 6 Id. 597; 4 Cow. 510, 527; 4 Johns. Ch. 460; 1 Gill. 280; 6 Binn. 559; Story Confl. L. §§ 365, 428. h-12 Eng. L. & Eq. 206. i-1 Bouv. Inst. n. 116. j-The fullest account which has yet been given of the reporters, their chronological order, merits, history, and the volumes, is Wallace' "The Reporters Chronologically Arranged."

impairing contracts. The right to pass retrospective laws, with the above exception, exists in the several States, according to their own constitutions; and they become obligatory if not prohibited by such constitutions.[d]

STATUTE LAW.

A STATUTE is a law established by the act of the legislative power. An act of the legislature. The written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the State. This word is used to designate the written law in contradistinction to the unwritten law. See ante, COMMON LAW. An affirmative statute is one which is enacted in affirmative terms. Such a statute does not necessarily take away the common law.[e] If, for example, a statute without negative words declares that when certain requisites shall have been complied with, deeds shall have a certain effect as evidence, this does not prevent their being used in evidence, though the requisites have not been complied with, in the same manner as they might have been before the statute was passed.[f] Nor does such an affirmative statute repeal a precedent statute if the two can both be given effect.[g] A negative statute is one expressed in negative terms, and so controls the common law that it has no force in opposition to the statute.[h] A declaratory statute is one which is passed in order to put an end to a doubt as to what is the common law or the meaning of another statute, and which declares what it is and ever has been. A remedial statute is one which is made to supply such defects and abridge such superfluities in the common law as may have been discovered. The term "remedial statute" is also applied to those acts which give the party injured a remedy; and in some respects such statutes are penal.[i] A penal statute is one which commands or prohibits a thing, under a certain penalty.[j] A statute affixing a penalty to an act, though it does not in words prohibit it, thereby makes it illegal.[k] A perpetual statute is one for the continuance of which there is no limited time, although it be not expressly declared to be so. If a statute which did not itself contain any limitation is to be governed by another which is temporary only, the former will also be temporary and dependent upon the existence of the latter.[l] A temporary statute is one which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed. A statute which by reason of its nature has only a single and temporary operation—*e. g.*, an appropriation bill—is also called a temporary statute. Private or special statutes or acts are those of which will not take notice without pleading; such as concern only a particular species or person. Private statutes may be rendered public by being so declared by the legislature.[m] Private statutes will not bind strangers, though they should not contain any saving of their right. A general saving clause used to be inserted in all private bills; but it is settled that, even if such saving clause be omitted, the act will bind none but the parties. Public or general statutes are those of which the courts will take judicial notice without pleading or proof. They are either general or local—that is, have operation throughout the State at large, or within a particular locality. It is not easy to say what limitation will render an act local. Thus, it has been held that a public act relating to one county only is not local within the meaning of the constitutional provision which forbids enactments of local bills embracing more than one subject.[n]

It is a general rule that when the provisions of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law,[o] and when a power is given by statute, everything necessary for making it effectual is given by implication.[p]

A statute which contravenes a provision of the constitution of a State by whose legislature it was enacted, or of the Constitution of the United States, is in so far void. The presumption, however, is that every State statute, the object and provision of which are among the acknowledged powers of the legislation, is valid and constitutional; and such presumption is not to be overcome unless the contrary is clearly demonstrated.[q] Where a part only of a statute is unconstitutional, the rest is not void if it can stand by itself.[r]

A statute is not to be deemed repealed, merely by the enactment of another statute on the same subject. There must be a positive repugnancy between the provisions of the new law and the old to work a repeal by implication; and even then the old law is repealed only to the extent of such repugnancy.[t] This rule is supported by a vast variety of cases. There is, however, a qualification to be observed in the case of a revised law. Where the new statute is in effect a revision of the old, it may be treated as superseding the former, though not expressly so declared.[u] A mere change of phraseology

d-4 S. & R. 364; 3 Dall. 396; 1 Bay, 179; 7 Johns. 477. **e**-Co. 2d Inst. 200; Dwarris Stat. 474. **f**-2 Caines, 169. **g**-Dwarris Stat. 474. **h**-Bac. Abr. Stat. (G). **i**-Esp. Pen. Act. 1. **j**-Esp. Pen. Act. 5, Bac. Abr.; see generally, Bac. Abr. Com. Dig. *Parlim.* Viner. Abr. Dane Abr. Index; Chitty Pr.; 1 Kent Comm. 447–459; Barrington Stat. Boscawen Pen. Stat.; Esp. Pen. Act. Dwarris Stat.; Sedgw. Const. L. **k**-14 Johns. 273; 1 Binn. 110; 37 Eng. L. & Eq. 475; 14 N. H. 294; 4 Iowa, 490; 7 Ind. 77. **l**-Bac. Abr. Stat. (D). **m**-Bac. Abr. Stat. (F.); 1 Bl. Comm. 85, 86; Dwarris Stat. 629; 4 Co. 76; 1 T. R. 125; Skinn. 350; and see Hale, Hist. Comm. L. (Runnington's Ed.) 3; 1 Kent Comm. 459. **n**-5 N. Y. 285; 2 Sandf. 355; 1 Hilt, 483. **o**-Co. Litt. 235; Co. 2d Just. 222; Bac. Abr. Stat. (B). **p**-*Quando lex aliquid concedit, concedere videtur et id per quod devenitur ad aliud.* (When the law grants anything it would also appear to concede that by which it may be accessible.) 12 Co. 130, 131; Co. 2d Just. 306. **q**-6 Cranch, 87; 1 Cow. 564; 3 Denio, 381; 7 N. Y. 109; 19 Barb. 81. **r**-1 Gray, 1. **t**-16 Pet. 342. **u**-7 Mass. 140; 12 Id. 537, 545; 1 Pick. 43, 45, 154; 9 Id. 97; 10 Id. 39; 3 Me. 22; 31 Id. 34; 42 Id. 53; 16 Barb. 15; 5 Eng. L. & Eq. 588; 37 N. H. 295; 30 Vt. 344; 8 Texas, 62; 14 Ill 334; 6 B. Mon. 146; but compare 9 Ind. 337; 10 Id. 566.

in the revision does not, however, necessarily imply a change in the law.[v] Where a new statute expressly repeals the former statute, and the new and the repeal of the old are to take effect at the same time, a provision in the old statute which is embodied in the new is deemed to have continued in force without suspension.[w] But it has been held, that where the new law does not go into effect until a time subsequent to that at which the repeal takes effect, such a provision is to be deemed repealed meantime.[x]

It is not to be presumed in the courts of any State, that statutes which have been enacted in that State have also been enacted in other States. The courts assume that the common law still prevails, unless it is shown to have been modified.[y]

CONSTRUCTION. Penal statutes are to be strictly construed. Remedial statutes are to be liberally construed.[z]

The apparent object of the legislature is to be sought for as disclosed by the act itself, the preamble in some cases, similar statutes relating to the same subject, the consideration of the mischiefs of the old law, and perhaps some other circumstances. All statutes are to be construed with reference to the provisions of the common law, and provisions in derogation of the common law are held strictly. In construing statutes of the various States or foreign countries, the Supreme Court of the United States adopts the construction put upon them by the courts of the State or country by whose legislature the statute was enacted; but this does not necessarily include subsequent variations of construction by such courts.[a]

PUNCTUATION is not to be regarded in construing a statute.[b]

Lease. See CONVEYANCES, "Leases."
Legacy. See CONVEYANCES, "Wills."
Legal. See LAW.
Legal Tender. See MONEY.
Legates. See INTERNATIONAL LAW.
Legislation. See LAW.
Legislative. See OFFICE AND OFFICERS.
Legitimacy. See CHILDREN.
Letter. See BAILMENTS, "Hire;" CONTRACTS, "Payments."
Letter of Advice. See BONDS, NOTES, AND BILLS.
Letter of Attorney. See AGENCY, "Attorneys in Fact."
Letter of Credence. See INTERNATIONAL LAW.
Letter of Credit. See MERCANTILE LAW.
Lex Loci. See LAW.
Lex Fori. See LAW.
Lex Rei Sitæ. See LAW.
Libel and Slander. See TORTS.

LIENS. See title BAILMENTS; CONTRACTS; ETC.

A LIEN is a hold or claim which one person has upon the property of another as a security for some debt or charge. In every case in which property, either real or personal, is charged with the payment of a debt or duty, every such charge may be denominated a lien on the property.[w] It differs from an estate in or title to the property, as it may be discharged at any time by payment of the sum for which the lien attaches. It differs from a mortgage in the fact that the mortgage is made, and the property delivered, or otherwise, for the express purpose of security; while the lien attaches as incidental to the main purpose of the bailment; or, as in case of a judgment, by mere act of the law without any act of the party. In its more limited as well as commoner sense, the word lien indicates a mere right to hold the property of another as security; or it is *the right* which one person possesses, in certain cases, of detaining property placed in his possession belonging to another, until some demand which the former has upon it, is satisfied.[x] A qualified right which, in certain cases, may be exercised over the property of another.[y] A lien is a right to hold.[z] A lien in regard to personal property is a right to detain the property till some claim or charge is satisfied.[a] The right of retaining or continuing possession till the price is paid.[b] Common law lien, as distinguished from other classes, consists in a mere right to retain possession until the debt or charge is paid. A general lien is the right to retain the property of another on account of a general balance due from the owner.[c] Of course where a general lien exists a particular lien is included. A particular lien is the right to retain the property of another on account of labor employed or money expended on that specific property.[d] Particular liens constitute the oldest class of liens, and the one most favored by the common law.[e] But the courts ceased to originate liens at an early period,[f] while general liens have been looked upon with jealousy, being considered encroachments upon the common law, and founded solely in the usage of and for the benefit of trade. In cases of a factor an apparent exception exists, as he is allowed a lien on the proceeds of the goods sold, as well as on the goods themselves. But this seems to result from the relation of the parties and the purposes of the bailment; to effectuate which, and at the same time to give a security to the factor, the law considers the possession, or right to possession, of the proceeds the same thing as the possession of the goods themselves. Liens either exist by law, arise from usage, or are created by express agreement.

COMMON LAW LIENS.

Liens which exist by the common law generally arise in cases of bailment. Thus, a particular lien exists whenever goods are delivered to a tradesman for the execution of the purposes of his trade upon them.[g] And so, where a person is, from the nature of his occupation,

v-21 Wend. 316: 2 Hill, 380: 4 Sandf. 374; 7 Barb. 191; 33 N. H. 246; 6 Texas, 34. w-3 Wis. 667; 15 Ill. 595. x-12 La. An. 593; but see 1 Pick. 33. y-22 Barb. 118; 23 Id. 498; 2 Duer, 419; see ante, FOREIGN LAWS. z-Dwarris Stat. 615, *et seq.* a-5 Pet. 280. b-9 Gray, 382. w-Whitaker Liens. x-2 East. 235. y-6 East. 25, *n.* z-2 Campb. 579. a-Met. Yelv. 67, *n* c b-1 Parsons' Mar. L. 144; (2) Whitaker Liens, 9. c-4 Burr. 2221; Dougl. 97; 9 B. & P. 126. d-1 Bos & P 494. e-9 East. 426. f-3 Bos. & P. 42, 26, 494. g-1 Atk. Ch 228; 2 Rolle Abr. 92; 3 M. & S. 167; 14 Pick 332; 7 Barb. 113.

under a legal obligation to receive and be at trouble or expense about the personal property of another, in every such case he is entitled to a particular lien upon it.[h] And sometimes a lien arises where there is strictly no bailment: thus, where a ship or goods at sea come into possession by finding, and he has been at some trouble or expense about them, he is entitled to retain the same until reimbursed his expenses. This applies only to the salvors of a ship and cargo preserved from peril at sea,[i] and in case of property on shore, where a specific reward is offered for the restoration,[j] and does not apply, generally, it is said, to things found upon land,[k] unless so made by custom or statute.

Liens which arise by usage are usually general liens, and the usage is either the general usage of trade, or the particular usage of parties.[l] The usage must be so general that the party delivering the goods may be presumed to have known it, and to have made the right of lien a part of the contract.[m] And the lien must be for a general balance arising from transactions of a similar character between the parties, and that the debt must have accrued in the business of the party claiming the lien,[n] and it seems that more decisive proof of general usage is required in those occupations in which the workmen are required to receive their employment when offered them, such as carriers.[o] But where a general lien has been once established, the courts will not allow it to be disturbed.[p]

In regard to a general lien arising from particular usage between the parties, proof of their having before dealt upon the basis of such a lien will be presumptive evidence that they continue to deal upon the same terms.[q] If a debtor, who has already pledged property to secure a loan, borrow a further sum, it will be understood that the creditor's lien is for the whole debt.[r]

Liens which arise from Express Agreement. A general or particular lien may be acquired in any case by the express agreement of the parties.[s] This generally happens when goods are placed in the hands of a person for the execution of some particular purpose upon them, with an express contract that they shall be considered as a pledge for the labor or expense which the execution of that purpose may occasion; or it exists where the property is merely pawned or delivered for bare custody to another, for the sole purpose of being a security for a loan made to the owner on the credit of it.[t] And if a number of tradesmen, not obliged by law to receive the goods of any one who offers for the purposes of their trade, agree not to receive goods unless they may be held subject to a general lien for the balance due them, and the bailor knows this, and leaves the goods, the lien attaches.[u] And the same is true, of course, of an individual under similar circumstances. But where the tradesman is obliged to receive employment from any one who offers, a mere notice will not be enough to give this lien with implied assent, but *express* assent must be shown.[v]

Liens which Exist in the Absence of any Special Agreement. Among the different classes who have liens by the common law, in the absence of any special agreement, are: *Agisters* of cattle have no lien.[w] *Attorneys* and solicitors have a lien upon the papers of their clients,[x] and also upon judgments obtained by them.[y] But this lien is subject to some restrictions.[z] *Bailies for hire* generally for work done by them.[a] *Bankers* have a lien on all securities left with them by their employers.[b] *Clerks of courts* have a lien on papers for their fees.[c] *Common carriers* for transportation of goods,[d] but not if the goods are taken tortuously from the owner's possession, where the carrier is innocent,[e] and on a passenger for his passage-money.[f] Part of the goods may be detained for the whole freight of goods belonging to the same person.[g] *Factors and brokers* have a lien on goods and papers[h] on part of the goods for the whole claim,[i] but only for such goods as come to them as factors.[j] *Innkeepers* may detain a horse for his keeping[k] if he belong to a guest,[l] but not sell him[m] unless authorized by statute, and then in the express mode provided; but cannot retake the horse after giving him up.[n] They may detain the goods of a traveler, but not of a boarder.[o] Their lien is a particular lien.[p] *Pawnees* from the very nature of their contract,[q] but only where the pawner (or pledgor) has authority to make such pledge.[r] A pledge, even where the pawnee is innocent, does not bind the owner, unless the pawner has authority to make the pledge.[s] The pawnee does not have a general lien.[t] *Tailors* have a particular lien.[u] *Ven-*

h-1 Esp 109; Ld. Raym. 867; 6 T R. 17; 3 B. & P. 42. i-1 Ld. Raym. 393; 5 Burr. 2732; 8 East. 57; 16 Penn St 393. j-8 Gill. 218; 3 Met. (Mass.) 352. k-2 H. Bl 254; 2 W. Bl. 1117. l-Whitaker Liens, 31. m-3 B & P. 50. n-Whitaker Liens, 33; and see 1 Atk Ch 223, 1 W. Bl. 651. o-6 T. R. 14; 6 East. 519; 7 Id 224 p-1 Esp. 109; 3 Id. 31. q-1 Atk. Ch. 235; 6 T R. 19 r-2 Vern Ch 691. s-Cro. Car. 271; 6 T. R 14. t-Whitaker Liens, 27. u-6 T. R. 14; 3 Bos & P. 4 v-6 T. R. 14 w-Cro Car. 271. Nor a livery stable keeper. 2 Ld. Raym. 866; 6 East. 509; 35 Me. 153, in the absence of a statute allowing it. 23 Penn. St. 193 x-12 Wend. 261; 2 Aik. 162; 14 Vt. 485; 11 N. H. 163; 11 Miss. 225; see 13 Ohio, 167. y-20 Pick. 259; 2 Met. (Mass.) 458; 10 Barb. 67; 4 Sandf. 661; Wright, 485; 30 Me. 152; 15 Vt. 544; *Contra*. 7 Penn. St. 376. z-Met. Yelv. 67, *f.*; 34 Me. 20; 21 N. H. 339; 22 Pick. 210. a-6 T. R. 14; 3 Selw. N. P. 1163; 4 T. R. 260; 26 Miss. 182; 4 Wend. 292. b-5 T. R. 488; 1 Esp. 66; 3 Gilm. (Va.) 233; 1 How. 234. c-3 Atk. Ch. 727; 1 P. Wms. 460; 2 Ves. Ch. 111. d-1 Ld. Raym. 752; 6 East. 519; 7 Id. 224; 1 Dougl. 1; Wright, 216; 24 Me. 339. e-1 Dougl. 1; 2 Hall, 561; 5 Cush. 137; *Contra*. 6 East. 519; 6 Whart. 418. f-2 Campb. 631. g-6 East. 622. h-3 T. R. 119; 1 Johns. Cas. 437, *n.*; 8 Wheat. 268; 28 Vt. 118; 34 Me. 582. i-6 East. 622; 34 Me. 582. j-11 Eng. L. & Eq. 528. k-2 Ld. Raym. 366; 8 Mod. 173; 6 T. R. 141. l-11 Barb. 41. m-F. Moore, 876; Bac. Abr. *Inns* (D.); 8 Mod. 173. n-8 Mod. 173; Hob. 42; Met. Yelv. 67. o-8 Rich. 423. p-9 East. 433; Cro. Car. 271; 2 E. D. Smith, 195. q-15 Mass. 408; 2 Vt. 309; 9 Wend. 345; 3 Mo. 219. r-3 Atk. Ch. 44; 2 Campb. 336, *n.* s-Paley Ag. 151; 1 Vern. Ch. 407; 2 Stark. 21; 1 Mas. C. C. 440; 2 Mass. 398; 4 Johns. 103; 1 M. & S. 180. t-15 Mass. 490. u-Cro. Car. 271; 9 East. 433.

dors of goods have a lien for the price so long as they retain possession.[v] *Warehousemen* have a particular lien.[w] So a *wharfinger*.[x]

General Requisites of a Valid Lien. In all these cases, to give rise to the lien there must have been a delivery of the property; it must have come into the possession of the party claiming the lien, or his agent.[y] A question may arise by whom the delivery is to be made. Where a person, in pursuance of the authority and directions of the owner of property, delivers it to a tradesman for the execution of the purposes of his trade upon it, the tradesman will not have a general lien against the owner for a balance due from the person delivering it, if he knew that the one delivering was not the real owner.[z] Thus, a carrier, who, by the usage of trade, is to be paid by the consignor, has no lien for a general balance against the consignee.[a] Nor can a claim against the consignee destroy the consignor's right of stoppage *in transitu*.[b] But a particular lien may undoubtedly be derived through the acts of agents acting within the scope of their employment.[c] And the same would be true of a general lien against the owner for a balance due from him.[d]

No lien exists where the party claiming it acquires possession by wrong[e] or by misrepresentation,[f] or by his unauthorized and voluntary act.[g] No lien exists where the act of the servant or agent delivering the property is totally unauthorized, and the pledge of it is tortious against the owner, whether delivered as a pledge or for the execution of the purposes of a trade thereupon.[h] A pledge, even when the pawnee is innocent, does not bind the owner unless the pawner had authority.[i]

A delivery by a debtor for the purpose of preferring a creditor will not be allowed to operate as a delivery sufficient for a lien to attach.[j]

Waiver of Lien. Possession is a necessary element of common law liens; and if the creditor once knowingly parts with that possession after the lien attaches, the lien is gone.[k] But there may be a special agreement extending the lien, though not to affect third persons.[l] The delivery may be constructive[m] and so may possession.[n] A lien cannot be transferred,[o] but property subject to a lien may be delivered to a third person, as to the creditor's servant with notice of the lien, so as to preserve the lien of the original creditor.[p] But it must not be delivered to the owner or his agent.[q] But if the property be of a perishable nature, possession may be given to the owner under proper agreements.[r] Neglect to insist upon a lien in giving reasons for a refusal to deliver property on demand, has been held a waiver.[s]

Where there is a special agreement made, or act done, inconsistent with the existence of the lien, such as an agreement to give credit, or where a distinct security is taken, or the possession of the property is acquired for another distinct purpose, and for that only, or where the property is attached by the creditor, no lien arises.[t] But such agreement must be clearly inconsistent with the lien.[u]

Rights, Uses, and Remedies under a Lien. The only remedy or use of the lien at common law is to allow the creditor to retain possession of the goods,[v] etc. And this he may do as against assignees of the debtor.[w]

MARITIME LIENS do not include or require possession. The word lien is used in maritime law, not in the strict legal sense in which we understand it in courts of common law, in which case there could be no lien where there was no possession, actual or constructive; but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession.[a] A distinction is made in the United States between qualified maritime liens, which depend upon possession, and absolute maritime liens, which do not require nor depend upon possession.[b]

Builders' lien may be placed on the common-law ground that a workman employing skill and labor on an article has a lien upon it;[c] and a lien for the purpose of finishing the ship where payments are made by instalments.[d] See MATERIAL MEN, below.

Collision. In case of collision the injured vessel has a lien upon the one in fault for the damage done;[e] and the lien lasts a reasonable time.[f]

Deposit of a bill of lading gives a lien for the amount advanced on the strength of the security.[g] See PART-OWNER, below.

Dead Freight. No lien exists for dead freight.[h] The lien attaches only for freight earned.[i] The lien is lost by a delivery of the goods,[j] but not if the delivery be involuntary,

v-7 East. 574; 1 H. Bl. 363; Hob. 41; 2 Bl. Comm. 448; 2 Swanst. 661; 6 McLean C. C. 472. w-18 Ill. 286; 34 Eng. L. & Eq. 116; 31 Miss. 261; 13 Ark. 437. x-Ware Dist. Ct. 354. y-3 T. R. 119; 6 East. 25, *n.* z-1 East. 335; 2 Id. 523; 2 Campb. 218; Parke Cas. 176; 2 Atk. Ch. 114. a-5 B. & P. 64. b-3 B. & P. 42. c-9 East. 233; 3 B. & P. 119; 3 Esp. 182; 2 East. 237. d-Whitaker Liens, 39. e-2 T. R. 485. f-1 Campb. 12. g-1 Str. 651; 8 T. R. 310, 610; 2 H. Bl. 254; 3 W. Bl. 1117; but see 4 Burr. 2218. h-5 Ves. Ch. 111; 6 East. 17; 4 Esp. 174; 5 T. R. 604. i-Paley Ag. 151; 1 Vern. Ch. 407; 2 Stark. 21; 1 Mas. C. C. 440; 2 Mass. 398; 4 Johns. 103; 1 M. & S. 140. j-4 Burr. 2239; 3 Ves. Ch. 85; 2 Campb. 579; 11 East. 256. k-Str. 556; 1 Atk. Ch. 254; Ambl. 252; Dougl. 97; 5 Ohio, 88; 6 East. 25, *n.*; 7 Id. 5; 3 T. R. 119; 2 Edw. Ch. 181; 5 Binn. 398; 3 Am. L. Jour. 128; 4 N. Y. 497; 4 Denio, 498; 42 Me. 50; 11 Cush. 231; 2 Swanst. 561; 23 Vt. 217. l-36 Wend. 467. m-Ambl. 252. n-5 Ga. 153. o-8 Pick. 73. p-2 East. 529; 7 Id. 5. q-Whitaker Liens, 71, *n.*; 2 East. 529; 4 Johns. 103. r-1 Atk. Ch. 235; 8 T. R. 199. s-1 Campb. 410, *n.*; 7 Ind. 21; 13 Ark. 437; 2 Blackf. 465. t-16 Ves. Ch. 275; 4 Campb. 146; 2 Marsh. 339; 3 Anstr. 881; 5 M. & S. 180; Met. Yelv. 67, *c.*; 8 N. H. 441; 17 Pick. 140; 15 Mass 389; 4 Vt. 549. u-1 Dutch. 443; 32 Me. 319. v-33 Me. 438; 1 Mas. C. C. 319. w-1 Burr. 489. a-22 Eng. L. & Eq. 62; see 15 Bost. Law Rep. 555; 16 Id. 1, 264; 17 Id. 93, 421. b-7 How. 729. c-2 Rose, 91; 4 Barnew. & Ald. 341; 1 W. Rob. Adm. 1; Wright Ohio, 660; 4 Wheat. 438; 1 Stor. C. C. 68. d-1 Parsons' Mar. Law, 75; 5 Barnew. & Ald. 942. e-1 Notes of Cases, 508; 22 Eng. L. & Eq. 62; Crabb, 580; 10 Law Rep. 264. f-18 Bost. Law Rep. 91. g-5 Taunt. 558; 2 Wash. C. C. 283. h-15 East. 547; 3 Maule & S. 205. i-3 Maule & S. 205; Ware Dist. Ct. 149; 2 Brev. No. C. 233. j-6 Hill N. Y. 43.

or procured by fraud.[k] So it is by stipulations inconsistent with its exercise,[l] as by an agreement to receive the freight at a day subsequent to the entire delivery of the goods—a distinction being, however, taken between the unloading or arrival of the ship, and the delivery of the goods.[m]

A third person cannot take advantage of the existence of such lien.[n] A vendor, before exercising right of stoppage in transitu, must discharge this lien by payment of freight.[o]

Master's Lien. In England, the master has no lien, at common law, on the ship for wages, nor disbursements.[p]

But, by the one hundred and ninety-first section of the English Merchant Shipping Act of 1854, it is provided that "Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the amount of his wages, which, by this act, or any law or custom, any seaman, not being a master, has for the money of his wages." This lien of the master on an English vessel may be reinforced in the admiralty courts of the United States.[q]

In the United States, he has no lien for his wages.[r] This does not apply to one not master in fact.[s] As to lien for disbursements.[t] He may be substituted if he discharge a lien.[u] But he has a lien on the freight for disbursements;[v] for wages in a peculiar case;[w] and on the cargo, where it belongs to the ship-owners.[x] He may, therefore, detain goods against the shipper or consignee, even after payment to owner, if the master give reasonable notice.[y] The master may retain goods till a contribution bond is signed.[z]

Material men have a lien by admiralty law. They are those whose trade it is to build, repair, or equip ships, or to furnish them with tackle and provisions necessary in any kind.[a] In regard to foreign ships, it has been lately held that material men have a lien on the ship only when the supplies were necessary, and could be obtained only on the credit of the ship.[b] The lien for repairs continues only as long as they retain possession, on domestic ships;[c] and is gone if possession is left.[d]

The several States of the United States are foreign to each other in this respect.

As to the order of precedence of these liens.[e] Admiralty formerly took jurisdiction of such liens, though not strictly maritime liens;[f] but this jurisdiction is now questioned,[g] if not denied.[h]

Giving credit will not be a waiver of a lien on a foreign ship, unless so given as to be inconsistent with the exercise of the lien.[i] See BUILDERS, ETC., above.

Owner of a ship has a lien on the cargo carried for freight earned, whether reserved by a bill of lading or not.[j]

This lien is, at most, only a qualified maritime lien.[k] The lien exists in case of a chartered ship[l] to the extent of the freight due under the bill of lading.[m] But if the charterer takes possession and management of the ship, he has the lien.[n] No lien for freight attaches before the ship has broken ground.[o] But see, as to the damages for removing goods from the ship before she sails.[p]

A part-owner, merely as such, has no lien whatever, but acquires such a lien when any of the elements of partnership or agency, with bailment upon which his lien may rest, enter into his relation with the other part-owners.[q]

A part-owner who has advanced more than his share towards building a vessel has no lien on her for such surplus,[r] and none, it is said, for advances on account of a voyage.[s]

That the relation of partners must exist to give the lien.[t]

And part-owners of a ship may become partners for a particular venture.[u]

The liens of part-owners and by deposit of a bill of lading are not maritime liens, however, and could not be enforced in admiralty.

Partners. See PART-OWNERS, above; SHIP'S HUSBAND, below.

Seamen's lien for wages attaches to the ship and freight, and the proceeds of both, and follows them into whosoever hands they come;[v] and lies against a part, or the whole, of the fund;[w] but not the cargo.[x] It applies to pro-

k-6 Hill N. Y. 43. l-17 How. 53: 10 Conn. 104; 6 Pick. Mass. 248; 4 Barnew. & Ald. 50: 4 Mann. & G. 502: 4 Bingh. 729: 3 Barnew. & Ald. 497; 32 Eng. L. & Eq. 210. m-Sumn. C. C. 551; 18 Johns. N. Y. 157; 14 Mees. & W. Exch. 794; 2 Sumn. C. C. 589; 5 Maule & S. 180; 10 Mass. 510. n-3 East. 85. o-1 Parsons' Mar. L. 350; 15 Me. 314; 3 Bos. & P. 42. p-9 East. 426; 33 Eng. L. & Eq. 600; 1 Barnew. & Ald. 575; 5 Dowl. & R. 552; 6 How. 112. q-22 Bost. Law Rep. 150. r-2 Paine C. C. 201; 8 Serg. & R. Penn. 18; 1 Pet. Adm. 223; 11 Id. 175; 3 Mas. C. C. 91; 14 Penn. St. 34; 18 Pick. Mass. 530. s-Bee. Adm. 198. t-2 Curt. C. C. 427: 14 Penn. St. 34; 11 Pet. 175. u-1 Pet. Adm. 223: Bee, Adm. 116; 3 Mas. C. C. 255. v-4 Mass 91; 11 Id. 72; 5 Wend. N. Y. 315; 18 Pick. N. Y. 530 w-Ware, 149. x-14 Me. 180. y-11 Mass. 72; 5 Wend. N. Y. 315; 4 Esp. 22; but see 5 Dowl. & R. 552. z-11 Johns. N. Y. 23; 2 Sandf. N. Y. 55; 11 Me. 150; 13 Id. 357. a-3 Hagg. Adm. 129. b-19 How. 359. c-Wright, Ohio, 660; 4 Wheat. 438: 1 Stor. C. C. 68. d-14 Conn. 404; 4 Wheat. 438; 4 Wash. C. C. 453; 1 Parsons' Mar. Law, 492, n.; and see § 11. e-See Dav. Dist. Ct. 199; Ware Dist. Ct. 2d ed. 565; 2 Curt. C. C. 421. f-7 Pet. 324; 1 Wall, Jr. 358; 12 Bost. Law Rep. 183. g-20 How. 393. h-21 Id. 4, 248.

i-7 Pet. 324; 1 Sumn. C. C. 73; 5 Sandf. N. Y. 342. j-12 Mod. 447: 6 East. 622: 4 Campb. 298; 7 Taunt. 14; 4 Barnew. & Ald. 630; 2 Brod. & B. 410; 4 Mass. 91; 6 Pick. Mass. 248; 18 Johns. N. Y. 157; 5 Wend. N. Y. 315; 5 Sandf. N. Y. 97; 5 Ohio, 88; 4 Wash. C. C. 110; 8 Wheat. 605; Ware Dist. Ct. 149; 1 Sumn. C. C. 551; 2 Id. 589; 2 Woodb. & M. C. C. 151. k-See 1 Parsons' Mar. Law, 143, n. l-4 Cow. N. Y. 470; 1 Paine C. C. 358; 4 Barnew. & Ald. 630; 20 Bost. Law Rep. 669; 8 Wheat. 605. m-2 Atk. Ch. 621; 1 Barnew. & Ald. 712; 4 Id. 630; 1 Sumn. C. C. 551. n-1 Cowp. 143; 8 Cranch, 39; 6 Pick. Mass. 248; 4 Cow. N. Y. 470; Ware Dist. Ct. 149; 4 Mann. & G. 502; 26 Eng L. & Eq. 136. o-1 Bos. & P. 634; 5 Binn. Penn. 392; 3 Gray Mass. 92. p-28 Eng. L. & Eq. 210; 1 C. B. 328; 2 Carr. & P. 334; 19 Bost. Law Rep. 579; 2 Gray Mass. 92. q-1 Parsons' Mar. Law, 103. r-6 Pick. Mass. 46. s-4 Pick. Mass. 456; 7 Bingh. 709. t-20 Johns. N. Y. 61; 4 B. Monr. Ky. 458; 8 Barnew. & C. 612; Gilp. Dist. Ct. 467; 4 Johns. Ch. N. Y. 522; 6 Pick. Mass. 120; 5 Mann. & R. 25. u-1 Ves. Sen. Ch. 497; 3 Woodb. & M. C. C. 193; 10 Mo. 701; 9 Pick. Mass. 334; but see 14 Penn. St. 34. v-2 Sumn. C. C. 443; 2 Parsons' Mar. L. 579. w-3 Sumn. C. C. 59 286. x-5 Pet. 675.

ceeds of a vessel sold under attachment of a State court.[y]

This lien of a seaman is of the nature of the *privilegium* of the civil law, does not depend upon possession, and takes precedence of a bottomry bond or hypothecation.[z] Taking the master's order does not destroy the lien.[a] Fishermen on shares have it, by statute. Generally, all persons serving in a way directly and materially useful to the navigation of the vessel.[b] A woman has it if she performs seaman's service.[c] It lies against ships owned by private persons, but not against government ships employed in the public service.[d]

A ship-broker, who obtains a crew, has been held to have a lien for his services, and advances for their wages.[e]

Shipper of goods has a lien upon the ship, for the value of the goods sent, which can be enforced in admiralty;[f] and, generally, every act of the master binds the vessel, if it be done within the scope of his authority,[g] where the possession of the master is not tortious, but under a color of right.[h] This does not apply to contracts of material men with the master of a domestic ship;[i] and the act must have been within the scope of the master's employment.[j] This lien follows the ship even in the hands of a purchaser, without notice before the creditor has had a reasonable opportunity to enforce his lien.[k] If the master borrow money for the ship's necessity, the lender has a lien on the ship for the amount.[l]

The ship's husband, if a partner, has a partner's lien; if not, he may have a lien in the proceeds of the voyage;[m] or of the ship herself, if sold, or on her documents, if any of these have come into his actual possession. And the lien applies to all disbursements and liabilities for the ship. But it is doubtful if his mere office gives him a lien.[n]

Stevedores have no lien.[o]

STATUTORY LIENS. The principal liens of this class are judgment liens, and the liens of builders and material men.

At common law a judgment is a lien upon real property from the time of its rendition.[p] A judgment is sometimes, though very rarely, a lien upon personal property.

Mechanics and material men in most of the States have a lien upon the property on which they bestow their labor, or contribute materials for repairs, or in the erection of buildings, etc.

See GENERAL STATUTES.

Life Assurance. See INSURANCE.
Limitations. See PRACTICE.
Lines and Carriers. See CONVEYANCES.
Liquidated Damages. See DAMAGES.
Liquidation. See PAYMENT.
Literary Property. See COPYRIGHT.
Loan. See BAILMENTS.
Local Statutes. See LAW.
Locative Calls. See CONVEYANCES.
Lodger. See BAILMENTS; "Inns," LANDLORD AND TENANT.

LOSS. See INSURANCE.

LOST PAPERS.

WHEN AGREEMENTS, CONVEYANCES, DEEDS, WILLS, and the like have been lost, and it is desired to prove their contents, the party must prove that he has made diligent search, and in good faith exhausted all sources of information accessible to him. For this purpose his own affidavit is sufficient.[a] On being satisfied of this, the court will allow sccondary evidence to be given of its contents. Even a will proved to be lost may be admitted to probate upon secondary evidence.[b] But the fact of the loss must be proved by the clearest evidence, because it may have been destroyed by the testator with an intention to revoke.[c]

WHEN A BOND OR OTHER DEED was lost, formerly the obligee or plaintiff was compelled to go into equity to seek relief,[d] but now the loss of any paper other than a negotiable note will not prevent the plaintiff recovering at law as well as in equity.[e]

WHEN A NEGOTIABLE NOTE HAS BEEN LOST, the claimant must tender an indemnity to the debtor, and file his petition or complaint to compel payment.[f]

LOST PROPERTY.

RIGHTS AND DUTIES OF A FINDER. The finder is entitled to certain rights, and liable to duties which he is obliged to perform. This is a species of deposit, which, as it does not arise *ex contractu*, may be called a *quasi* deposit, and it is governed by the same general rules as common deposits. The finder is required to take the same reasonable care of the property found as any voluntary depositary *ex contractu*.[a]

The finder is not bound to take the goods he finds, yet when he does undertake the custody, he is required to exercise reasonable diligence in preserving the property, and he will be responsible for gross negligence. On the other hand, the finder of an article is entitled to recover all expenses which have necessarily occurred in preserving the thing found; as, if a man were to find an animal, he would be entitled to be reimbursed for its keeping, for

y-2 Wall C. C. 592, overruling 1 Newb. Adm. 215. z-2 Parsons' Mar. Law, 581, and cases cited; 15 Bost. Law Rep. 555; 16 Id. 264; Ware Dist. Ct. 134. a-Ware Dist. Ct. 185; and see 2 Hagg. Adm. 136. b-Gilp. Adm. 505; 2 Ventr. 181; 3 Hagg. Adm. 376; 2 Pet. Adm. 268; Ware Dist. Ct. 83; 1 Blatchf. & H. Adm. 423; 1 Sumn. C. C. 384; 1 Ld. Raym. 397; 2 Strange, 858. c-1 Hagg. Adm. 187; 18 Bost. Law Rep. 672; 1 Newb. Adm. 5. d-9 Wheat. 409; 3 Sumn. C. C. 308. e-1 Blatchf & H. Adm. 189. f-1 Blatchf. & H. Adm. 300; Olcott Adm. 43; 1 Blatchf. C. C. 173; Ware Dist. Ct. 188; 1 Sumn. C. C. 551; 12 How. 272. g-17 Me 147; 1 W. Rob. Adm. 392; 2 Eng. L. & Eq. 536; 18 How. 182; 19 Id. 22. h-6 McLean C. C. 484. i-1 Conkling Adm. j-18 How. 182; see Crabb, 23; 1 C. Rob. Adm. 391-406. k-Ware Dist. Ct. 188. l-3 Yeates Penn. 131; 4 Dall. Penn. 225; 8 Me. 298. m-8 Barnew. & C. 612; 16 Conn. 12, 23; 3 Woodb. & M. C. C. 193. n-1 Parsons' Mar. Law, 100; 2 Curt. C. C. 427; 2 Ves. & B. Ch. Ir. 242; Cowp. 469. o-Olcott Adm. 120; 1 Wall, Jr. 370. p-Met. Yelv. 67, *i.*; Sugden Vend. 306, 446. a-1 Atk. Ch. 446; 1 Greenlf. Ev. § 349. b-1 Greenl. Ev. (2d Ed.) §§ 84, 509, 575; 2 Id. § 668. c-8 Met. Mass. 487; 2 Add. Eccl. 223; 6 Wend. 173; 1 Hagg. Eccl. 115; 3 Pick. 67; 5 B. Mon. 58; 2 Curt. Eccl. 913. d-1 Chanc. Cas. 77. e-3 Atk. 214; 1 Ves. Ch. 341; 5 Id. 235; 6 Id. 812; 7 Id. 19; 3 Ves. & B. Ch. Ir. 54. f-7 B. & C. 90; Ry. & M. 90; 4 Taunt. 602; 2 Ves. Sr. Ch. 317; 16 Ves. Ch. 430; see ante, BAILMENTS, DEPOSIT. a-Doctor & Stud. Dial. 2 *c*, 38; 2 Bulstr. 306, 312; 1 Rolle, 125.

advertising in a reasonable manner that he had found it, and to any reward which may have been offered by the owner for the recovery of such lost thing.[b] And when the owner does not reclaim the goods lost, they belong to the finder.[c]

CRIMINAL RESPONSIBILITY OF A FINDER. As to the criminal responsibility of a finder, the result of the authorities is that if a man finds goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them, with intent to take entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny; but if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny.[d]

Lucid Intervals. See MEDICAL LAW.
Luggage. See BAILMENTS, "Common Carriers."
Machine. See PATENTS.
Magistrate. See OFFICE AND OFFICERS.
Maintenance. See CONTRACTS; CRIMINAL LAW.
Maker. See BONDS, NOTES, AND BILLS.
Malpractice. See MEDICAL LAW.
Malice. See CRIMINAL LAW.
Malicious Injury; Mischief; Trespass; etc. See CRIMINAL LAW.
Manager. See CORPORATIONS.
Mandamus. See PRACTICE.
Mandate. See BAILMENTS; PRACTICK.
Mania. See MEDICAL LAW, "Insanity."
Manslaughter. See CRIMINAL LAW.
Manufacturer. See PATENTS.
Manuscript. See COPYRIGHTS.
Marine. See INSURANCE.
Marital. See MARRIAGE.
Maritime Contract. See CONTRACTS.

MARRIAGE AND DIVORCE. See CONTRACTS.

MARRIAGE is a contract, made in due form of law, by which a man and woman reciprocally engage to live with each other during their joint lives, and to discharge towards each other the duties imposed by law on the relation of husband and wife.

CONTRACT OF MARRIAGE.

The marriage contract is in law a civil contract, to which the consent of the parties is essential. The marriage relation can only be entered into, maintained, and abrogated as provided by law. It is dissolved by death or divorce. A marriage which is valid by the laws of the country in which it is contracted is valid in this State. To make a valid marriage the parties must be *willing* to contract, *able* to contract, and have *actually* contracted.

All persons are able to contract marriage nnless they are under the legal age, or unless there be other disability; the age of consent at common law is fourteen in males and twelve in females.[a] When a person under this age marries, such person can, when he or she arrives at the age above specified, avoid the marriage, or such person or both may, if the other is of legal age, confirm it; if either of the parties is under seven, the marriage is void.[b]

If either party is *non compos mentis* or insane,[c] or has a husband or wife living,[d] the marriage is void. Consanguinity and affinity within the rules prescribed by law render the marriage void.

The parties must each be willing to marry the other. If either party acts under compulsion, or is under duress, the marriage is voidable.[e] Where one of the parties is mistaken in the person of the other, this requisite is wanting; but a mistake as to the qualities or character of the other party will not avoid the marriage.[f] If the apparent willingness is produced by fraud, the marriage will be valid until set aside by a court of competent jurisdiction, or by a decree of divorce.[g] Fraud is sometimes said to render a marriage void, but this is incorrect, as it is competent for the party injured to waive the tort, and affirm the marriage. Impotency in one of the parties is sometimes laid down as rendering the marriage void, as being a species of fraud on the other party; but it is only a ground for annulling the contract by a court or for a divorce.

The parties must actually make a contract of marriage; the form and requisites are hereinafter stated.

At common law no particular form of words or ceremony is necessary; mutual assent to the relation of husband and wife is sufficient. Any words importing a previous assent to being married to each other are sufficient evidence of the contract, if legally consummated.

Marriage is proved, in the absence of a license and certificate of the person authorized to perform the ceremony or proved copies thereof, from the subsequent acknowledgment of the parties, or from proof of cohabitation, or of general reputation resulting from the conduct of the parties.[h] In civil cases a marriage can generally be proved by showing that the parties have held themselves out as husband and wife, and by general reputation founded on their conduct. There is an exception, however, in the case of such civil suits as are founded on the marriage relation, such as actions for the seduction of the wife, where general reputation and cohabitation will not be sufficient.[i]

The civil effects of marriage are the following:

1. It confirms all matrimonial agreements between the parties;

2. It creates the civil affinity which each contracts towards the relations of the other;

b-Domat. 1, 2, *t.* 9, *s.* 2, *n.* 2; see Story Bailm. § 35. c-1 Bl. Comm. 296; 2 Id. 9; 2 Kent. Comm. 290. The acquisition of treasure by the finder is evidently founded on the rule that what belongs to none naturally becomes the property of the first occupant; *res nullius naturaliter fit primi occupantis*. d-1 Denio Cr. Cas. 335-387; 2 Id. 353; 2 Ben. & H. Lead. Cr. Cas. 18; Dearsl. Cr. Cas. 580; Bell Cr. Cas. 27; 2 Carr. & K. 841; 6 Cox Cr. Cas. 117; 7 M. & W. 623; 1 Hill, 94; 22 Conn. 153. a-Reeve; Dom. Rel. 236; 2 Kent Comm. (6th Ed.) 78; 1 N. Chip. 254; 10 Humph. 61; 1 Gray, 119; see 20 Ohio, 1. b-1 Sharsw. Bl. Comm. 436, and note 9; 5 Ired. Eq. 487. c-21 N. H. 52; 22 Id. 553; 4 Johns. Ch. 343. d-4 Johns. 53; 22 Ala. N. S. 86; 1 Salk. 120; 1 Sharsw. Bl. Comm. 438. e-2 Hagg. Cons. 104, 246. f-Poynter Marr. & Div. *c.* 9. g-5 Paige, 43. h-See 6 Binn. 405; 4 Johns. 52; 7 Wend. 47; see 10 N. H. 388; 4 Burr. 2058; 1 How. 219, 234; 1 Gray, 119; 2 Me. 102. i-4 N. Y. 230; 3 Bradf. Surr. 369-373; 6 Conn. 446; 29 Me. 323; 14 N. H. 450.

3. The wife thereby acquires the name of her husband;

4. In general the wife follows the condition of her husband;

5. The wife on her marriage loses her domicil and acquires that of her husband;

6. The children acquire the domicil of their father;

7. It gives the children, who are the fruits of the marriage, the rights of kindred, not only of the father and mother, but all their kin;

8. It makes all the issue legitimate.

Incestuous marriages are those prohibited by the law of nature. They are generally prohibited by statute.

The marriage ceremony may be regarded either as a civil ceremony or a religious sacrament.

HUSBAND'S OBLIGATIONS. He is bound to receive his wife at home, and should furnish her with all necessaries and conveniences which his fortune enables him to do, and which her situation requires; but this does not include such luxuries as, according to her fancy, she deems necessaries. He is bound to love his wife and to bear with her faults, and, if possible, by mild means, to correct them; and he is required to fulfil towards her his marital promise of fidelity, and can, therefore, have no carnal connection with any other woman, without a violation of his obligations. As he is bound to govern his house properly, he is liable for its misgovernment, and he may be punished for keeping a disorderly house, even where his wife had the principal agency, and he is liable for her torts, unless otherwise provided by statute.

——RIGHTS. Being the head of the family, the husband has a right to establish himself wherever he may please, and in this he cannot be controlled by his wife; he may manage his affairs in his own way, buy and sell all kinds of personal property, without her control, and he may buy any real estate he may deem proper; but as the wife acquires a right in the latter, he cannot sell it discharged of her interest, except by her consent, expressed in the manner prescribed by the laws of the State where such lands lie.

WIFE'S OBLIGATIONS. A wife is under obligation to love, honor, and obey her husband, and is bound to follow him wherever in the country he may choose to go and establish himself, provided it is not, for other causes, unreasonable. She is under obligation to be faithful in chastity to her marriage vow.[j]

——RIGHTS. A wife has a right to the love and protecting care of her husband; she has a right to share his bed and board; she can call upon her husband to provide her with necessary food and clothing according to her position in life, and if he neglects or refuses to do so, she can procure them on his account. As to her rights, on decease of her husband, in real estate, etc., see GENERAL STATUTES.

Any woman who shall have been married out of this Commonwealth, if her husband afterward become a resident thereof, enjoys all the rights as to property, which she may have acquired by the laws of any other State, Territory, or country, or which she may have acquired by virtue of any marriage contract or settlement made out of this State.

DIVORCE is the dissolution or partial suspension by law of the marriage relation. It is regulated by the statutes of the different States, and the various statutes are by no means uniform. Divorces are allowed for adultery, cruelty, desertion for a specified period, drunkenness if habitual, and other causes. In some States divorces are not allowed, are allowed for adultery only, and in others for any of the above or other causes. For specific information recourse must be had to the general statutes of the particular State.

ALIMONY. Of those consequences which result from the direction or order of the court, the most important are—*Alimony*, or the allowance which a husband, by order of court, pays to his wife, living separate from him, for her maintenance. The allowance may be for her use either during the pendency of a suit,—in which case it is called alimony *pendente lite*,—or after its termination, called permanent alimony.[k] Alimony is an *allowance*, not a sum of money nor a specific proportion of the husband's estate, given absolutely to the wife; it is a continuous allotment of sums payable at regular intervals for her support from year to year.[l] Alimony *pendente lite* is granted very much as a matter of course, unless the wife has sufficient separate property, upon the institution of a suit,[m] either for the purpose of obtaining a divorce from the bonds of matrimony,[n] a sentence of nullity, or a separation from bed and board,[o] and whether the wife be plaintiff or defendant; for it is improper for the parties to live in matrimonial cohabitation during the pendency of such a suit, whatever may be its result,[p] and therefore, the husband who has all the money, and the wife none, is bound to furnish her, whether plaintiff or defendant, with means to defray her expenses in the suit; otherwise she might be denied justice.[q] Alimony, especially permanent alimony, pertains rather to a separation from bed and board than to a divorce from the bond of matrimony. Indeed, it is generally allowed in the latter case only in pursuance of statutory provisions.[r] It is provided by statute in several States that, in case of divorce, the court may order the husband to restore to the wife, when she is the innocent party, and sometimes even when she is not, a part or the whole of the property which he received by the marriage.

j-5 Martin (N. S.) 60. k-Bishop Marr. & Div. § 549. l-6 Harr. & J. 485; 9 N H. 309; 9 B. Mon. 49; 6 W. & S. 85. m-1 Hagg. Eccl. 773; 1 Curt. Eccl. 444; 2 B. Mon. 142; 2 Paige Ch. 8; 11 Id. 66. n-9 Mo. 539; 18 Me. 308; 1 Band Ch. 101. o-1 Edw. Ch. 255. p-1 Sandf. Ch. 483. q-2 Barb. 146; Walk. Ch. 421; 2 Md. Ch. 335, 393; see 1 Jones N. C. 528; Bishop Marr. & D. §§ 569–590. r-Bishop Marr. & Div. § 563.

In some cases, also, the court is authorized to divide the property between the parties, this being a substitute for the allowance of alimony. For further particulars, recourse must be had to the statutes in question.[r]

To entitle a wife to permanent alimony, the following conditions are requisite: 1. Proof of a legal and valid marriage.[s] 2. A subsistence of the relation of husband and wife;[t] but this requisite is not generally indispensable.[u] 3. The wife must be separated from the bed and board of her husband by judicial decree, as voluntary separation, for whatever cause, is insufficient. Permanent alimony must, as a general rule, be awarded by the same decree that grants the separation, or at least in the same suit, for it is not, in general, competent to maintain an independent or subsequent suit for that purpose.[v] 4. The wife must not be the guilty party.[w]

The amount to be awarded for alimony depends upon a great variety of considerations, and is governed by no fixed rules.[x] The ability of the husband is a circumstance of more importance than the necessity of the wife, especially in respect to permanent alimony; and in estimating his ability, his entire income, whether derived from his property or personal exertions, will be taken into consideration.[y] If the wife has separate property,[z] or derives income from her personal exertions, this will also be considered. The method of computation is to add the wife's annual income to her husband's; consider what, under the circumstances, should be allowed her out of the aggregate, then, from the sum so determined, deduct her separate income, and the remainder will be the annual allowance to be made her. There are various other circumstances besides the ability of the husband; as, whether the bulk of the property came from the wife, or belonged originally to the husband,[a] or was accumulated by the joint exertions of both subsequent to the marriage.[b] Whether there are children to be educated and supported, and upon whom their support and education devolves.[c] The condition in life, employment, health, and place of residence of the husband, as demanding a larger or smaller sum for his own support;[d] the circumstance, condition in life, health, necessary expenditures, and place of residence of the wife;[e] the conduct and demeanor of the wife towards the husband who desires cohabitation,[f] and his as well; the extent and nature of the husband's[g] or wife's offence; the aggravation or encouragement of the cause of separation by either, and whatever other circumstances or considerations address themselves to the discretion of the court.

The proportion of the joint income to be awarded for permanent alimony ranges from one-third to one-half. In alimony pendente lite, it is not usual to allow more than about one-fifth.[h] Generally, a less proportion will be allowed out of a large estate than a small one where the question is on alimony during the suit, for then the wife should live in seclusion, and wants only a comfortable subsistence.[i] The amount of alimony is liable at any time to be diminished or increased at the discretion of the court.[j]

Alimony must secure to the wife as wife, a maintenance separate from her husband; an absolute title in specific property, or a sale of a part of the husband's estate for her use, cannot be decreed or confirmed to her as alimony.[k] Nor is alimony regarded, in a general sense, as the separate property of the wife; hence she can neither alienate nor charge it;[l] if she suffers it to remain in arrears for more than one year, she cannot generally recover such arrears;[m] if she saves up anything from her annual allowance, upon her death it will go to her husband;[n] if there are any arrears at the time of her death, they cannot be recovered by her executors.[o] Her right to alimony ceases upon the death of her husband,[p] he being bound to support her only during his life; it ceases also upon reconciliation and cohabitation.

The extent, incidents, and nature of alimony is largely regulated by statute, and all observations concerning them should be very carefully received in conjunction with the statutes of the particular State where the subject is to be considered.[q]

CHILDREN—CUSTODY OF. The tribunal hearing a divorce cause is generally authorized by statute to direct, during its pendency and afterwards, with which of the parties, or with what other person, the children shall remain, and to make provision out of the husband's estate for their maintenance. There are few positive rules upon the subject, the matter being left to the discretion of the court, to be exercised according to the circumstances of each case. The general principle is to consult the welfare of the child, rather than any supposed rights of the parents, and as between the parents to prefer the innocent to the guilty. In

r-See also Bishop Marr. & Div. cc. 28–30. s-1 Rob. Eccl. 484; 2 Add. Eccl. 484; 4 H & M. 507; 10 Ga. 477; 5 Sess. Cas. (N. S.) 1288. t-1 Lee Eccl. 621; 1 Blackf. 360; 1 Iowa, 440; 2 Hagg. Cons. 395; Saxt. 96; 13 Mass. 264; 5 Pick. 461; 18 Me. 308; 4 Barb. 295; 1 Gill & J. 463; 8 Yerg. 67. u-Bishop Marr. & D. § 563. v-9 Watts. 90; 27 Miss. 630, 692; 21 Conn. 185; 1 Blackf. 360; 8 Yerg. 67. w-1 Paige Ch. 276; 2 Barb. Ch. 311; 2 Ill. 242; Wright, 514; 6 B. Mon. 496; 11 Ala. (N. S.) 763; 24 N. H. 564. x-4 Gill, 105; 7 Hill, 107; 1 Green, 90; 1 Iowa, 151; 10 Ga. 477. y-3 Curt. Eccl. 3, 41; 1 Rich. Eq. 282; 2 B. Mon. 370; 5 Pick. 427; 1 R. I. 212. z-2 Phill. Eccl. 40; 2 Add. Eccl. 1. a-2 Litt. 337; 4 Humphr. 510. b-11 Ala. (N. S.) 763; 3 Harr. (Del.) 142. c-3 Paige Ch. 267; 4 Id. 643; 3 Green. 171; 2 Litt. 337; 10 Ga. 477. d-1 Hagg. Eccl. 526, 532. e-5 Pick. 427; 4 Gill. 105; 11 Ala. (N. S.) 673. f-7 Hill (N. Y.) 207; 5 Dana. 499; 15 Ill. 145. g-3 Hagg. Eccl. 657; 2 Johns. Ch. 391; 4 Des. Eq. 183; 24 N. H. 564. h-Bishop Marr. & D. § 613 i-Id. §§ 603–619; 2 Phill. Eccl. 40. j-8 Sim. Ch. 315, 321, n.; 6 W. & S. 85; Bishop Marr. & D. §§ 591–599. k-3 Hagg. Eccl. 322; 7 Dana, 181; 6 Harr. & J. 485; 4 Hen. & M. 587; 6 Ired. 293. l-5 Paige Ch. 509. m-3 Hagg. 322. n-6 W. & S. 85; 12 Ga. 201. o-8 Sim. Ch. 321; 8 T. R. 545; 6 W. & S. 85. p-1 Root. 349; 4 Hayw. 75; 4 Md. Ch. 289. q-See 10 Paige Ch. 20; 7 Hill (N. Y.) 207; Bishop Marr. & D. §§ 600–602 *a*, 619 *d*–631.

the absence of a controlling necessity or very strong propriety arising from the circumstances of the case, the father's claim is to be preferred.[r]

THE CONSEQUENCES of divorce are such as flow from the sentence by operation of law, or flow from either the sentence or the proceeding by reason of their being directly ordered by the court and set down of record.[s] In regard to the former, they are chiefly such as result immediately and necessarily from the definition and nature of a divorce. Being a dissolution of the marriage relation, the parties have no longer any of the rights, nor are subject to any of the duties, pertaining to that relation. They are henceforth single persons to all intents and purposes. It is true that the statutes of some of the States contain provisions disabling the guilty party from marrying again; but these are in the nature of penal regulations, collateral to the divorce, and which leave the latter in full force.[t]

DEFENCES. Some of the principal defences in suits for divorce are: *Connivance*, or the corrupt consent of a party to the conduct in the other party whereof he afterwards complains. This bars the right of divorce, because no injury was received; for what a man has consented to he cannot say was an injury.[u] *Collusion.* This is an agreement between husband and wife for one of them to commit, or appear to commit, a breach of matrimonial duty, for the purpose of enabling the other to obtain the legal remedy of divorce, as for a real injury. Where the act has not been done, collusion is a real or attempted fraud upon the court; where it has, it is also a species of connivance; in either case it is a bar to any claim for divorce.[v] *Condonation* applies chiefly, though not exclusively, to the offence of adultery; it is the conditional forgiveness or remission by the husband or wife of a matrimonial offence which the other has committed. While the condition remains unbroken, condonation, on whatever motive it proceeded, is an absolute bar to the remedy for the particular injury condoned.[w] *Recrimination.* This is a defence arising from the complainant's being in like guilt with the one of whom he complains. It is incompetent for one of the parties to a marriage to come into court and complain of the other's violation of matrimonial duties, if the party complaining is guilty likewise. When the defendant sets up such violation in answer to the plaintiff's suit, this is called, in the matrimonial law, recrimination.[x]

The foregoing defences, though available in all divorce causes, are more frequently applicable where a divorce is sought on the ground of adultery.

PROPERTY: In regard to rights of property as between husband and wife, a sentence of divorce leaves them as it finds them. Consequently, all transfers of property which were actually executed, either in law or fact, continue undisturbed; for example, the personal estate of the wife, reduced to possession by the husband, remains his after the divorce the same as before. But it puts an end to all rights depending upon the marriage and not actually vested: as, dower in the wife, all rights of the husband in the real estate of the wife, and his right to reduce to possession her choses in action.[y] In respect to dower, however, it should be observed that a contrary doctrine has been settled in New York, it being there held that immediately upon the marriage being solemnized the wife's right to dower becomes perfect, provided only she survives her husband.[z]

VALIDITY OF DIVORCE. Numerous and difficult questions are constantly arising in regard to the validity in one State of divorces granted by the courts or legislature of another State. The following propositions require the highest consideration:[a] 1. The tribunals of a country have no jurisdiction over a cause of divorce, wherever the offence may have occurred, if neither of the parties has an actual *bona fide* domicil within its territory. 2. To entitle the court to take jurisdiction, it is sufficient for one of the parties to be domiciled in the country; both need not be, neither need the citation, when the domiciled party is plaintiff, be served personally on the defendant, if such personal service cannot be made. 3. The place where the offence was committed, whether in the country in which the suit is brought or a foreign country, is immaterial. 4. The domicil of the parties at the time of the offence committed is of no consequence, the jurisdiction depending on their domicil when the proceeding is instituted and the judgment is rendered. 5. It is immaterial to this question of jurisdiction in what country or under what system of divorce laws the marriage was celebrated. It should be observed, however, that the last proposition but one is not sustained by authority in Pennsylvania and New Hampshire, it being held in those States that the tribunals of the country alone where the parties were domiciled when the *delictum* (fault or offence) occurred have jurisdiction to grant a divorce.[b] And in regard to the second proposition, it is to be observed that, without personal citation within the State, the divorce is not of binding effect in any other State.

Master. See APPRENTICESHIP.
Master of Ship. See BAILMENTS; CONTRACTS.
Material Men. See LIENS.
Mayhem. See CRIMINAL LAW.

r-Reeve Dom. Rel. (3d Ed.) 453; 40 N. H. 272; 16 Pick. Mass. 203; 3 Hill N. Y. 299; 24 Barb. N. Y. 521; 27 Id. 9, and cases cited; Bishop Marr. & Div. Ch. 29. s-Bishop Marr. & Div. § 548. t-Bishop Marr. & Div. §§ 655-659. u-Bishop Marr. & Div. § 332. v-Bishop Marr. & Div. § 350. w-Bishop Marr. & Div. § 354. x-Bishop Marr. & Div. § 389. y-Bishop Marr. & Div. § 660; 27 Miss. 630, 637; 17 Mo. 87; 6 Ind. 229; 6 Watts & S. Penn. 85, 88; 4 Harr. Del. 440; 8 Conn. 541; 10 Id. 225; 2 Md. 429; 8 Mass. 99; 10 Id. 260; 10 Paige Ch. N. Y. 420, 424; 5 Blackf. Ind. 309; 5 Dan. Ky. 254; 6 Watts Penn. 131. z-4 Barb. N. Y. 102; 4 N. Y. 95; 6 Du. N. Y. 102, 152, 153. a-Bishop Marr. & Div. Ch. 32. b-7 Watts, Penn. 349; 8 Watts & S. Penn. 251; 6 Penn. St. 449; see 30 Penn. St. 412, 416; 34 N. H. 518, and cases there cited; 35 Id. 474; and for the law of Louisiana see 9 La. Ann. 317.

Measure. See WEIGHTS AND MEASURES.
Measure of Damages. See DAMAGES.
Medical Evidence. See EVIDENCE
Medical Law. See LAW.
Memorandum. See CONTRACTS; COPYRIGHT.
Merger. See CRIMINAL LAW; ESTATES.
Military Law. See LAW.
Miscarriage. See MEDICAL LAW.
Misdemeanor. See CRIMINAL LAW.
Misrepresentation. See CONTRACTS.
Mistake. See CONTRACTS.
Mitigation. See DAMAGES.
Modification. See CONTRACTS.
Money. See UNITED STATES STATUTES AT LARGE.
Mortgages. See CONVEYANCES.
Mortmain. See CORPORATIONS.
Mother, Mother-in-Law. See PERSONS; RELATIONS.
Municipal Corporations. See CORPORATIONS.
Municipal Law. See LAW.
Murder. See CRIMINAL LAW.
Mite. See PERSONS.
Mutilate. See CRIMINAL LAW, "Mayhem."
Naval Law. See ADMIRALTY; MARITIME LAW.

NECESSARIES. See APPRENTICESHIP; CONTRACTS; ETC.

NECESSARIES. The term "necessaries" is not confined merely to what is requisite barely to support life, but includes many of the conveniences of refined society. It is a relative term, which must be applied to the circumstances and conditions of the parties.[a] Ornaments and superfluities of dress, such as are usually worn by the party's rank and situation in life,[b] some degree of education,[c] lodging and house-rent,[d] horses, saddles, bridles, liquors, pistols, powder, whips, and fiddles have been held not to be necessaries.[e]

The rule for determining what are necessaries is that whether articles of a certain *kind* or certain *subjects* of expenditure are, or are not such necessaries as an infant may contract for, is a matter of law, and for instruction by the court; but the question whether any particular things come under these classes, and the question also as to the *quantity*, are generally matters for the jury to determine.[f]

Infants may contract for necessaries,[g] but are not liable for borrowed money, though expended for necessaries.[h] Necessaries for the infant's wife and children are necessaries for himself.[i] A wife is allowed to make contracts for necessaries, and her husband is generally responsible upon them, because his assent is presumed; and even if notice be given not to trust her, still he would be liable for all such necessaries as she stood in need of, but in this case the creditor would be required to show she did stand in need of the articles furnished.[j] But if the wife elopes, though it be not with an adulterer, he is not chargeable even for necessaries; the very fact of the elopement and separation is sufficient to put persons on inquiry, and whoever gives credit to the wife afterwards gives it at his peril.[k]

Negligence. See ACTS; BAILMENTS; CONTRACTS; ETC.
Negligent Escape. See CRIMINAL LAW, "Arrest."
Negotiable Instruments. See BONDS, NOTES, AND BILLS.
Neutrality. See INTERNATIONAL LAW.
New and Useful Inventions. See PATENTS.
New Trial. See EVIDENCE; PRACTICE.
Newly Discovered Evidence. See EVIDENCE.
Night Walkers. See CRIMINAL LAW.
Nominal Damages. See DAMAGES.
Nonfeasance. See ACTS.
Nonsense. See CONVEYANCES, "Wills."
Notes. See BONDS, NOTES, AND BILLS.
Notice. See BONDS, NOTES, AND BILLS.
Notice of Protest. See BONDS, NOTES, AND BILLS.

NOVATION. See CONTRACTS, ETC.

NOVATION is the substitution of a new obligation for an old one, which is thereby extinguished. A transaction, whereby a debtor is discharged from his liability to his original creditor, by contracting a new obligation in favor of a new creditor, by the order of his original creditor. The term novation is rarely employed. The usual common law equivalent is assignment and sometimes merger. Still, this form of contract found its way into common law treatises as early as Fleta's day, by whom it was called *innovatio*.[a]

If A. owes B. fifty dollars; B. owes C. the same sum, and, at the request of C., orders A. to pay that sum, when it shall fall due, to C.; to this A. consents, and B. discharges A. from all obligation to him.[b] And if A. owes B., and B. owes C., and it is agreed by these three parties that A. shall pay this debt to C., and A. is by this agreement discharged from his debt to B., and B. is also discharged from his debt to C., then there is an obligation created from A. to C., and C. may bring an action in his own name.[c] The mutual assent of all three parties is necessary to make an effectual novation, or substitution.[d] This new promise

a-7 S. & R. 247. b-1 Campb. 120; 3 Id. 326; 7 C. & P. 52; 1 Hodg. 31; 8 T. R. 578; 1 Leigh. N. P. 135. c-4 M. & W. 727; 6 Id. 48; 10 Vt. 683; see 10 Barb. 489; Chitty Contr. 140; 1 Parsons' Contr. 246. d-2 Bulstr. 69; 1 B. & P. 340; see 12 Met. (Mass.) 559; 13 Id. 306; 1 M. & W. 67; 5 Q. B. 606. e-1 Bibb. 519; 1 M'Cord, 572; 2 Nott. & M'Cord, 524; 2 Humph. 27; 2 Str. 1101; 1 Mann. & G. 550; and see 7 C. & P. 52; 4 Id. 104; Holt, 77; Cart. 216; 11 N. H. 51; 8 Exch. 680. f-1 Parsons' Contr. 241; 10 Vt. 225; 12 Met. (Mass.) 559; 11 N. H. 51; 1 Bibb. 519; 2 Humph. 27; 3 Day, 371; 1 M. & G. 550; 6 M. & W. 42; 6 C. & P. 690. g-4 M. & W. 727; 13 Id. 252. h-1 Salk. 279; 2 Esp. 472, *n.*; 10 Mod. 67; 1 Bibb. 519; 7 W. & S. 83, 88; 10 Vt. 225; see 1 P. Wms. 558; 5 Esp. 28; 7 N. H. 368; 2 Hill (S. C.) 400; 32 N. H. 345. i-Str. 168; Com. Dig. *Enfant* (B. 5); 1 Sid. 112; 2 Starkie Ev. 725; 3 Day, 37; 1 Bibb. 519; 2 Nott. & M'C. 524; 9 Johns. 141; 16 Mass. 31; 14 B. Mon. 232; Bac. Abr. *Infancy* (1); see 13 M. & W. 252. j-1 Salk. 118; 2 Ld. Raym. 1006. k-1 Salk. 119; Str. 647; 1 Sid. 109; 1 Lev. 4; 11 Johns. 281; 12 Id. 293; 3 Pick. 289; 2 Halst. 146; 2 Kent Comm. 123; 2 Starkie Ev. 696; Bac. Abr. *Baron & Feme* (H.); Chitty Contr. Index; 1 Hare & W. Sel. Dec. 104, 106; Hammond Part. 217. a-See Fleta lib. 2, c. 60, § 12; Bracton lib. 3, c. 2, § 13; but in Bracton we have *novationem* for *innovationem*. b-A case of novation is put in Tatlock *vs.* Harris; 3 T. R. 180. "Suppose A. owes B. £100, and B. owes C. £100, and the three meet and it is agreed between them that A. shall pay C. the £100, B.'s debt is extinguished, and C. may recover the sum against A." 1 Parsons' Contr. Ch. 13; 2 Barb. 349. c-3 T. R. 174; 5 B. & Ald. 228; 7 N. H. 397; 5 B. & Ad. 925; 3 Bingh. N. C. 883; 1 Mo. & P. 8; 2 Mann. & G. 644; 17 Mass. 400; 3 Scott N. R. 125; 3 Barb. 209; 9 Bingh. 372; 3 B. & C. 842; 5 A. & E. 115, 116; 3 Greenl. (2 Ed.) 346, *n.*; 20 Vt. 25; 1 E. L. & E. 153, *n.*; 14 Conn. 141; 5 Wheat. 277; 20 Pick. 15. d-4 C. & P. 93; 1 Id. 248.

is not within the provisions of the statute of frauds, relating to a promise to pay the debt of another;[e] for here the debtor contracts an entirely new debt of his own, the consideration of which is the absolute discharge of the old debt. But there must always be a debt once existing and now cancelled, to serve as a *consideration* for the new liability. The action in all cases is brought on the new agreement. But in order to give a right of action there must be an extinguishment of the original debt.[f]

Nudum Pactum. See CONTRACTS, "Naked Agreements."

Null and Void. See CONTRACTS, ETC.

NUISANCE. See DAMAGES; CRIMINAL LAW.

A NUISANCE is that which incommodes or annoys; something that produces inconvenience or damage. Nuisances are either private or public. Private when it affects individuals, as when one man erects a house so near his neighbor as to throw the water off the roof upon his neighbor's land or house, or to intercept the light that his neighbor before enjoyed. Public, when it annoys citizens in general, as obstructions of the highway.[a]

It is difficult to say what degree of annoyance constitutes a nuisance. If a thing is calculated to interfere with the comfortable enjoyment of a man's house, it is a nuisance.[b] In relation to offensive trades, it seems that when such a trade renders the enjoyment of life and property uncomfortable it is a nuisance,[c] for the neighborhood have a right to pure and fresh air.[d]

A thing may be a nuisance in one place which is not so in another; therefore the situation or locality of the nuisance must be considered. A tallow-chandler setting up his business among other tallow-chandlers, and increasing the noxious smells of the neighborhood, is not guilty of setting up a nuisance unless the annoyance is much increased by the new manufactory.[e] Such an establishment might be a nuisance in a thickly-populated town of merchants and mechanics where no such business was carried on. Carrying on an offensive trade for twenty years in a place remote from buildings and public roads does not entitle the owner to continue it in the same place after houses have been built and roads laid out in the neighborhood, to the occupants of and travellers upon which it is a nuisance.[f] The trade may be offensive for noise,[g] or smell,[h] or for other reasons.[i]

Private nuisances may be to corporeal inheritances; as, for example, if a man should build his house so as to throw the rain-water which fell on it on my land;[j] or erect his building, without right, so as to obstruct my ancient lights;[k] keep hogs or other animals so as to incommode his neighbor and render the air unwholesome;[l] or to incorporeal hereditaments: as, for example, obstructing a right of way by ploughing it up, or laying logs across it, and the like;[m] or obstructing a spring;[x] interfering with a franchise, as a ferry or railroad, by a similar erection unlawfully made.[n]

To constitute a public nuisance, there must be such a number of persons annoyed that the offence can no longer be considered a private nuisance; this is a fact, generally, to be judged of by the jury.[o] Public nuisances arise in consequence of following particular trades, by which the air is rendered offensive and noxious:[p] from acts of public indecency, as bathing in a public river in sight of the neighboring houses;[q] or for acts tending to a breach of the public peace, as for drawing a number of persons into a field for the purpose of pigeon-shooting, to the disturbance of the neighborhood;[r] or keeping a disorderly house;[s] or a gaming house;[t] or a bawdy house;[u] or a dangerous animal, known to be such, and suffering him to go at large, as a large bulldog accustomed to bite people;[v] or exposing a person having a contagious disease, as the small-pox, in public;[w] and the like. The bringing a horse infected with the glanders into a public place, to the danger of infecting the citizens, is a misdemeanor at common law.[x] The leaving unburied the corpse of a person for whom the defendant was bound to provide Christian burial, as a wife or child, is an indictable nuisance, if he is shown to have been of ability to provide such burial.[y]

The remedies are by an action for the damage done, by the owner, in the case of a private nuisance;[z] or by any party suffering special damage, in the case of a public nuisance;[a] by abatement by the owner, when the nuisance is private;[b] and in some cases when it is public, if no riot is committed;[c] by injunction or by indictment for a public nuisance.[d]

Nuncupative Will. See CONVEYANCES, "Wills."

Oath. See EVIDENCE.

Obligations. See CONTRACTS.

Obstructing Process. See CRIMINAL LAW.

Office and Officer. See GENERAL STATUTES; UNITED STATES STATUTES AT LARGE.

Omission. See ACTS.

e-3 Bingh. (N. C.) 883; 3 Barb. 209; 3 T. R. 174. f-4 B. & C. 163; 1 M. & W. 124; 14 Ill. 34; 4 La. An. 281; 15 N.H. 129. a-3 Bl. Comm. 166, 215; 1 Hawk. Pl. Cr. 197. b-3 Jur. N.S. 571. c-1 Burr. 333; 5 Esp. 217. d-2 Carr. & P. 485; 6 Rog. N. Y. 61. e-Peake, 91. f-6 Gray, Mass. 473; see 7 Blackf. Ind. 534; 2 Carr. & P. 483. g-2 Show. 327; 22 Vt. 321; 6 Cush. Mass. 80. h-2 Carr. & P. 485; 13 Metc. Mass. 365; 1 Den. N. Y. 524. i-1 Johns. N. Y. 78; 1 Swan, Tenn. 213; Thach. Crim. Cas. Mass. 14; 3 East, 192; 3 Jur. N. S. 570. j-Fitzherbert, Nat. Brev. 184. k-9 Coke, 58; but see Washburn, Easements. l-9 Coke, 58. m-Fitzherbert, Nat. Brev. 183; 2 Rolle, Abr. 140. x-1 Campb. 463; 6 East. 208. n-See Washburn, Easements. o-1 Burr. 337; 4 Esp. 200; 1 Strange, 686, 704; 2 Chitty, Crim. Law, 607, n. p-Croke Car. 510; Hawkins Pl. Cr. b. 1, c. 75, § 10; 2 Ld. Raym. 1163; 1 Burr. 333; 1 Strange, 686. q-1 Russell, Crimes, 302; 2 Campb 89; Sid. 168. r-3 Barnew & Ald. 184. s-1 Russell, Crimes, 298. t-1 Russell, Crimes, 299; Hawkins, Pl. Cr. b. 1, c. 75, § 6. u-Hawkins Pl. Cr. b. 1, c. 74, § 1; Bacon, Abr. *Nuisance* (A.); 9 Conn. 350. v-4 Burn. Just. 578. w-4 Maule & S. 73, 272. x-Dearsl. Cr. Cas. 24; 2 Hurlst. & N. Exch. 299. y-2 Den. Cr. Cas. 325; see 3 Jur. N. S. 570. z-3 Blackstone, Comm. 220. a-4 Wend. N. Y. 9; 3 Vt. 529; 1 Penn. St. 309; Carth. 194; Vaugh. 341; 3 Maule & S. 472; 2 Bingh. 283; 1 Esp. 148. b-2 Rolle Abr. 565; Rolle, 394; 3 Bulstr. 198; see 3 Dowl. & R. 556. c-9 Coke, 55; 2 Salk. 458; 7 Blackstone Comm 5. d-2 Bishop. Cr. L. § 856.

Opinion. See EVIDENCE.
Ordinances. See EVIDENCE.
Ordinary Skill. See CONTRACTS.
Original Entries. See ACCOUNTS.

OWNER. See ASSIGNMENT; BAILMENTS; SALES; ETC., ETC.

AN OWNER is he who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases—even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant, which restrains his right. Although there can be but one absolute owner of a thing, there may be a qualified ownership of the same thing by many. Thus, a bailor has the general ownership in the thing bailed, the bailee the special ownership. The right of the absolute owner is more extended than that of him who has only a qualified ownership; as, for example, the use of the thing. Thus, the absolute owner of the estate, that is, an owner in fee, may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper for minerals, stone, plaster, and similar things, which would be considered actionable and would not be allowed in a qualified owner of the estate, as a lessee or a tenant for life. The word owner, when used alone, imports an absolute owner.[e]

When there are several joint owners of a thing—as, for example, of a ship—the majority of them have a right to make contracts in respect to such thing in the usual course of business or repair, and the like, and the minority will be bound by such contracts.[f]

Pardon. See CRIMINAL LAW.
Parents. See PERSONS; RELATIONS.
Parol. See EVIDENCE; LEASES.
Part-Owners. See OWNER.
Partial Loss. See INSURANCE.
Particular Estate. See ESTATES.
Particular Lien. See LIENS.
Parties. See BONDS, NOTES, AND BILLS; CONTRACTS, ETC.
Partners. See PARTNERSHIP; MEMBERS.

PARTNERSHIP. See ASSIGNMENTS; BILLS, BONDS, AND NOTES; CONTRACTS; CONVEYANCES, ETC., ETC.

For FORMS, see CONTRACT FORMS, ante.

GENERAL PARTNERSHIP.

PARTNERSHIP is a voluntary contract between two or more persons for joining together their money, goods, labor, and skill, or any or all of them, in some lawful commerce or business, under an understanding, express, or implied from the nature of the enterprise, that there shall be a communion of profit and loss between them.[a] The law of partnership, as administered in England and the United States, rests on a foundation composed of three materials—the common law, the law of merchants, and the Roman law.[b]

A partnership exists when two or more persons combine their property, skill, and labor, or one or more of them, in the transaction of business, for their common profit.[c] When a partnership is formed by written articles, it is considered as beginning at the date of the articles, unless they contain a stipulation to the contrary.[d]

As a general rule, a partnership may exist in any business or transaction which is not a mere personal office, and for the performance of which payment may be enforced.[e] It may be created for a special purpose, or confined by the parties to a particular line of business, or even a single transaction.[f] One partner may contribute all the money or all the stock, or all the labor or skill necessary for the purposes of the firm; but in order to make people liable as partners to each other, it is necessary that there should be a community of profits,[g] although one of them may stipulate to be indemnified against loss.[h] This, however, respects their mutual claims, for however they may stipulate with each other, all who take a share in the profits,[i] and all who allow themselves to be described and held out as partners, are liable as such to those to whom they have so held themselves out.[j] Supposing the parties to have become partners, the result is that each individual partner constitutes the others his agents for the purpose of entering into all contracts for him in the scope of the partnership concern, and consequently, that he is liable to the performance of all such contracts in the same manner as if entered into personally by himself.[k] It is not essential to the existence of a partnership that there should be any joint capital or stock.[l] Sometimes a partnership exists between parties merely as the managers and disposers of the goods of others.[m] A partnership is presumed to be general when there is no stipulations, or no evidence, from the course of business, to the contrary.[n] There may be a partnership to trade in land.[o] A ship as well as any other chattel, may be held in strict partnership.[p] But ships are generally owned by parties as tenants in common; and they are not, in consequence of such ownership, to be considered as partners.[q] The same is true of any other species of property in which the parties have only a community of interest.[r]

CONTRACT. The formation of a contract of partnership does not require any particular formality. It is, in general, sufficient that it is formed by the voluntary consent of the parties, whether that be express or implied; whether it be by written articles, tacit approba-

e-See 2 Ohio, 123. f-Holt, 586; 1 Bell Comm. (5th Ed.) 519; 5 Whart. 366. a-Collyer Partn. § 2; 10 Me. 489; 3 Harr. 485; 5 Ark. 278. b-Collyer Partn. § 1. c-25 Vt. 390; 2 Met. (Ky.) 258. d-5 B. & C. 108; 5 Pick. 38; 10 B. & C. 128; 1 La. An. 457. e-Collyer Partn. § 56. f-Davies Dist. Ct. 323; 3 Kent Comm. 30; Story Partn. § 81; 2 Ga. 18; 3 C. B. 641, 651; 9 Id. 458. g-1 Dougl. 371. h-3 M. & W. 357. i-9 C. B. 431; Eng. C. L. Vol. 67; 19 L. J.; C. P. 243. j-10 B. & C. 140; 6 Bingh. 793. k-6 Bingh. 792. l-2 Bingh. 170. m-Collyer Partn. § 17; 4 B. & Ald. 663; 15 Johns. 409, 442. n-14 How. 589; 3 Foster (N. H.) 438. o-21 Me. 421, 422; Dav. Dist. Ct. 320; 7 Penn. St. 165; 10 Cush. 458; 4 Conn. 568; Story Partn. §§ 82, 83. p-3 Kent Comm. 154; Collyer Partn. § 1185; 12 Mass. 54; 6 Me. 77; 15 Id. 427. q-Collyer Partn. § 1185; 6 Me. 77; 6 Pick. 120; 24 Id. 19; Abb. Shipping, 97; 14 Conn. 404; 14 Penn. St. 34, 38; T. Raym. 15; 8 Gill. 92. r-Poth. Partn. § n. 2; Story Partn. § 3; 1 Lindley Partn. 30, *et seq.*; 8 Exch. 825; 21 Beav. Rolls, 536; 24 Id. 283; 2 C. B. (N. S.) 357.

tion, or by parol contract, or even by mere acts.[s] Although ordinary partnerships may be formed without any written contract, and the acts and words of the parties are ordinarily sufficient for that purpose, yet, if the object of the company be to speculate in the purchase and sale of land, the positive rules of law and the statute of frauds require the partnership agreement to be in writing.[t] But this applies only to the contract between the parties, for as to third persons the partnership may be proved like any other.[u] A partnership, in general, is constituted between individuals, by an agreement to enter together, into a general or a particular business, and share the profits and losses thereof.[v] The criterion of a partnership is, whether the parties are to participate in profit. If the actual contract give a claim upon the profits, or the application of them, that is a partnership.[w] A participation in the uncertain profits of trade renders one a copartner in respect to the liabilities of the concern to third persons.[x] But the mere sharing of profits, without any connection whatever in the business, is not enough to constitute a partnership.[y] Thus, if one firm agrees with another, that each shall continue and carry on its business independently, but that the profits and losses of each firm shall be divided between the two, the two firms do not enter into partnership, nor do the members of one firm become partners with the members of the other.[z] There need not, however, be a community of interests in the property, if there be in the profits and some connection in the business.[a] But a setting apart a portion of the profits to pay the debt of a third person, does not make him a partner.[b] So, too, a joint purchase, but for the purpose of distinct and separate sales by each party on his own account, does not constitute the purchasers partners.[c] There are but few cases where a writing is necessary. Under the statute of frauds, where there is an agreement that a partnership shall commence at some time more than a year from the making of the agreement, a writing is necessary.[d] With respect to that part of the statute of frauds relating to lands, it has been held that a partnership may be constituted without writing,[e] and that if a partnership is proved to exist it may be shown that its property consists of land, although there is no signed agreement between the parties.[f] So it has been held, that an agreement to form a partnership for the purpose of buying and selling land may be proved by parol.[g] But this latter proposition is not generally conceded. The contrary doctrine has the weight of learned opinion.[h]

Persons may be copartners as to third parties and brought within all the liabilities of partnership as to them, who are not partners between themselves.[i] For whether they are partners is determined chiefly by their own intention; but whether they are partners in respect to third parties, is determined by a consideration of this intention, and also of that actual participation of profits which is held to require them to participate in the losses, because it diminishes the fund from which the losses are to be paid; and also of the way and degree in which the person sought to be charged as partner has been held out to the world as such, so that the person seeking to charge him had good reason to believe the debt of the partnership carried with it his responsibility.[j] Though a man really have no interest in the firm, yet if he suffer himself to be held out to the world as a member of it, he thereby authorizes those to whom he has been held out to treat him as a contracting party.[k] To make a man liable as nominal partner, he must have been held out as such *to the plaintiff*.[l] A contract to pay one employed in certain business a salary *equal in amount* to a certain proportion of the profits, will not make such a person a partner. The question of profits is of importance only in determining the amount of the salary. Neither will a certain salary, together with a certain per cent. upon the profits, make the receiver a partner.[m] An agreement by which a person is to receive a *certain portion of the profits* for his *salary*, does not constitute a partnership, such person having no special interest in the profits themselves, as profits.[n] Nor do factors and brokers for a commission on the profits, nor a master of vessel engaging for the share of the profits,[o] become partners, and are not, therefore, liable for the debts, as a partner is. It is sometimes difficult to distinguish between partnership and tenancy in common. In general, if the property owned jointly is so owned for the purpose of a joint business, and is so used, and the profits resulting from a common fund, it is partnership property; otherwise not.[p]

Though partnerships are usually formed by participation in profits and losses, partners may agree as to any way of dividing the losses; that a partner shall have his share of the profits and not be liable for losses. And this

s-Story Partn. § 86; 3 Kent Comm. 27; Dav. Dist. Ct. 320; 4 Conn. 568; 7 E. L. & E. 305; 2 Barb. Ch. 336. t-3 Sumner, 435; 1 Munf. 510; 15 Penn. 177. u-Davies, 320. v-18 Ves. 300. w-17 Ves. 403 (Sumner's Ed.) and note, p. 404; 10 Hill. 526; 1 Foster (N. H.) 175; 14 Barb. 474. x-2 Sandf. 7; 15 Conn. 67; 1 Hill, 526; 4 M. & Sel. 240; 2 B. & C. 401; 4 East. 144; 4 B. & C. 867; 6 Conn. 347; 6 Greenl. 76; 6 Pick. 124; 3 Mason 138; 22 Vt. 181; 31 Id. 395. y-20 N. Y. (6 Smith) 93. z-5 Sandf. 113; 1 Seld. 186. a-19 Barb. 222; 26 Ala. 133. b-3 Rich. L. 37. c-38 Me. 553; 15 Mo. 481. d-5 B. & C. 108. e-20 Beav. Rolls. 449. f-5 Ves. Ch. 309; 10 Cush. 458. g-5 Hare Ch. 369; 2 Phill. 266; 2 Hall & F. 224. h-See Dav. Dist. Ct. 320; Story Partn. § 83; 3 Sumn. C. C. 458-471; 2 De Gex & J. 52. i-6 S. & B. 333; 4 East. 144; 14 Vt. 540; 4 Penn. St. 30. j-22 Vt. 511; 4 Harrington, 90; 11 Humph. 271. k-10 B. & C. 20. l-10 B. & C. 141; 1 M. & R. 126 S. C. m-15 S. & R. 137; 5 E L. & E. 67; 1 Barr. 255; 6 Met. 82; 13 Barb. 302 16 Id. 309. n-12 Conn. 169; 1 Denio, 337; S. C. 3 Comst 132; 20 Wend. 70; 4 Sandf. 311; 1 Foster (N. H.) 93; 2 G. Greene, 574; 10 Texas, 193; 2 Md. 1; 3 Rich L. 37; 2 Strobh. 471; 6 Ala. 215; 7 Leigh, 115; 9 C B. 431; 3 Harr. & Johns. 505; 6 Conn. 351. o-15 Mass. 370; 6 Pick. 335. p-9 Johns. 470; 14 Id. 318: 1 Gray, 289; 1 Hill, 234; 15 Wend. 379; 24 Pick. 191; 23 Vt. 308; 11 Ohio, 364; 20 Ala. 212; 3 Mason, 138; 6 Greenl. 76; 6 Pick. 124; 10 Vt. 170; 31 Id. 395.

agreement is valid as between themselves. And this agreement will be equally efficacious, whether stated in articles, or proved by circumstances, or otherwise. For partners among themselves may make whatever bargain they choose. But no such agreement will prevent such partner from being liable for the debts of the partnership, unless the creditor knew of this bargain between the partners, and with this knowledge gave the credit to the other partners only.[p]

The liability of a partner springs *either* from his holding himself out to the world as a partner, *or* from his participation in the business and its profit or loss. If these two cases meet, as is usually the case, they strengthen each other; but either of them alone is, in general, sufficient to create this liability.[q] There is no liability as a partner, where there is neither a participation in the profits, nor any such use of the defendant's name permitted by him as justifies the plaintiff in selling to others on his credit, although there may be in some way or measure a community of interest.[r]

Proof of existence. Whether a partnership exists or not in a particular case is not a mere question of fact, but one of mixed law and fact. It is, nevertheless, generally to be decided by a jury.[s] The existence of a partnership may be proved by showing—1. A distinct agreement for a partnership: or, 2. An agreement to share profit *and* loss; either of these will be conclusive: or, 3. An agreement to share profits—which will be strong evidence of a partnership: or, 4. Circumstances sufficient to establish a *quasi*-partnership which, being proved, is held to be *prima facie* evidence of a real partnership.

Where there is no written agreement, the evidence generally relied upon to prove a partnership is the conduct of the parties, the mode in which they have dealt with each other, and the mode in which each has, with the knowledge of the others, dealt with other persons. This can be shown by the books of account, by the testimony of clerks, agents, and other persons, by letters and admissions, and, in short, by any of the modes in which facts can be established.[t]

DISSOLUTION. A partnership may be dissolved in either of the following modes:

By the act of the parties, as by their mutual consent.[u] And where no specified period is limited for the continuance of the partnership, either party may dissolve it at his pleasure.[v] If the partnership be for a time certain, one partner may maintain an action against the other for a breach of the articles in dissolving before the period therein limited. And the action may be brought before the expiration of the time for which the partnership was limited. The damages would be the profits which would have accrued to the plaintiff from the continuation of the business.[w] When a partnership is not to endure for a time certain by the articles of copartnership, or where that time has expired, it may undoubtedly be dissolved at the pleasure of either partner.[x] But notice should be given to the other partner.[y] This should be a reasonable notice where the articles are totally silent upon the subject, and where, without such notice, injury would be inflicted, or fraud indicated.[z] The duration may be gathered from the terms of the articles, although not expressly provided for.[a] As against third persons a partner may withdraw from the partnership at will.[b]

By the act of God, as by the death of one of the partners; and this operates from the time of the death.[c] In such case the dissolution takes place from the time of the death, however numerous the association, and this not only to the deceased partner, but also as to all the survivors.[d] And the same rule applies to a silent partner,[e] unless there be an express stipulation to the contrary.[f] Although death of a partner operates a dissolution of the partnership, the articles of copartnership may provide for its continuance, by an agreement that the executors, administrators, heirs, or other designated persons, shall take the place of the deceased partner.[g] And such express agreement for the continuance of the partnership after the death of one partner is necessary, although the partnership is for a term of years.[h] Absolute insanity, or any equivalent disability, operates at once, and *ipso facto*, a dissolution.[i]

By the act of the law, as by the bankruptcy of one of the partners.[j] Bankruptcy of the firm, or of one partner, operates an immediate dissolution.[k] An act of bankruptcy does not dissolve the partnership *instanter*. The adjudication that he is a bankrupt is what severs

p-5 B. & Ald. 954: 3 M. & W. 357; 2 H Bl. 246; 6 S. & M. 385; 1 Story, 374; 17 Me. 180; 7 Ala. 761; 1 Campb. 404, *n.*; 5 Bro. P. C. 489; 2 Chitty, 120. q-3 McLean, 364: 2 Id. 347; 7 B. Mon. 456: 22 Vt. 511. r-2 Nott. & M'Cord, 447; 8 Gill, 92; 3 Story, 108. s-See 3 Harr. 358; 4 Id. 190; 6 Conn. 347; 1 Nott. & M'C. 20; 1 Caines, 184; 2 Fla. 541; 9 C. B. 457; 3 C. B. (N. S.) 562, 563; 9 Bingh. 117. t-As to presumptions arising from the joint retainer of solicitors, see 20 Beav. Rolls. 98; 7 De Gex M. & G. 239; 7 Hare Ch. 159, 164. For cases in which partnership has been inferred from various circumstances, see 4 Russ. Ch. 247; 2 Bligh. (N. S.) 215; 3 Brown Parl. Cas. 548; 5 Id. 482; 1 Stark. 81; 2 Campb 45. u-1 Story Partn. § 268; 3 Kent Comm. 54; Poth Partn. *n.* 149. v-4 Russ. Ch. 260, 1 Swanst. 508; 3 Kent Comm. 53, 54; Gow. Partn. (3d Ed.) 109; Story Partn. §§ 84, 271, 273; see 5 Ark. 280. w-10 N. Y. (6 Seld.) 489. x-15 Johns. 82. y-4 Russ. 260; 16 Ves. 50. z-5 Ark. 280. a-2 Jur. 252: 15 Ves. 227; 1 Swanst. 480: 17 Pick. 519; 18 Vt. 107. b-3 C. B. (N. S.) 561. c-3 Mer. 610; 6 Cow 441; Poth Partn. *n.* 144; 6 Conn. 184; 2 How. 560; 7 Ala. (N. S.) 19; Collyer Partn. § 113; 3 Kent Comm. 55, 56; Story Partn. §§ 317, 319; 7 Pet. 594; 5 Met. (Mass.) 519; 5 Gill. 1. d-5 Met. 575; 7 Peters, 586, 594; Chitty Contr. Ed. 1860, 285, note. e-17 Pick. 520. f-3 Madd. Ch. 521; 2 How. 569. g-1 Swanst. 514, *n.*; Id. 520; 2 Ves. Sen. 33; 9 Ves. 500; 3 Dowl. 76; 11 S. & R. 41; 7 Ala. 28. h-3 Madd. 251; 7 Pet. 586; M'Clel. & Y. 575. i-Story Partn. § 295: 2 M. & K. 125; 15 Johns. 57; 10 N. H. 161; 2 Ves. & B. 303; Gow. Part. 272. j-4 Burr. 2174; Cowp. 448; 6 Ves. Ch. 126; 5 M. & S. 340. k-Cowp. 448; 1 Swanst 482; 5 Ves. 295; 15 Id. 218; 11 Id. 5; 17 Id. 193; 15 Johns. 82, S. C.; 16 Johns. 491; 17 Id. 535; 24 Pick. 89; 2 Doug. (Mich.) 206; Coll. Part. B. 1, Ch. 2, § 3; Story Part. § 313.

the partnership.[l] Insolvency under the statute would have the same effect.[m] And bankruptcy destroys the right of a partner to bind the firm by an acknowledgment of debt.[n] But either of the solvent and competent partners may collect, adjust, and receipt for partnership accounts.[o]

By a valid assignment of all the partnership effects for the benefit of creditors, either under insolvent acts[p] or otherwise,[q] and by a sale of partnership effects under a separate execution against one partner.[r] But the mere insolvency of one or all the members of a partnership does not itself operate a dissolution.[s]

By the assignment of the whole of one partner's interest either to his copartner or to a stranger.[t] Where it does not appear that the assignee acts in the concern after the assignment.[u] Where it was held that this would not *ipso facto* work a dissolution. Any assignment of a copartner's interest in the partnership's funds operates, *ipso facto*, a dissolution. So, the assignment of the whole of a copartner's interest.[v] And an assignment by one partner of his share of the future profits to another partner is a dissolution of the partnership, because the essence of that is a participation of the profits.[w]

By the award of arbitrators appointed under a clause in the partnership articles to that effect.[x]

By the civil death of one of the partners;[y] but the absconding of a party from the State does not of itself operate a dissolution.[z]

By the extinction of the subject-matter of the joint business or undertaking,[a] and by the completion of the business or adventure for which the partnership was formed.[b]

By the termination of the period for which a partnership for a certain time was formed.[c] If the partnership be continued, by express or tacit consent after that period, it will be presumed to continue on the old terms,[d] but as a partnership at will.

By the breaking out of a war two States in which the partners are domiciled and carrying on trade.[e]

A partnership for a term may be dissolved before the expiration of the term, by the decree of a court of equity founded on the wilful fraud or other gross misconduct of one of the partners;[f] so on his gross carelessness and waste in the administration of the partnership, and his exclusion of the other partners from their just share of the management;[g] so on the existence of a violent and lasting dissension between the partners,[h] where these are of such a character as to prevent the business from being conducted upon the stipulated terms,[i] and to destroy the mutual confidence of the partners in each other.[j] But a partner cannot, by misconducting himself and rendering it impossible for his copartners to act in harmony with him, obtain a dissolution on the ground of impossibility so created by himself.[k] A partnership may be dissolved by decree when its business is in a hopeless state, its continuance impracticable, and its property liable to be wasted and lost.[l]

The confirmed lunacy of an active partner is sufficient to induce a court of equity to decree a dissolution, not only for the purpose of protecting the lunatic, but also to relieve his copartners from the difficult position in which the lunacy places them.[m] The same may be said of every other inveterate infirmity, such as palsy, or the like, which has seized upon one of the partners, and rendered him incompetent to act where his personal labor and skill were contracted for.[n]

But lunacy does not itself dissolve the firm, nor do other infirmities.[o] The court does not decree a dissolution on the ground of lunacy, except upon clear evidence that the malady exists, and is incurable.[p] A temporary illness is not sufficient.[q] A dissolution by the court, on the ground of insanity, dates from the decree, and not from a prior day.[r]

Dissolution with respect to Third Persons. The partnership as to third persons, that is, the liability of partners with respect to third persons, cannot be dissolved without notice to them that the partnership no longer exists. Actual notice must be brought home to persons who have been in the habit of dealing with the firm; but as to all persons who have had no previous dealings with the firm, notice fairly given in the public newspapers is deemed sufficient.[s] This notice is neces-

l-Coll. Partn. § 111; 5 Ves. 295; Story Partn. § 314. m-1 Bland. 418; 2 Ashm. 305. n-2 Doug. (Mich.) 206. o-Cowp. 445; 5 M. & Sel. 336; 11 Ill. 14; 12 Id. 298. p-Collyer Partn. § 112. q-41 Me. 373. r-Collyer Partn. § 112; Cowp. 445; 2 Ves. & B. Ch. Ir. 300; 3 Kent Comm. 59. s-24 Pick. 89; see 1 Bland Ch. 408; 2 Ashm. 305; Poth. Partn. n. 148. t-Collyer Partn. § 110, note; 3 Kent Comm. 59; Story Partn. §§ 307, 308; 4 B. & Ad. 175; 17 Johns. 525; 1 Freem. Ch. 231; 8 W. & S. 262. u-17 Johns. 525; 8 Wend. 442; 5 Dana, 213; 1 Whart. 381; 2 Dev. Eq. 481; but see 14 Pick. 322. v-13 Penn. St. 67; 1 Blatch. 488; 17 Johns 525; 1 Freem. Ch. (Miss.) 231; 5 Dana, 213; 8 W. & S. 262; 14 Pick. 322; Collyer Partr § 110; 2 Dev. Eq. 481; 17 Vt 390. w-4 B & Ad. 175. x-See Bisset Partn 87; 1 W. Bl. 475; 4 B. & Ad. 172. y-Collyer Partn. § 114; Poth. Partn. n. 147. z-24 Pick. 89; see Story Partn. § 298. a-16 Johns. 401, 402; Poth. Partn. nn. 5, 140–143; Collyer Partn. § 115. b-Poth. Partn. n. 143; Story Partn. § 280. c-Collyer Partn. § 119; Poth. Partn. n. 139. d-17 S. & R. 165; Chitty Boutr. (Ed. 1860) 285. e-16 Johns. 438; 3 Kent Comm. 62; Story Partn. §§ 315, 316; 3 Bland. 674. f-Collyer Partn. § 296; Chitty Contr. (Ed. 1860) 285; 4 Beav Rolls. 502; 21 Id. 482; 2 Ves. & B. Ch. Ir. 299. g-Collyer Partn. § 227; 1 Jac & W. Ch. 592; 2 Id. 206; 5 Ark. 278; 2 Ashm. 309, 310; 3 Ves. Ch. 74. h-1 Jarman Conv. 26; Gow. Partn. (3d Ed.) 227; 1 Iowa, 537, Collyer Partn. § 297; see 4 Sim. Ch. 11; Story Partn § 288; 4 Beav. Rolls, 503; 14 Ohio, 315. i-3 Kent Comm. 60, 61, Collyer Partn. § 297. j-Beav. Rolls. 502, 21 Id. 482; 1 Lindley Partn. 184, 185. k-21 Beav. Rolls. 493, 494; 3 Hare Ch. 387. l-Collyer Partn § 291; 3 Kent Comm 60; 1 Cox, 212; 2 Ves. & B Ch. Ir. 290; 16 Johns. 491; Gow. Partn. (3d Ed.) 226, 227; 1 Lindley Partn. 180, 182; 3 Kay & J. 78; 13 Sim. Ch. 495 m-See 1 Cox Ch. 107; 1 Swanst. 514, note; 2 Mylne & K. 125; 6 Beav. Rolls, 324; 1 De Gex M. & G. 171; 2 Kay & J. 441; Collyer Partn. § 292; 3 Kent Comm 58; Watson Partn. 382; 3 Younge & C. 184. Bisset Partn 83. n-Poth. Partn. n. 153, 3 Kent Comm. 62; Collyer Partn § 295. o-3 Kent Comm. 58; Story Partn § 295; 3 Jur. 358; Bisset Partn. 85. p-3 Younge & C. 184; 2 Kay & J 441. q-2 Ves. Sen. Ch. 34; 1 Cox. 107; 1 Lindley Partn. 182, 183. r-1 Phil. 172; 2 Coll. 276; 1 K. & J. 765; 1 Lindl. Partn. 183. s-Collyer Partn. §§ 532–534.

sary to terminate the agency of each partner, and, consequently, his power to bind the firm.[t]

It is not necessary to give notice of the retirement of a dormant partner from the firm, if the fact of his being a partner be unknown to all the creditors of the firm; if it be known to some, notice to those must be given, but that will be sufficient.[u]

Notice of the dissolution is not necessary in case of the death of one of the partners, to free the estate of the deceased partner from further liability;[v] nor is notice, in fact, necessary in any case where the dissolution takes place by operation of law.[w]

EFFECT OF DISSOLUTION. The effect of dissolution as between partners is to terminate all transactions between them as partners, except for the purpose of taking a general account, and winding up the concern.[x] As to third persons, the effect of a dissolution is to absolve the partners from all liability for future transactions, but not for past transactions of the firm.[y] Dissolution, however it takes place, terminates altogether the power of a partner to carry on the business concerns of the partnership, in a way to bind former partners by any contract whatever. The former partners are partners no longer, but tenants in common; and where there is no agreement to the contrary, each partner, after dissolution, possesses the same authority to adjust the affairs of the firm, by collecting its debts, and disposing of its property, as before dissolution; but they can no longer bind each other, even by varying the form of existing obligations.[z] No partner can indorse a note of the firm, even to pay a prior debt of the firm.[a] When a partner dies, the partnership property goes to the survivors for the purpose of settlement, and they all have the power necessary for that purpose, and no more.[b] And the survivors can charge nothing for their trouble or labor in settling the concern.[c] Nor is a partner entitled to compensation for extra services in the absence of an express contract, and there is no principle of the law which authorizes an inquiry into the inequality of the services of partners, unless there be an express stipulation to that effect.[d] They are tenants in common with the representatives of the deceased, as to the choses in possession; and they have a lien on them to settle the affairs of the concern, and pay its debts.[e] Proper notice should be given of a dissolution, for a firm may be bound by a contract made after the dissolution, or retirement of one or more, by a former partner, in the usual course of business, with a person who had no notice or knowledge of the dissolution.[f]

The power of the partners subsists for many purposes after dissolution; among these are:[g]

1. The completion of all the unfinished engagements of the partnership.

2. The conversion of all the property, means, and assets of the partnership existing at the time of the dissolution, for the benefit of those who were partners, according to their respective shares.

3. The application of partnership funds to the payment of the partnership debts.

But although, for the purposes of winding up the concern, and fulfilling engagements that could not be fulfilled during its existence, the power of partners subsists even after dissolution, yet, legally, and strictly speaking, it subsists for those purposes only.[h]

RIGHTS OF CREDITORS CONCERNING PARTNERSHIP FUNDS. The property of a partnership is bound to the payment of the partnership debts, and the right of a private creditor of one copartner to that partner's interest in the property of the firm, is postponed to the right of the partnership creditor.[i] Where an attachment by mesne process exists, such attachment is allowed; but it is generally made subject to the paramount rights of the partnership creditors.[j] It is well settled that if partnership effects can be taken by attachment or on execution to secure or satisfy the debts of one of the partners, this can be done only to the extent of that partner's interest, and subject to the settlement of all partnership accounts.[k] The general rule of law is, that in levying an execution against one partner for his separate debt, the officer may take possession of all the joint

t-1 Lindley Partn. 261, 324; 1 Younge & J. 227; 1 Stark. 164; 7 Price, 193; 1 Campb. 402; 10 East. 264. u-Collyer Partn. §§ 120, 536; 5 Esp. 89; 1 Carr. & K. 580; 1 Met. (Mass.) 19; 1 B. & Ad. 11; 4 Id. 179; 5 B. Mon. 170; Chitty Contr. (Ed. 1860) 287, and note; 5 Cow. 534; 1 Lindley Partn. 326. v-Collyer Partn. § 120; Story Partn. §§ 162, 336, 343; 3 Kent Comm. 63; 3 Mer. Ch. 614; 17 Pick. 519; Bisset Partn. 103, 104. w-Collyer Partn. § 538; 3 Kent Comm. 63, 67; 15 Johns. 57; 16 Id. 494. x-1 Penn. St. 274; 3 Kent Comm. 62, *et seq.* y-Collyer Partn. § 121; Story Partn. Ch. 15; 3 Kent Comm. 62, *et seq.*; 2 Cush. 175; Poth. Partn. *n.* 155; 3 M'Cord, 378; 4 Munf. 215; 5 Mas. C. C. 56; Harper, 470; 4 Johns. 224; 6 Cow. 701; 41 Me. 376. z-13 Vt. 452; Id. 522; 24 N. Y. (10 Smith) 570. a-5 Ga. 166; 25 Ala. 474; 33 N. H. 351; 1 Cush. 146; 11 Id. 314. b-6 Ves. 119, 126; 11 Id. 5; 15 Id. 218; 16 Id. 49, 57; 5 M. & Sel. 336; 31 E. L. & E. 121; 3 Harr. & J. 495; 6 Cowen, 441; 17 Pick. 519; 1 Busb. Eq. (N. C.) 277; 4 Wis. 102; 1 E. & E. 506; 16 La. 30; 19 Id. 402. c-19 Penn. St. 516; 1 Hare, 153. d-1 Head, 93; Id. 353. e-6 Ves. 119; 11 Id. 5. f-16 B. Mon. 355; 2 Kernan, 283; 3 G. Greene, 186; 23 Mo. 185; 14 Penn. St. 469; 12 Barb. 67 28 Conn. 1. g-Story Partn. § 326; Chitty Contr. (Ed. 1860) 288; 3 Kent Comm. 57; 17 Pick. 519. h-Collyer Partn. § 119; 15 Ves. Ch. 227; 5 Man. & G. 564; 1 H. Bl. 156; 3 Esp. 108; 4 M. & W. 461, 462; 10 Hare Ch 453; 4 De Gex M. & G. 542. Whether a dissolution of a partnership is *per se* a breach of a contract by the firm to employ a person in their service is questionable; 3 Hurlst. & N. 931. i-8 How. 414; 6 Mass. 243; 5 N H. 190; 4 Conn. 540; 9 Greenl. 28; 20 Me. 89; 13 Ala. (N. S.) 752; 18 Conn. 294; 6 B. Mon. 128; 7 Id. 210; 2 Md. 1; 18 Ohio, 181; 20 Penn. St. 76; 1 Foster, 462; 20 Vt. 479; 1 Barb. Ch. 480; 13 Ala. 387; 7 Humph. 106; 3 Barb. Ch. 46, 50; 2 Vt. 120; 8 Id. 290; 19 Id. 278; Id. 292; 46 Me. 250. j-6 Mass. 242; 11 Id. 248; 16 Pick. 572; 22 Id. 450; 24 Id. 210; 9 Greenl. 28; 1 Fairf. 458; 2 Me. 89; 5 N. H. 190; 1 Show. 169; 1 Salk. 392; 1 Comyns. 277; 8 N. H. 238; 10 Id. 77; 12 Id. 276; 4 Conn. 540; 19 Vt. 278; 16 Johns. 102; 6 Johns. Ch. 186; 13 Cal. 626. k-Cowp. 445; Doug. 650; 1 Ves. Sen. 239; 1 Ves. Jr. 236; 4 Id. 396; 15 Ves. 557; 1 Jac. & W. 608; 17 Ves. 193; 9 Greenl. 33; 1 Penn. St. 198. 1 Ala. (N. S.) 129; Story Partn. § 261; Coll Partn. § 822, *n.*; 1 Wend. 311; 5 N. H. 190; 5 Blackf. 337-8, *Dewey*, J.

property of the firm, in order to inventory and appraise it. He has no authority to divide it; he can only sell the joint interest of the debtor, whatever it may be, and the purchaser will stand in the place of the debtor, and hold the same interest in the joint concern which he held. The levy of execution does not give the creditor a separate possession of the goods. The indebted partner had no such possession himself; and the levy gives to his creditor only that which the debtor had; and that is a right to call for an account, and then a right to the balance which may be found to belong to him upon a settlement.

In the absence of statutory provisions, an officer cannot take or give, by sale, specific possession of the partnership property; he takes, and can sell only the right and interest of the indebted partner to, and in the whole fund. After sale on execution, the officer should convey to the purchaser all the right and interest of the indebted partner in the stock and property of the partnership.

Private creditors of one of the partners cannot reach the partnership funds until the claims of the partnership creditors are satisfied.[l] The assets of a deceased, and of insolvent partners, if there be a partnership and separate property, will be distributed by paying the firm debts out of the joint estate, and the individual debts out of the separate estate; the joint and individual debts should be kept separate, and the assets of the two estates marshalled accordingly; joint creditors must first resort to the joint fund, and the creditors of the individual partners to their separate property; upon the inadequacy of either of these, then the joint or separate estate may be applied, according to the exigency of the case; if there is no joint fund, nor any solvent partner, joint creditors may participate equally with a private creditor in the estate of a deceased partner, and if there should be a surplus of the joint fund, the creditor of an individual partner may resort to that.[m]

MEMBERS.

Partners are members of partnership. Dormant partners are those whose names and transactions as partners are professedly concealed from the world. Nominal partners are ostensible partners who have no interest in the firm or business. Ostensible partners are those whose names appear to the world as partners, and who in reality are such.

Persons who have the legal capacity to make other contracts may enter into that of partnership.[a] A lunatic seems not to be absolutely incapable of being a partner.[b] A minor may contract the relation of partner, as he may make any other trading contract which may possibly turn out to be for his benefit.[c] This contract is subject to the right of avoidance by the minor; but, as in the case of continuing contracts, he is presumed to ratify it, and will be liable on subsequent contracts made on the credit of the partnership if he do not, within a reasonable time after he has attained his full age, give notice of his disaffirmance of or otherwise repudiate the partnership.[d] It has been held that if a party who was a member of a firm during his minority, does in any manner concur with in carrying on the partnership, or receive profits from it, after he comes of age, it amounts to a confirmation, and will render him liable on the contracts of the firm made during his minority.[e] The person with whom the minor contracts will be bound by all the consequences.[f]

Persons domiciled, and trading in different countries at war with each other, cannot be partners.[g]

Generally speaking, the common law imposes no restriction as to the number of persons who may carry on trade as partners.[h]

PARTNERS IN LAW. If persons suffer their names to be used in a business, or otherwise hold themselves out as partners, they are to be so considered, whatever may be the engagements between them and the other partners.[i] In such cases they will be equally responsible with the other partners, although they receive no profits; for the contract of one is the contract of all.[j] This rule of law arises not upon the ground of the real transaction between the partners, but upon principles of general policy, to prevent the frauds to which creditors would be liable if they were to suppose that they lent their money upon the apparent credit of three or four persons, when, in fact, they lent it only to two of them, to whom, without others, they would have lent nothing.[k] It has been held that it is not necessary for a person charging a nominal partner to have been aware of the partnership at the time of the contract,[l] and this doctrine has been vindicated on the ground that the object of the rule is to prevent the extension of unsound credit.[m] But the doctrine has been very much questioned.[n] The term "holding one's self out as partner," imports, at least, the voluntary act of the party holding himself out,[o] but no particular mode of holding himself out is requisite to charge a party. The usual evidence to charge a party in such cases is that he suffered the use of his name over the shop door, in printed notices, bills of parcels, and advertisements, or that he

l-8 How. 414; 1 Williams, 478; 14 Texas, 20. m-Pahlman *vs.* Graves, 26 Ill. 405. a-Collyer Part. §§ 11, 12. b-2 Mylne & K. 125; 6 Beav. Rolls. 324; 1 Lindley Partn. 76, 77. c-1 Stark. 25; 8 Taunt. 35; 5 B. & Ald. 147. d-5 B. & Ald. 147; 9 Vt. 368; 2 Hill, 479; 3 Cush. 372; Collyer Part. § 528; Chitty Contr. (Ed. 1860), 170, 171; Story Part. § 37; 3 Kent Comm. 68; 1 Lindley Part. 74–76. e-2 Hill, (S. C.) 497. f-Str. 939; 2 M. & S. 205. g-Collyer Partn. § 14; 15 Johns. 57; 16 Id. 438; 3 Kent Comm. 62, 67; 1 Lindley Partn. 99. h-Collyer Partn. § 11; 1 Lindley Partn. 71. i-14 Vt. 540; 3 Kent Comm. 32, 33; Collyer Partn. § 86; 27 N. H. 252. j-2 Campb. 802; 2 McLean C. C. 347; 5 Mill. (La.) 406, 409; 5 Bingh. 776; 10 B. & C. 140; 1 M. & R. 9; 19 Ves. 459; 17 Vt. 449. k-2 H. Bl. 235; Dougl. 371; 2 W. Bl. 998; 3 Kent Comm. 32, 33; 6 S. & R. 259, 333; 16 Johns. 40; 2 Des. 148; 2 Nott. & M'Cord, 427; Collyer Partn. § 86; Watson Partn. 26. l-2 H. Bl. 242; 3 Watts. 39. m-Collyer Partn. § 86. n-See 1 Smith L. Cas. (Eng. Ed.) 507; 1 B. & C. 140; 2 McLean C. C. 347; Mood. & R. 9; 1 B. & Ald. 11; 8 Ala. (N. S.) 560; 7 B. Mon. 456. o-Collyer Partn. § 97; 3 Conn. 324; 2 Camp. 617.

has done acts, or suffered his agents to do acts,[p] no matter of what kind, sufficient to induce others to believe him to be a partner.[q] If there be a stipulation that a person appearing to be a partner shall be liable to no loss, he, of course, will not be liable as a partner to those who have absolute knowledge of such stipulation.[r]

Dormant partners are, when discovered, equally liable with those who are held out to the world as partners, upon contracts made during the time they participate in the profits of the business.[s] The principle upon which dormant partners are liable is that, as they have the benefit of a share in the profits which are a part of the fund to which a creditor looks for payment, they shall be bound by the burdens.[t] Another reason given for holding them liable is that they might otherwise receive usurious interest without any risk.[u]

Sharing Profits. The general result of the authorities seems to be that persons who share in the profits of the concern are *prima facie* liable as partners to third persons; if they have not held themselves out, or allowed themselves to be held out, as partners, they may repel the presumption of partnership by showing that the legal relation of partnership *inter se* does not exist.[v] This presumption may be repelled by showing that the persons who receive a share of the profits are mere servants, agents, factors, brokers, or other persons receiving such share of the profits in lieu of wages, or commission for their labor, trouble, or services.[w] A distinction has been sometimes made between sharing the *gross* profits or earnings and the net profits; but it is far from being treated as decisive on the question of partnership.[x]

The contract must be voluntary among the members; therefore no stranger can be introduced into the firm without a concurrence of the whole firm.[y] The *delectus personæ*, as it is called, is so essentially necessary to the constitution of a partnership, that even the executors, or other representatives of partners themselves do not, in their capacity of executors, or representatives, succeed to the state and condition of partners.[z] But it may be stipulated that the heirs or executors of partners themselves shall be partners,[a] and such stipulation is binding.[b] Although the *delectus personæ*, which is inherent in the nature of partnership, precludes the introduction of a stranger into the concern against the will of any of the partners, yet no partner is precluded from entering into a sub partnership with a stranger.[c] In such case the stranger may share the profits of the particular partner with whom he contracts.

Powers. It may be stated, as a general principle which governs all partnerships in *trade*, that each individual partner constitutes the others his *agents* for the purpose of entering into all contracts for him within the scope of the partnership concern, and, consequently, that he is liable to the performance of all such contracts in the same manner as if entered into personally by himself.[d] In truth, the law of partnership is a branch of the law of principal and agent. If two agree that they should carry on a trade and share the profits of it, each is a principal and each is an agent for the other, and each is bound by the other's contracts in carrying on the trade as much as a single principal would be by the act of an agent who was to give the whole of the profits to his employer. Hence it becomes a test of liability of one for the contract of another, that he is to receive the whole or a part of the profits arising from that contract by virtue of the agreement made at the time of the employment.[e] If an act is done by one partner on behalf of the firm, and it can be said to have been necessary for the carrying on of the partnership business in the ordinary way, the firm will *prima facie* be liable, although in point of fact the act was not authorized by the other partners; but if the act cannot be said to have been necessary for the carrying on of the partnership business in the ordinary way, the firm will *prima facie* not be liable.[f]

Each partner has power to manage the ordinary business of the firm, whatever it may be, and, consequently, to bind his partners, whether they be ostensibly dormant, actual, or normal,[g] by whatever he may do in the course of such management, as entirely as himself. A partner may, for instance, borrow money,[h] purchase goods,[i] and sell[k] the whole of the partnership goods at a single sale.[l] So he may pledge the

[p]-37 N. H. 9. [q]-Collyer Partn. § 97; 3 McLean C. C. 364, 549. 3 Camph. 310; 1 Ball & B. 9. 6 Bingh. 776. 4 Moore & P. 713. 20 N. H. 453, 454; 39 Me. 157. [r]-1 Camph. 404. 5 Brown. Parl. Cas. 489; Collyer Partn. § 98, but see Chitty Balm. 120. As to how knowledge of the terms of the agreement under which parties are associated will affect third persons, see 6 Met. (Mass.) 93, 94; 6 Pick. 372; 13 Mass. 371; 4 Johns. 251; 5 Cow. 489, 28 Vt. 108. [s]-Story P. S. 79, 675, 4 Esp. 69; 1 Cr. & J. 316; 3 Mass. C. C. 9 Pick. 272, 5 Pet. 529; 2 Harr. & G. 284; Chitty Contr. (Ed. 1860), 160; 3 Watts. 454; 1 Doug. 371; 2 Bl. R. 27. 3 Price, 538. [t]-1 Story C. C. 371; 3 Mas. C. C. 167, 188, 5 Pet. 574. 20 Vt. 170; 16 Johns. 16 East. 174. 2 H. Bl. 31. 2 Id. 242. Collyer Partn. § 78. [u]-Per Mansfield, Doug. 371. 4 East 14; 4 B. & Ald. 663; 3 C. B. 641, 650 10 Johns. 216. [v]-Collyer Partn. § 85. [w]-Collyer Partn. § 25, 30. Story Partn. §§ 33, 34, 40, 35; 4 Sandf. 311, 14 Pick. 195; 6 Met. (Mass.) 91; 20 Conn. 69; 2 McCord, 421; 3 Wils. 40; but see 38 E. L. 289. [x]-See 1 Camph. 330; 16 Vt. 119; 10 Id. 170; 6 Pick. 335; 14 Id. 193, 6 Met. (Mass.) 92; 4 Mo. 264. 20 Conn. 69. 38 N. H. 287, 304. Coll. Partn. § 35, and note Abbott, C. J.; 4 B. & Ald. 663. [y]-7 Pick. 235, 238. 11 Me. 488. 1 Hill (N. Y.) 234. 6 W. & S. 63; 16 Ohio, 166; Collyer Partn. §§ 8, 290, Poth. Partn. Ch. 5, § 11. Art. 91, 2 Rose Bank 254. [z]-Collyer Partn. § 9. 7 Pick. 237, 238. 3 Kent Comm. 35, 36. [a]-2 Ves. Sr. Ch. 34; Collyer Partn. 9, and *et seq.*; 3 Kent Comm. 36, 57; 1 Swanst. 510, n. 9 Ves. Ch. 320; 7 Conn. 307. [b]-Poth. Partn. n. 145. [c]-Dig. lib. 17 tit. 2, s. 20; Poth. Partn. Ch. 5, § 11, n. 91. [d]-6 Bingh. 790; Story Partn. 1, 20 Miss. 122; 10 N. H. 16; Collyer Partn. § 395, Poth. Partn. c. 5, n. 90; 4 Exch. 623, 630. [e]-03 Bost. L. Rep. 498. [f]-10 B. & C. 128. 14 M. & W. 11. 4 Exch. 670. 1 Lindley Partn. 190–195. [g]-7 East. 210; 2 B. & Ald. 673; 1 Cr. & J. 316. [h]-1 Esp. 406. Collyer Partn. §§ 390, 391; 4 Met. (Mass.) 577. [i]-Comb. 383. 2 Carr. & K. 228, 3 W. & S. 564. [k]-Godb. 244; Comp. 445. 3 Kent Comm. 64. [l]-24 Pick. 89; Collyer Partn. § 394. 1 Brock. 456; 8 Watts. 20; 4 Wash. C. C. 634; 1 Harr. Ch. 2.

partnership goods[m] even in the case of a particular adventure.[n] This principle does not extend to the case of a joint-purchase or sub-purchase.[o] The right of a partner to dispose of the property of the firm extends to assignments of it as security for antecedent debts, as well as for debts thereafter to be contracted on account of the firm.[p] The assignment may be for the benefit of one creditor or of several, or of all the joint creditors where all are admitted to an equal participation.[q] It has been held that one partner may without the consent or knowledge of his copartners mortgage all the goods of the firm to secure a particular creditor of the firm.[r] The right of one partner to dispose of the partnership property is, however, confined strictly to personal effects, and does not extend to real estate held by the partnership.[s]

A partner may draw, accept, and indorse bills, notes, and checks in the name and for the use of the firm,[t] and a note or bill executed by one partner in the name of the firm is *prima facie* evidence that it was executed for partnership purposes.[u] But if a partnership be carried on under a single name, it has been held that the legal presumption in regard to a note signed by that name, is, that it was a personal and not a partnership note.[v] One partner may effect insurance,[w] and receive money for the firm,[x] may compromise with its debtors or creditors,[y] and release debts due to it,[z] and such acts and dealings, if they fall within the ordinary business of the firm,[a] will bind all the other partners. A warranty of a horse upon sale thereof by one of several horse-dealers' partners would bind the others.[b] Upon the principle that the act and assurance of one partner, made with reference to business transacted by the firm, will bind all the partners; the acknowledgment, promise, or undertaking of one partner with reference to the contracts of the partnership, is held to be the acknowledgment, promise, or undertaking of all.[c]

Power to Interfere with, or Dissent from Future Contracts, etc. One partner may interfere, and, by his dissent from future contracts by his copartner, or from closing of contracts with him which have not become binding upon the firm, he may, upon express notice thereof, avoid any liability subsequently arising upon such contracts if entered into, unless the dissenting partner afterwards assents to and ratifies the transaction.[d] But it seems that the dissenting partner would not be liable merely on the ground that the goods purchased, or the fruits of the contract, came to the use of the firm,[e] unless they were of some benefit to the firm.[f] It has, however, been questioned whether the dissent of one partner where the partnership consists of more than two, will affect the validity of partnership contracts made by the majority of the firm in the usual course of business, and within the scope of the concern.[g] In the absence of an express stipulation, a majority must decide as to the disposal of the partnership property,[h] but the power of the majority must be confined to the ordinary business of the partnership.[i] It does not extend to the right to change any of the articles thereof,[j] nor to engage the partnership in transactions for which it was never intended.[k] Where a majority is authorized to act, it must be fairly constituted, and must proceed with the most entire good faith.[l]

Power to Bind the Firm in Submission, Arbitration, Confession of Judgment, etc. One partner cannot bind the firm by submitting any of the affairs of the firm to arbitration, whether by deed or parol.[m] The principle is that there is no implied authority, excepting so far as it is necessary to carry on the business of the firm.[n] It might also affect the rights of the other partners to resort to the ordinary course of justice.[o] Still, in some States, one partner may submit partnership matters to arbitration.[p]

One partner cannot, by confessing a voluntary judgment, bind his copartners, unless actually brought into court by regular service of process against him and his partner; a judgment so confessed will bind the partners who did it only.[q] Nor can one partner, by entering an appearance for another, bind him personally and individually, where the latter is not within the jurisdiction, and has not been served with process.[r]

One partner will be bound by the fraud of

m-Barn. 343; 2 Kent Comm. 46; Collyer Partn. § 396; 10 Hare Ch. 453; 5 Exch. 489; 6 M. & G. 607. n-Gow. 132, 135 note; 1 Rose Bank. 297; 4 B. & C. 867. o-5 B. & Ald. 395. p-Story Partn. § 101; 5 Cranch. 298; 1 Brock. 456; 17 Vt. 394. q-Story Partn. § 101; 4 Day, 428; 6 Pick. 360; 4 M'Cord, 519; 4 Mas C. C. 206; 5 Watts, 22; 1 Hoff. Ch. 511. r-1 Met. (Mass.) 518, 519; 7 Id. 248. s-1 Met. (Mass.) 518, 519; Story Partn. § 101; 1 Brock. 456, 463. t-Salk. 126: 7 T. R. 210; 2 Peake. 150; 3 Dowl. 219; B. N. P. 279; 20 Miss. 226; 4 Johns. 265; Story Partn. § 102; 5 Blackf. 210; 4 Md. 288. u-Collyer Partn. § 401, note; 6 Wend. 615; 16 Me. 419; 5 Mass. C. C. 176; 7 Ala. N. S. 119. v-See 26 Barb. 610; 38 Me 506; 5 Pick. 11. w-4 Campb. 66; Collyer Partn. § 438; Story Partn. § 102. x-Holt. 434; Cowp. 814 y-Story Partn. § 115; 7 Gill. 49; Rice, 291. z-3 Kent Comm. 48; Chitty Contr. (Ed. 1860) 274; Collyer Partn. § 468 and note; Bac. Abr. *Release (D)*; 3 Bingh. 103; 17 Johns. 58; 7 N. H. 567; 4 Mas. C. C. 232; 4 Gill & J. 310; 3 Wash. C. C. 511; 3 C. B. 742, 745; Story Partn. § 115. a-6 Beav. Rolls, 324; 2 Phill. 354. b-2 B. & Ald. 679. c-1 Taunt. 104; Story Partn. § 107; 1 Esp. 135; 1 Russ. & M. 199; 4 B. & Ald. 663; 4 Dowl. & R. 7; 1 Salk. 291; Collyer Partn. § 422. d-1 Stark. 164; 3 Kent Comm. 45; 3 Comm. 124; 1 Campb. 403; 16 Vin. Abr. 244; 15 Me. 198; Collyer Partn. §§ 388, 389; Poth. Partn. n. 90. e-15 Me. 178, 181; 3 Conn. 124; 10 East. 204; 1 Younge & J. 227, 230. f-1 Stark. 104; 15 Me. 181. g-3 Kent Comm. 45; Collyer Partn. §§ 147, 389 and note; Story Partn. § 123; 1 Johns. Ch. 400; 4 Id. 573, 597; 1 Turn. & R. Ch. 496, 517, 525. h-1 Chitty Com. L. 234. i-Collyer Partn. § 197; 9 Hare Ch. 326; 3 De Gex. & J. 123; 4 Kay. & J. 733; 2 Phill. 740; 14 Beav. Rolls. 367; 2 De Gex. M. & G. 49; 3 Smale & G. 176. j-Collyer Partn. § 198; Story Part. § 125; 4 Johns. Ch. 573; 32 N. H. 9. k-Gow. Partn. (3d Ed.) 398 App.; 3 M. & S. 488; 1 Taunt. 241; 1 Sim. & S. Ch. 31. l-Turn. & R. Ch. 525; 10 Hare Ch. 493; 5 De Gex. & S. 310. m-3 Kent Comm. 49; Story Partn. §§ 114, 115; 3 Bingh. 101; 3 Hurlst. & N. 500; 1 Cr. M. & R. 681; 3 C. B. 742, 745: 19 Johns. 137; 1 Pet. 221; Coll. Partn. § 439, 470. n-1 Cr. M. & R. 581; 3 Bingh. 101. o-Collyer Partn. § 439. p-Wright, 420; 12 S. & R. 243; 3 Monr. 433. q-1 Wend. 311; 1 Blackf. 252; 1 W. & S. 340, 519; 7 Id. 172; 3 C. B. 742; Coll. Partn. § 464, n.; 4 Moore & P. 57. r-9 Cush. 360; 1 How. 165.

his copartner in contracts relating to the affairs of the copartnership made with innocent third persons.[s] This doctrine proceeds upon the ground that, where one of two innocent persons must suffer by the act of a third person, he shall suffer who has been the cause or occasion of the confidence and credit reposed in such third person.[t] The liability, therefore, does not arise when there is collusion between the fraudulent partners and the party with whom he deals,[u] or the latter have reason to suppose that the partner is acting on his own account.[v] A partner may be made liable for other wrongs committed in reference to the partnership business by his copartners; as, where a partner injures a third person by negligence in driving a coach, the property of the firm and employed on their business.[w] A joint conversion may be raised in point of law, by the assent of the partner to the acts of his copartner.[x] Demand of, and refusal by one partner to deliver up property is evidence of a conversion by both.[y] But the wilful tort of one partner seems not in general to be imputable to the firm.[z]

Private Arrangements between Partners, etc. No arrangements between the partners themselves can limit or prevent their ordinary responsibilities to third persons, unless the latter assent to such arrangements.[a] But where the creditor has express notice of a private arrangement between the partners, by which either the power of one to bind the firm, or his liability on partnership contracts is qualified or defeated, such creditor will be bound by the arrangement.[b] The act or contract of one partner, even in a transaction purely of a partnership nature, does not bind the firm, if the creditor has express notice from the other partners that they will not consider themselves responsible,[c] for the authority of one partner to bind the firm is only implied; and no one can become the creditor of another against his express and declared will.[d]

The partnership property consists of the original stock and the additions made to it in the course of trade. All real estate purchased for the partnership, paid for out of the funds thereof, and devoted to partnership uses and trusts, whether the legal title is in one or all of the partners, is treated in equity in the same manner as other partnership property until the partnership account is settled, and the partnership debts are paid.[e] Leases of real estate taken by one partner for partnership purposes, mines, and trade-marks, are held to be partnership property.[f]

A peculiar species of interest, called good-will of the trade or business, is often treated as in some sort a part of the partnership property.[g] It is considered to enhance the value of the effects on it, is attendant, and will, therefore, be included in a decree for the sale of those effects.[h] The good-will of a professional partnership belongs, in the absence of express stipulation, exclusively to the survivors.[i]

Partners as Joint Tenants, and Differing from Tenants in Common, etc. Partners are said to be joint tenants of the partnership property, without benefit of survivorship *inter se*.[j] But in addition to the ordinary right of joint tenants, each partner has also a power, singly, to dispose of the entire right of all the partners in the partnership effects, for the purposes of partnership, and in the name of the firm.[k]

Partnership also differs from a tenancy in common in reference to the power of disposal, and because, *inter se*, each partner has a claim, not to any specific share or interest in the property *in specie*, as a tenant in common has, but to the proportion of the residue which shall be found to be due to him upon the final balance of their accounts, after the conversion of the assets, and the liquidation thereout of all the claims upon the partnership; and, therefore, each partner has a right to have the same applied to the discharge and payment of all such claims before any one of the partners, or his personal representatives, or his individual creditors, can claim any right or title thereto.[l]

If a Partner has taken the whole or any part of his share out of the partnership stock, the stock so taken, if identified, is applicable to the payment of what, upon an account taken, shall be found to be due from him to the partnership, before it can be applied to the payment of his separate creditors.[m] The same rule will apply to any other property into which the partnership property may have been converted, so far and so long as its original character and identity can be distinctly traced,[n] and hence no separate creditor of any partner can, merely

s-Collyer Partn. § 445; 2 B. & Ald. 795; Cowp. 114; 1 Met. (Mass.) 563; 6 Cow. 497; 1 Ry. & M. 364; 6 B. & C. 561; 2 Clark & F. Ho. L. 250; 7 Monr. 617; 1 Campb. 185; 7 Ired. 4; 15 Mass. 75, 81, 331; 17 Id. 182; Bisset Partn. 76. t-Story Partn. § 108; 1 Met. (Mass.) 562, 563. u- Bisset Partn. 80, 81; 1 East. 48, 53. v-Peake, 80, 81; Chitty Contr. (Ed. 1860), 280, 284; 2 C. B. 821; 10 B. & C. 298. w-Chitty Contr. (Ed. 1860) 280, a note; Collyer Partn. § 458; 12 N. H. 276. x-Collyer Partn. § 458; 1 M. & S. 588; Story Partn. § 166. y-4 Hill, 13; 24 Wend. 169; 4 Rawle, 120. z-3 Dowl. 160; 10 Exch. 352. a-Collyer Partn. § 386; 1 B. & Ald. 679; 3 Kent Comm. 41; 5 Mas. C. C. 187, 188; 5 Pet. 129; 3 B. & C. 427. b-Collyer Partn. § 387; 12 N. H. 275; 4 Ired. 129; 38 N. H. 287; 6 Pick. 372; 4 Johns. 251; 5 Conn. 597, 598; 1 Campb. 404; 5 Brown Parl. Cas. 489; 1 Lindley Partn. 260, *et seq*. 267–269. c-1 Salk. 202; 10 East. 264; 1 Stark. 164; 1 Younge & J. 227. d-Chitty Contr. (Ed. 1860) 284; Collyer Partn. § 387. e-Bisset Partn. 47-56, 60; Story Partn. § 98; 5 Ves. Ch. 189; 3 Swanst. 489; Collyer Partn. § 135; 10 Cush. 458; 4 Met. 527; 5 Id. 562; 3 Kent. Comm. 37; 27 N. H. 37. f-17 Ves. Ch. 298; Bisset Partn. 60, 61; 1 Taunt. 250; 10 Jur. 106; 5 Ves. Ch. 308; Story Partn. § 98. g-But Chancellor Kent says: "The good-will of a trade is not partnership stock." 3 Kent Comm. 64. Still, the good-will of a business is often recognized as a valuable interest. 3 Mer. Ch. 452, 455; 1 Hoff. Ch. 68; 5 Ves. Ch. 539. h-Collyer Partn. §§ 161, 322; Story Partn. §§ 99, 100; Bisset Partn. 62. i-Bisset Partn. 64; 3 Madd. Ch. 64; Collyer Partn. § 163. j-Bisset Partn. 34, 45; 7 Jarman Conv. 67; Com. Dig. *Merchants* (D.); Collyer Partn. § 123; Story Partn. §§ 89, 90. k-Bisset Partn. 45; Story Partn § 90; Cowp. 445. l-Story Partn. § 97; 7 Jarman Conv. 68; Cowp. 469; 1 Ves. Sen. Ch. 239; 4 Ves. Ch. 396; 6 Id. 119; 17 Id. 193. m-1 P. Wms. 180; Collyer Partn. § 120; Story Partn. § 97. n-4 Harr. & M'H. 167; Story Partn. § 97.

as such creditor, take any portion of the partnership effects, by process or otherwise, except for so much as belongs to that partner, and his share or balance after all prior claims thereon are deducted and satisfied.[o]

Each Partner has also a specific lien on the present and future property of the partnership, the stock brought in, and everything coming in lien, during the continuance and after the determination of the partnership, not only for the payment of debts due to third persons, but also for the amount of his own share of the partnership stock, and for all moneys advanced by him beyond that amount for the use of the partnership, as also for moneys abstracted by his copartners beyond the amount of his share.[p] This lien attaches on real estate held by the partnership for partnership purposes, as well as upon the personal estate,[q] and is co-extensive with the transactions on joint account.[r]

Each Partner is Liable to pay the whole Partnership Debts. In what proportion the partners shall contribute is a matter merely among themselves.[s] Universally whatever agreement may exist among the partners themselves, stipulating for a restricted responsibility, and however limited may be the extent of his own separate beneficial interest in, and however numerous the members of the partnership, each individual member is liable for the joint debt to the whole extent of his property.[t]

The act or admission of one partner in legal proceedings, as also notice to or by one partner, as a general rule, is held to be binding on the firm.[u] In an action against partners, one may enter an appearance for the rest,[v] but not to bind them personally and individually when not within the jurisdiction, and not served with process.[w] Where one partner released an action after the firm had instructed their attorney to proceed to trial, the court refused to interfere.[x] And it seems that one partner has also the power of suspending proceedings in an action.[y] One partner may give notice of abandonment under a policy of insurance for all.[z] Notice of dishonor to one of several partners, joint indorsers of a bill or note, is notice to all.[a] One partner may act for the others in proceedings under the bankrupt laws,[b] except in the case of a petition for a fiat.[c]

Power to Bind the Firm outside of Partnership Transactions, etc. A partner derives no authority from the mere relation of partnership to bind the firm as the guarantor of the debt of another,[d] or as a party to a bill or note for the accommodation of, or as a mere and avowed surety for another.[e] In neither of these cases can the act of one partner bind the firm, unless there be a special authority for the purpose, or one to be implied from the common course of business, or the previous course and habit of dealing, with the knowledge and consent of the firm, or unless the transaction is subsequently adopted by the firm.[f] Whether it appears upon the instrument or in some other way, that the contract is one of guaranty, suretyship, or accommodation, the burden of proof is upon the party holding it, if he took it, knowing such to be the character of the contract, to show the facts necessary to render it available against the firm.[g] Direct or positive proof is not necessary; the authority or ratification may be inferred from circumstances.[h]

The Act of a Partner wholly unconnected with the business of the Partnership does not bind the firm.[i] Still a partner may bind the firm in matters out of the usual course of the business of the firm, if those matters arise out of, and are connected with, the regular transactions of the firm.[j] If one partner is a trustee, and he improperly employs the trust funds in the partnership business, his knowledge that he is doing so is not imputable to the firm.[k]

If a partner applies partnership funds to the payment of his own debts this act is void, although the creditor did not know that the funds belonged to the partnership.[l] And where any creditor of one member of the firm takes from him either in payment or security for his debt the paper of the firm, he takes it in fraud of the firm, and the firm will not (unless their interest, or assent and authority be shown) be held.[m]

Contracts to Convey Real Estate. Contracts by Deed, etc. One partner without authority, express or implied, from circumstances cannot bind the firm by a contract to convey real estate of the partnership unless there be a subsequent ratification or adoption of the contract.[n] One

o-Story Partn. § 97; 9 Me. 28; Collyer Partn. § 822, and notes; 5 Johns. Ch. 417. p-Story Partn. §§ 97, 326, 441; Collyer Partn. § 125; 3 Kent Comm. 65, 66; 8 Dana, 278; 10 Gill & J. 253; 20 Vt. 479; 9 Cush. 558; 1 Lindley Partn. 576; 1 Ves. Sen. 239; 9 Beav. Rolls. 239; 20 Id. 20; 25 Id. 280; 3 Mont. D. & D. 198. q-5 Met. (Mass.) 562, 577-579, 585. r-1 Dana, 58; 11 Ala. (N. S.) 412. s-Per Mansfield, 5 Burr. 2613. t-Bisset Partn. 9; 5 Burr. 2611; 2 W. Bl. 947; 9 East. 516; 5 T. R. 601; 1 Ves. & B. Ch. Ir. 157; 2 Deas. 148; 6 S. & R. 333; 1 Lindley Partn. 300. u-Collyer Partn. §§ 441, 442, 443; 15 Mass. 44; 2 Wash. C. C. 388; 4 Conn. 326; 3 Littell, 250; Story Partn. § 107; 1 M. & S. 259; 5 Id. 49; 1 C. & P. 550; 1 Campb. 82; 2 Cr. & M. 318. v-7 T. R. 207; 17 Vt. 531; see 2 M'Cord, 310. w-9 Cush. 360; 11 How. 165. x-7 J. B. Moore, 356. y-Bisset Partn. 75; Gow. Partn. 65, note. z-5 M. & S. 47. a-Chitty Bills, 339; 6 La. 684; 20 Johns. 176. b-Collyer Partn. § 444; 4 Ves. Ch. 579; 19 Id. 291; 1 Rose Bank, 2; 2 Id. 174; Bisset Partn. (Eng. Ed.) 76. c-Bisset Partn. 76. d-5 Q. B. 833; 4 Exch. 623; Collyer Partn. § 421; Chitty Contr. (Ed. 1860) 276, 277, and notes; Story Partn. § 127; 3 Kent Comm. 46, 47; 3 Ired. 241; 2 Harr. 24; 2 Ala. (N. S.) 502; 2 Cush. 309. e-2 Cush. 309; Coll. Partn. § 421; 19 Johns. 154; 1 Wend. 531; 5 Conn. 574; 21 Miss. 122; 31 Me. 452; 3 Humph. 597; 14 Wend. 133, 138; 4 Hill (N. Y.) 161. f-Collyer Partn. § 421, and note; 3 Kent Comm. 46, 47; Chitty Contr. (Ed. 1860) 276, 277; 3 Humph. 597; 4 Hill (N. Y.) 261. g-19 Johns. 154; 7 Wend. 309; 2 Cush. 314, 315; 2 Penn. St. 177; 21 Miss. 122; 22 Me. 188, 189; 31 Id. 454. h-2 Cush. 309; 22 Me. 188, 189; 14 Wend. 133; 2 Littell, 41; 10 Vt. 268. i-4 Exch. 623; Collyer Partn. §§ 437, 484; 2 B. & Ald. 678; 4 Johns. 265; 8 Me. 820; 15 Pick. 290; 3 Conn. 198; 3 Johns. Ch. 23; Story Partn. §§ 112, 113; Chitty Contr. (Ed. 1860) 275; 3 Q. B. 316; 4 Dana, 378; 2 El. & Bl. 61. j-Collyer Partn. § 484; 2 B. & Ald. 673. k-1 Lindley Partn. 231; 1 Brock, 386. l-12 Peters, 229; 16 Johns. 34; 7 Wend. 326; 23 Ala. 558; 24 Miss. 170. m-14 Wend. 33; 11 S. & Marsh. 322; 18 Penn. 408; 11 Cush. 62; 4 Seld. 408. n-5 Hill (N. Y.) 107.

partner has no implied authority to bind his copartners by deed,[o] but a deed made by one partner in the name and for the use of the members of the firm will bind the other partners, if they assent to it or subsequently adopt it; and this consent or adoption may be by parol.[p] So one partner may bind the firm to a conveyance by deed of the effects of the firm which he might have conveyed without deed. The mere circumstance of annexing a seal to the instrument in such a case does not annul a transfer so consummated.[q] A deed of assignment of the partnership property, executed by one partner as his deed only, passes his interest in the property.[r] The rule that one partner cannot bind his copartners by deed does not extend to *releases*;[s] as a release by one partner is a release by all, so a release to one partner is a release to all.[t]

The power of a partner to dispose of the property of the firm does not extend to real estate held by the partnership; one partner cannot convey away real estate of the firm without special authority.[u]

Upon the decease of one of several partners his personal representatives become tenants in common with the surviving partners.[v] Still, as the surviving partner stands chargeable with the whole of the partnership debts, he takes the partnership property by survivorship, for all purposes of holding and administering the estate, until the effects are reduced to money, and the debts paid.[w] The debts of the partnership must be collected in the name of the surviving partner.[x]

Profits, Distribution of. As between the partners, they may by agreement stipulate for equal or unequal shares in the profit and loss of the partnership,[y] but in the absence of any express agreement or stipulation between them, and of all controlling evidence and circumstances, the presumption is held to be that they are interested in equal shares.[z] And the circumstance that each partner has brought an unequal amount of capital into the common stock, or that one or more have brought in the whole capital, and the others have only brought industry, skill, and experience, would not seem to furnish any substantial ground of difference as to the distribution.[a] Whether a partnership includes the capital stock, or is limited to the profit and loss, must be determined from the agreement and intention of the parties.[b]

A *bona fide* sale, for a valuable consideration, by one partner to another, of all the partnership effects, is valid, and the property so conveyed becomes the separate estate of the purchaser, although the firm and both partners are at the time insolvent.[c]

Mutual Rights—Obligations. Good faith, reasonable diligence, and skill, and the exercise of a sound judgment and discretion, lie at the very foundation of the relation of partnership. The same rules and tests are to be applied to the conduct of partners as are ordinarily applied to that of trustees. Indeed, the functions, rights, and duties of partners in a great measure comprehend both those of trustees and agents.[d] If the partnership suffers loss from the gross negligence, unskilfulness, fraud, or other wanton misconduct of a partner in the partnership business, or from a known deviation from the partnership articles, he is ordinarily responsible over to the other partners for all losses and damages sustained thereby.[e] A party withdrawing the funds of the concern, thereby diminishing the stock, and applying it to his own use, shall account to the others for the injury.[f] But if one partner, acting fairly, and for the best in his judgment, causes a loss, he is not answerable to the others.[g] Not only gross frauds, but intrigues for private benefit, are clearly offences against the partnership at large, and, as such, are relievable.[h]

As it is the duty of the partners to devote themselves to the interests of the concern, to exercise due diligence and skill for the promotion of the common benefit of the partnership, it follows that they must do it without any reward or compensation, although the services performed by the partners are very unequal in amount and value, unless there is an express stipulation for remuneration.[i] So no partner has a right to engage in any business or speculation which must necessarily deprive the partnership of a portion of his skill, industry, or capital,[j] nor to place himself in a position which

[o]-3 Kent Comm. 47, 48; Story Partn. § 117, *et seq.*; Collyer Partn. 463. [p]-11 Pick. 400; 4 Met. (Mass.) 548; 11 Ohio, 223; Chitty Contr. (Ed. 1860) 278, note; Collyer Partn. 462, *et seq.* § 469, *et seq.* [q]-1 Brock. 456; 1 Met. 515; 7 Id. 244; 5 Hill, 107; 8 Leigh. 415. [r]-11 M. & W. 128; but see 17 Ves. Ch. 193, 200; 5 Mo. 466. [s]-Collyer Partn. § 468; 2 Co, 68; 4 T. R. 519; 3 Bingh. 101; 3 Johns. 68; 4 Gill & J. 310; 3 Kent Comm. 48. [t]-March, 202; 8 Co. 136; 23 Pick. 444; 3 Penn. 57; 5 Gill & J. 314; 22 Pick. 305; Chitty Contr. (Ed. 1860) 275, *n.* [u]-1 Met. (Mass.) 518, 519; Story Partn. § 101; 1 Brock, 456, 468; 3 McLean C. C. 27; Collyer Partn. § 394. [v]-Collyer Partn. § 346; 3 Kent Comm. 37; Story Partn. § 346; 35 N. H. 403. [w]-3 Kent Comm. 37; Story Partn. § 346; Collyer Partn. § 129; 5 Met. (Mass.) 576, 585; 10 Gill & J. 404; 30 Me. 386; 6 Cow. 441; 3 Paige, 527; 13 Miss. 44; 18 Conn. 294; see 1 Exch. 164; Year B. 38 Edw. III. *f.* 7, *t. Accompt.* [x]-6 Cow. 441; Story Partn. § 346; 3 Kent Comm. 37; 4 Met. (Mass.) 540. [y]-Story Partn. § 23. [z]-Id. § 24; Bisset Partn. 56, 57; Collyer Partn. § 167; 1 Mood. & R. 527; 6 Wend. 263; 9 Ala. (N. S.) 372; 13 Id. 752; 2 Murphy, 70; 5 Dana, 211; 8 Id. 214; 1 Ired. 332; 1 J. J. Marsh. 506; 1 Lindley Partn. 573; 20 Beav. Rolls, 98; 7 DeGex M. & G. 239; 17 Ves. Ch. 49; 7 Hare, 159; 1 Mood. & R. 527. [a]-Story Partn. § 24; 3 Kent Comm. 28, 29; 21 Me. 117. [b]-21 Me. 120; Collyer Partn. §§ 169–171; see 5 Taunt. 74; 4 B. & C. 867; Story Partn. § 26. [c]-9 Cush. 553; Collyer Partn. §§ 174, 894, 903; 21 Conn. 130, 137; 21 N. H. 462, 469. [d]-Collyer Partn. §§ 178, 182; Story Partn. § 169; 3 Story C. C. 93, 101; 3 Ves. & B. Ch. Ir. 36; 1 Johns. Ch. 470; 10 Hare Ch. 522, 536; 14 Beav. Rolls, 250; 1 Macn. & G. 294; 3 Smale & G. 419; 1 Lindley Partn. 492, 493. [e]-1 Sim. Ch. 89; Path. Partn. *n.* 133; 3 Kent Comm. 52, *n.*; Story Partn. § 173, and note. [f]-1 J. J. Marsh. 507; 3 Story C. C. 101. [g]-3 Wash. C. C. 224. [h]-Collyer Partn. § 179; 15 Ves. Ch. 227; 2 Kent Comm. 51, 52; 1 Sim. Ch. 52, 89; 17 Ves. Ch. 298. [i]-7 Paige Ch. 483; 1 Anstr. 94; 1 Johns. Ch. 157, 165; 8 Dana, 219; 4 Gill. 338; 2 Dev. & B. 123; 3 Johns. Ch. 431; Story Partn. § 182; Collyer Partn. § 183. [j]-3 Kent Comm. 51, 52; Collyer Partn. § 184; Story Partn. § 177; 1 Johns. Ch. 305; 1 Sim. & S. Ch. 133.

gives him a bias against the discharge of his duty,[k] nor to make use of the partnership stock for his own private benefit,[l] nor to introduce a stranger into the concern.[m] Each partner should keep precise accounts, and have them always ready for inspection.[n]

In all ordinary matters relating to the partnership, the powers of the partners are co-extensive, and neither has a right to exclude another from an equal share in the management of the concern, or from the possession of the partnership effects.[o] A partner ought not to transcend the ordinary privileges of a partner by incurring extravagant and unnecessary expense in the management of the concern, though for partnership purposes.[p] The weight of authority is in favor of the power of a majority of the firm acting in good faith, to bind the minority in the ordinary transactions of the partnership, and when all have been consulted.[q]

It is the duty of those upon whom, by appointment or otherwise, it devolves, after the dissolution of a firm, to wind up the affairs of the partnership, to act for the best advantage of the concern, to make no inconsistent use of the property, and to seek no private advantage in the composition of debts, or in any other transaction in the performance of this business.[r] Nor, in this case, can any partner claim any commission for getting in the debts, or, in any other particular, reward or compensation for his trouble.[s]

Right of Action between. A partner may sue a copartner on an express agreement to do any act not involving a consideration of the partnership accounts.[t] And if partners finally balance all their accounts, or a distinct part thereof is entirely severed by them from the rest, a suit is maintainable for the balance.[u] But one partner cannot sue a copartner at law in respect to any matter growing out of the transactions of the partnership, and involving an examination of partnership accounts.[v] If one of a partnership who are plaintiffs be also one of a partnership who are defendants, the action cannot be maintained; for the same party cannot be plaintiff and defendant of record in the same action.[w]

—— NAME.

FIRM is the persons composing a partnership, taken collectively. The name, style or title under which the members of a partnership transact business.

The word is used as synonymous with partnership. The words "house," "concern," and "company," are also used in the same sense. This name is in point of law conventional, and applicable only to the persons who, on each particular occasion when the name is used, are members of the firm. A firm is usually described in legal proceedings as certain persons trading or carrying on business under, and using the name, style, and firm of, etc.[a]

It may be that the names of all the members of the partnership appear in the name or style of the firm, or that the names of only a part appear, with the addition of "and company" ("& Co."), or other words indicating a participation of others, as partners in the business,[b] or that the name of only one of the partners, without such addition, is the name of the firm. It sometimes happens that the name of neither of the partners appears in the style of the firm. The proper style of the firm is frequently agreed upon in the partnership articles; and where this is the case, it becomes the duty of every partner, in signing papers for the firm, to employ the exact name agreed upon.[c] This may be necessary, not only to bind the firm itself,[d] but also to prevent the partner signing from incurring a personal liability both to third persons and to his copartners.[e] So, the name which a partnership assume, recognize, and publicly use, becomes the legitimate name and style of the firm, not less so than if it had been adopted by the articles of copartnership,[f] and the partner has no implied authority to bind the firm by any other than the firm-name thus acquired.[g] Wherefore, where a firm consisted of J. B. and C. H., the partnership name being J. B. only, and C. H. accepted a bill in the name of J. B. & Co., it was held that J. B. was not bound thereby.[h]

NO FIXED NAME. If a firm have no fixed name, a signing by one, in the name of himself and company, will bind the partnership,[i] and a note in the name of one, and signed by him "for the firm," etc., will bind the company.[j] Where the business of a firm is to be carried

k-Collyer Partn. § 186; 1 Madd. & G. Ch. 367; Story Partn. § 175; 1 Sim. & S.Ch. 124; 9 Sim. Ch. 607; 11 S. & R. 41, 48; 3 Kent Comm. 61. l-Mosely, 3; Collyer Partn. § 196; 6 Madd. Ch. 367; 4 Beav. Rolls, 534; 16 Id. 485; 17 Ves. Ch. 298; 1 Macn. & G. 294; 1 Sim. Ch 52; 24 C. S. 209. m-Collyer Partn. §§ 8, 192; 7 Pick. 238; 8 W. & S. 63; 16 Ohio, 166. n-Collyer Partn. § 189; 2 Jac. & W. Ch. 558; Story Partn. § 181; 16 Ves. Ch. 51; 1 Lindley Partn. 665, 666; 3 Beav. Rolls, 388, note; 1 DeGex & S. 692; 12 Sim. Ch. 460; 2 Phill. 222; 3 Younge & C. 655; 20 Beav. Rolls, 219. o-Collyer Partn. § 190; 2 Paige Ch. 310; 16 Ves. Ch. 61; 2 Jac. & W. Ch. 558; 1 Lindley Partn. 464. p-Collyer Partn. § 191. q-3 Kent Comm. 45, and note; see also Story Partn. § 123, and notes; 3 Chitty Com. L. 234; 6 Ves. Ch. 777; 5 Brown Parl. Cas. 476, 489; Turn. & R. Ch. 516, 525; 3 Johns. Ch. 400, 405, 406; 4 Id. 473; 1 Vern. Ch. 465. r-1 Taunt. 104; 1 Swanst. 507; 2 Id. 627. s-1 Knapp. Priv. Counc. 312; 3 Kent Comm. 64, note; Story Partn. § 331, and note; 17 Pick. 519; 4 Gratt. 138; Collyer Partn. § 199, and note. But in 16 Vt. 613, a partner who performed services in settling up the affairs of the firm after dissolution was allowed compensation for them. See also 15 Mass. 120. t-8 Cranch, 30; 6 N. H. 547; 2 Caines, 293; 2 Bingh. 170; 3 Pick. 423; Holt, 368; 26 Vt. 754; 11 Pick. 82; 5 Wend. 274; 1 Stark. 78; 6 B. & C. 149; 2 T. R. 478; 2 Conn. 425; 14 Johns. 318; 1 Wend. 532; 2 T. R. 483, *n.*; 2 Bingh. 170; 16 Wend. 601; 3 Ala. 347; 15 Mass. 116; 13 Ala. 214; 12 Mass. 32; 19 Me. 211. u-6 B. & C. 149; 6 M. & W. 119; 9 Dana, 257; 3 Cal. 292; 15 Ga. 213. v-2 Fairf. 196; Minor (Ala.) 103; 2 B. & P. 120; 4 Bingh. 149; 8 B. & C. 345; 6 Taunt. 597; 2 B. & Ad. 822; 12 Ohio, 300; 1 Story, 396; 8 Yerg. 111. w-See 9 Q. B. 361; 9 M. & W. 347; 1 Chitty Bailm. 49, and *ante*, page 55 *et seq.* a-16 Pick. 428, 429. b-Collyer Part. § 215; 1 Story Part. § 202. c-Story Part. § 102. d-Collyer Part. § 215; Story Part. §§ 102, 202; 2 Jac. & W. Ch. 268; 11 Ad. & E. 339; Poth. Part. *nn.* 100, 101. e-2 Pet. 186, 198. f-9 M. & W. 284. g-9 M. & W. 284; see Dav. Dist. Ct. 325. h-2 Ohio, 61. i-5 Blackf. 99.

on in the name of B. & D., a signature of a note by the names and surnames of the respective parties is a sufficient signature to charge the partnership.[k] Where a written contract is made in the name of one, and another is a *secret* partner with him, both may be sued upon it.[l]

INDIVIDUAL'S NAME USED, ETC. Where partners agree that their business shall be conducted in the name of one person, whether himself interested in the partnership business or not, that is the partnership name, and the partners are bound by it.[m] Where that name is the name of one of the partners, and he does business also on his own private account, a contract signed by that name will not bind the firm, unless it appears to have been entered into for the firm; but, if there be no proof that the contract was made for the firm, the presumption will be that it was made by the partner on his own separate account, and the firm will not be responsible.[n]

IDENTITY OF NAME. The name of the firm should be distinct from the names of all other firms. When there is confusion in this respect, the partners composing one firm may, in some cases, be made responsible for the debts of another.[o] Merchants and lawyers have different notions respecting the nature of a firm. Merchants are in the habit of looking upon a firm as a body distinct from the members composing it.[p] The law looks to the partners themselves; any change among them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities. In point of law, a partner may be the debtor or creditor of his copartners; but he cannot be either debtor or creditor of the firm of which he is himself a member.[q]

Suits in Firm Name. A firm can neither sue nor be sued otherwise than in the name of the partners composing it. Consequently, no action can be brought by the firm against one of its partners, nor by one of its partners against it; for in any such action one person at least would appear both as plaintiff and defendant, and it is considered absurd for any person to sue himself even in form.[r] For the same reason, one firm cannot bring an action against another if there be one or more partners in both firms.[s] Whenever a firm is spoken of by its name or style, the courts admit evidence to show what persons did in fact constitute the firm at the time in question.[t]

Change in Name, etc. If persons trade or carry on a business under a name, style or firm, whatever may be done by them under that name is binding as much as if real names had been used.[u] Any change of the persons composing a firm is productive of a new signification of the name. If, therefore, a legacy is left to a firm, that is a legacy to those who compose it at the time the legacy vests;[v] and if a legacy is left to the representatives of an old firm, it will be payable to the executors or the survivors of the partners constituting the firm alluded to, and not to its successors in business.[w] Again, an authority given to a firm of two partners cannot, it would seem, be exercised by them and a third person afterwards taken into partnership with them.[x] A name may be a trade-mark; and, if it is, the use of it by others will be illegal, if they pass themselves or their own goods for the firm or the goods of the firm whose name is made use of.[y] Moreover, if this is done intentionally, the illegality will not be affected by the circumstance that the imitators of the trade-mark are themselves of the same name as those whose mark they imitate.[z]

LIMITED PARTNERSHIP.

The purpose of limited partnership is to enable a party to put into the stock of a firm a definite sum of money, and abide a responsibility and share a profit which shall be in proportion to the money thus contributed, and no more.[a] Partnerships of this kind are wholly unknown to the common law, and are authorized and regulated only by statute. See GENERAL STATUTES.

1. The name or firm under which the partnership business is to be conducted.

2. The general nature of the business to be transacted.

3. The names of all the general and special partners interested therein; distinguishing which are general partners and which are special partners, and their respective places of residence.

4. The amount of the capital stock which each special partner shall have contributed to the common stock.

5. The period at which the partnership is to commence, and the period when it will terminate.

Such certificate must be acknowledged by the several persons signing the same, before some officer authorized by law to take the

k-3 C. B. 792. l-2 Ala. 134; 5 Watts. 454. m-6 Hill, 322; 1 Denio. 405, 471, 481. n-Story Part. § 139; Collyer Part. § 411, and note; 5 Pick. 11; 9 Id. 274; 1 Duer, 405; 17 S. & R. 165; 5 Mas. C. C. 176; 5 Pet. 529; 2 Bouv. Inst. *n.* 1442 *et seq.* o-See Peake Cas. 80; 7 East. 210; 2 Bell Comm. (5th Ed.) 670; 3 Martin N. S. 39. As to the right of a surviving partner to carry on the business in the name of the firm, see 7 Sim. Ch. 127; Story Part. § 100, *n*; Collyer Part. § 162, *n*. p-Cory Accounts (2d Ed.); Lindley Partn. c. vii, p. 163. q-4 Mylne & C. Ch. 171, 172. r-1 B. & Ald. 664; 4 M. & C. Ch. 171, 172; 6 Taunt. 598; 6 Pick. 320, 321; 5 Gill. & J. 487; Collyer Part. § 642, *n*. s-6 Taunt. 597; 2 Bos. & P. 120. t-6 Taunt. 15; 4 Maule & S. 13; 2 Keen. Rolls, 255. u-1 Chitty Bailm. 707; 3 C. & P. 296; 2 Campb. 548; Hays & S. Exch. Ir. 43. v-See 2 Keen Rolls, 255; 3 Mylne & C. 507; 7 De Gex. M. & G. 673. w-11 Ir. Eq. 451; 1 Lindley Partn. 166. x-6 Bingh. N. & C. 201; see 4 Ad. & E 482; 16 Sim. Ch. 121; 7 Hare Ch. 351; 4 Ves. Ch. 645 y-2 Keen Rolls, 213; 4 Kay & J. Ch. 747. z-13 Beav. Rolls. 209; 3 De Gex. M. & G. 896. a-By the common law of partnership, he who had any interest in the stock and received any proportion of the profits, is a partner, and as such is liable, *in solido*, for the whole debts of the firm. And mere joint stock companies, without incorporation, are, as to all purposes of liability, like common partnerships. 35 Maine, 302; 1 Clarke (Iowa) 369; 7 Wend. 542; 4 S. & R. 356.

acknowledgment of deeds; and such acknowledgment must be made and certified in the manner provided by law for the acknowledgment of deeds for the conveyance of land. See GENERAL STATUTES.

Partnership Certificate and Acknowledgment.

We, the undersigned, A. B., C. D., and E. F., and G. H., as partners under the name (*or* firm) of B. & D., will, on the —— day of ——, commence the business of (*here give the general nature of the business to be transacted*), and on the —— day of ——, said partnership will terminate.

The names of the general partners, and their respective places of residence, are as follows: A. B., ——, —— county, State of ——; C. D., ——, —— county, State of ——.

The names of the special partners, and their respective places of residence, are as follows: E. F., ——, —— county, State of ——; and G. H., ——, —— county, State of ——.

The amount of capital which each of said special partners has contributed to the common stock of said partnership is as follows: E. F., —— dollars, and G. H., —— dollars.

A. B.
C. D.
E. F.
G. H.

For form of ACKNOWLEDGMENT, see that title, ante.

Affidavit.

To be Indorsed on the back of Certificate of Partnership.

State of ——, —— county, ss.

A. B., being duly sworn, says, that he is one of the general partners of the within-named partnership, and that the amount of money contributed by each of the within-named special partners to the common stock thereof is as follows: E. F., —— dollars, G. H., —— dollars; which said amounts have been actually and in good faith contributed and applied to the same. A. B.

Subscribed and sworn to before me, this —— day of ——, A. D. ——.

J. P., *Justice of the Peace.*

Partnership—Notice of Terms of.

Partnership Notice.

Notice is hereby given that A. B., C. D., and E. F., and G. H., as partners, under the name (*or* firm) of B. & D., will, on the —— day of ——, commence the business of —— ——, and on the —— day of —— said partnership will terminate.

The names of the general partners, and their respective places of residence, are as follows: A. B., ——, —— county, State of ——; C. D., ——, —— county, State of ——.

The names of the special partners, and their respective places of residence, are as follows: E. F., ——, —— county, State of ——; and G. H., ——, —— county, State of ——.

The amount of the capital which each of said special partners has contributed to the common stock of said partnership is as follows: E. F., —— dollars, and G. H., ——dollars.

Date ——. [*Official Signature and Seal.*]

[*Publish six weeks successively.*]

State of ——, —— county, ss.

P. P., being duly sworn, says, that he is the printer of (*or*, is in the employ of P. P., the printer of) the —— ——, a newspaper published in and of general circulation in said county; and that the notice, of which the annexed is a true copy, was published for —— consecutive weeks in said newspaper, commencing on the —— day of ——.

P. P.

Subscribed and sworn to before me, this —— day of ——. [*Official Signature and Seal.*]

Partnership—Notice of Dissolution.

Dissolution of Partnership.

The partnership heretofore existing under the name of B. & D., wherein A. B., of ——, —— county, State of ——, and C. D., of ——, —— county, State of ——, were general partners, and E. F., of ——, —— county, State of ——, and G. H., of ——, —— county, State of ——, were special partners, is, this —— day of ——, A. D. ——, dissolved by mutual consent.

A. B.
C. D.
E. F.
G. H.

The affairs of the firm will be adjusted by C. D., at ——, etc.

[*Publish six weeks successively.*]

For a debt owing by all the partners, general and special, in a limited partnership, a suit is well brought against the general partners alone; and a judgment and execution in such suit, levied upon the partnership property, will bind the entire interest of all the partners.[b]

ACTIONS BY AND AGAINST A LIMITED PARTNERSHIP. Special partners are not liable for the debts of the partnership beyond the amount of funds contributed by them respectively to the common stock, and all sums by them received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn or divided, if they comply with the restrictions of the law. If they do not they become general partners, and, as such, are liable, *in solido*, for the whole debts of the firm.[c]

Parturition. See MEDICAL LAW, "Birth."

Party. See BILLS, BONDS, AND NOTES; CONTRACTS, ETC.

Party Walls. See REAL PROPERTY.

Pass-book. See ACCOUNTS.

Passengers. See BAILMENTS, "Common Carriers of."

Pastures. See REAL PROPERTY.

PATENTS AND TRADE-MARKS. See also COPYRIGHTS; CONTRACTS; CONVEYANCES.

"The Congress shall have power to promote the progress of science and useful arts by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries."—Constitution of the United States, Art. 1, Sec. 8.

Under this constitutional provision the Congress, in 1790, passed an act for the granting of patents by the State Department. By 1836 some 10,000 patents had been issued, and in that year an act was passed establishing the United States Patent Office. In 1870 the laws relating to granting of patents were quite fully revised and made to take the form in which they appeared in the Revised Statutes of 1875. Since then amendments have been added from time to time and as experience suggested, but the gist and spirit of the laws, as incorporated in the Revised Statutes of 1875, have been substantially preserved.

The bulk of patent legislation concerns the duties of the Commissioner of Patents and the practical working arrangements of his office. As this class of legislation is accurately and abundantly synopsized in the Rules of Practice of the Patent Office, which appear in the following pages, there will be no need of citing in this place, either in extenso or in synopsis, any other sections of statutes than those of general moment for business men and lawyers, and those which probably determine nine-tenths of the practice in matters pertaining to patents.

b-34 Barb. 553. c-3 Kent Comm. 36; 3 Denio, 435; 24 Penn. St. 344.

Sec. 475 of the Revised Statutes provides for the establishment of a Patent Office in the Department of the Interior.

Sec. 476, and subsequent sections, provide for a Commissioner of Patents and other officials, and for the working force, salaries, duties and general internal ensemble of the Patent Office.

Sec. 483 vests the establishment of regulations for the conduct and proceedings of the Patent Office in the Commissioner of Patents, subject to the approval of the Secretary of the Interior.

Sec. 629 vests the Circuit Courts with original jurisdiction in "all suits at law or in equity arising under the patent and copyright laws of the United States."

Sec. 690 vests the Supreme Court with appellate jurisdiction in the cases specially provided for.

Sec. 711. The jurisdiction vested in the courts of the United States, in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States. . . . . Fifth. All cases arising under the patent right or copyright law of the United States.

Sec. 973. When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered unless the proper disclaimer, as provided by the patent laws, has been entered in the Patent Office before the suit was brought.

Sec. 4883 provides that all patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and signed by the Secretary of the Interior, or under his direction, and countersigned by the Commissioner of Patents. Then they must be properly recorded.

Sec. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature or design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use and vend the invention or discovery throughout the United States and the Territories thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

Sec. 4885 provides that patents shall bear date as of a day not later than six months after their allowance and notice sent to the patentee, and if the fee is not paid within that period the patent shall be withheld.

Sec. 4886. Any person who has invented or discovered any new and useful art, machine, mannfacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor.

Sec. 4888 provides the requisites for applications for patents—description, specification and claim. All of its provisions appear in practical form under the head of "Applications." See (*post*) "Rules of Practice."

Sec 4918 relates to suits touching interfering patents, and **Sec. 4919** to suits in damages for infringement of patents. If a verdict has been had for the plaintiff, the court may at its discretion raise the amount found in the verdict "not exceeding three times the amount of said verdict, together with costs."

Sec. 4920. In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney thirty days before, may prove on trial any one or more of the following special matters:

1. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or,

2. That he surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or,

3. That it has been patented or described in some printed publication prior to his supposed invention or discovery thereof, or more than two years prior to his application for the patent thereof; or,

4. That he was not the original or first inventor or discoverer of any material and substantial part of the thing patented; or

5. That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.

And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of the patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used, and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defences may be pleaded in any suit in equity for relief against the alleged infringement; and proofs

of the same may be given upon like notice in the answer of the defendant, and with the like effect.

Sec. 4921 vests the power to issue injunctions in restraint of violations of rights secured by patent in the respective courts of jurisdiction, and limits the time of bringing suits for damages to six years before filing complaint.

Sec. 4929 extends the right of patent to inventor and producer of "a new and original design for a manufacture, bust, statue, alto-relievo or bas-relief; any new and original design for the printing of woolen, silk, cotton or other fabrics; any new and original impression, ornament, patent (pattern), print or picture to be printed, painted, cast or otherwise placed on or worked into any article of manufacture, or any new, useful or original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication," upon payment of the prescribed fee and other proceedings had as in the case of procuring a usual patent.

Sec. 4933 provides a penalty of $250, and all excess of profit over that amount, for the use of any patented design, by manufacture, sale or otherwise, without the consent of the owner.

RULES OF PRACTICE
In the United States Patent Office.

ABANDONMENT. This may be abandonment (1) of the Invention, and (2) of the Application. Public use by any person more than two years before the application for a patent constitutes an abandonment of the invention. Publication of the invention more than two years before application for patent is an abandonment. Patentable matter, not described or claimed in an application for patent, is abandoned.

An application for a patent will be regarded as abandoned unless completed and prepared for examination within one year after the filing of petition, or upon failure of applicant to prosecute the same within one year after any action thereon, unless it can be shown that delay was unavoidable. Notice of action by the Patent Office will be given, and if failure to prosecute the application within a year thereafter continues the application will be declared abandoned. An applicant may also abandon by filing a written notification of abandonment, signed by himself or assignee, fully identifying his application. Commissioner of Patents may revive an application where delay is shown to have been unavoidable.

ADMINISTRATORS. In case of the death of an inventor during the time intervening between the filing of his application and the granting of a patent thereon, the letters patent may issue to the administrator or executor upon proper intervention by him.

AFFIDAVITS. Affidavits, whose admission or exclusion is judged of under prevailing equity rules, are received to overcome references on rejection of applications for patents, in support of applications for reissue, to establish priority of invention, and in cases after appeal taken.

AMENDMENTS. An applicant has a right to amend before or after the first rejection or action, and as often as the examiner presents new references or reasons for rejection; but not after appeal, unless a verified and sufficient reason is shown why the amendment was not earlier offered. In every amendment the exact words to be stricken out or inserted must be specified, and on sheets of paper written on one side, and separated from the other papers on file. Amendatory clauses must be wholly rewritten, without interlineations or erasures, and signed, where required, by the applicant, and in case of assignment by the assignee. All amendments to original applications capable of illustration by drawing or model must conform to at least one of such models or drawings as it was at the time of the application. Matter involving entire departure from the original invention can only be claimed by separate application. Specifications and drawings must be amended when required, to correct inaccuracies and prolixity, and to reconcile the claim, specification and drawing. Amendments to the specification will not be received during pendency for interference, except under certain prescribed conditions as to the law and practice relating to Interference. The following is a usual form of amendment:

To the Commissioner of Patents:
In the matter of my application for letters patent for an improvement in ——, filed ——, 19— (serial number ——), I hereby amend my specification as follows:
By striking out all between the —— and —— lines, inclusive, of page ——;
By inserting the words "——" after the word "——" in the —— line of the —— claim; and
By striking out the —— claim and substituting therefor the following:

—— —— —— —— —— —— ——

Signed at ——, in the county of ——, and State of ——

By ——
His Attorney in Fact.

APPEALS. An applicant for patent whose claim has been twice rejected by a primary examiner may appeal to the examiners-in-chief, on payment of a fee of $10. The appeal must be in writing, set forth the points of the decision upon which it is taken, and be signed by the applicant or his attorney or agent. The primary examiner shall within five days furnish the examiners-in-chief with the entire grounds of his decision, a copy of which must be furnished the appellant. An appeal lies from the decision of the examiners-in-chief to the Commissioner, on payment of $20. Cases heard and decided by the Commissioner on appeal will not be reopened ex-

cept on his order. In interference and *ex parte* cases appeal lies from the decision of the Commissioner to the District Court of Columbia. In such appeals appellant must file in the Patent Office, in writing, and within 40 days, his reasons for appeal. In patent cases appeals lie from the United States Circuit or District Courts to the United States Circuit Court of Appeals, and thence to the United States Supreme Court when instruction is desired on any question or proposition of law. A form of appeal from a principal examiner to the examiners-in-chief runs as follows:

To the Commissioner of Patents:
Sir: I hereby appeal to the examiners-in-chief from the decision of the principal examiner in the matter of my application for letters patent for an improvement in ——, filed ——, 19—, serial number ——, which, on the —— day of ——, 19—, was rejected the second time. The following are the points of the decision on which the appeal is taken: (Statement of the points.)
Signed at ——, in the county of ——, and State of ——, this —— day of ——, 19—.

In case of an interference the appeal would run thus:

To the Commissioner of Patents:
Sir: I hereby appeal to the examiners-in-chief from the decision of the examiner of interferences in the matter of the interference between my applications for letters patent for improvement in —— and the letters patent of ——, in which priority of invention was awarded to said ——. The following are assigned as reasons of appeal: (Here should follow an explicit statement of alleged errors in the decision of the examiner of interferences.)
Signed at ——, in the county of ——, and State of ——, this —— day of ——, 19—.

APPLICANTS AND APPLICATIONS. As to who may apply for a patent, see Sections 4886, 4929, *ante*. Applicants need not visit Patent Office. Should conduct business by correspondence, personally or by attorney. Must be courteous and decorous. Will be informed with serial number of their application.

Applications must be made by petition, signed by the inventor, if alive, and addressed to the Commissioner of Patents. A complete application comprises the first fee of $15, a petition, specification and oath, and drawings, model or specimen, when required. Petition and specification must be in the English language. A guardian of an insane person, or executor or administrator of a deceased inventor, may make application and secure patent. The specification must be signed and witnessed by two witnesses. Inventor must judge for himself of the propriety of making application. Patent Office cannot help him, but its records are open to him. All parts of a complete application should be deposited in the Patent Office at the same time, and all papers should be attached together. Incomplete applications will not be filed. If applicant neglect to prosecute his application for one year after last official notice of any action taken by Patent Office, he abandons his application. Applications will not be filed till all their parts, except model or specimen, are received. They will be numbered in the annual series. Two or more inventions cannot be claimed in one application unless they are connected. No reservation will be made for future applications. An applicant, if inventor, must make oath that he believes he is first inventor or discoverer of the machine, or other article, for which he solicits a patent; that he resides in such and such a country; that his invention has not been before patented to himself or others in this or any other country for more than two years prior to his application; that, if so, the foreign countries shall be mentioned; that the invention has not been used or sold in the United States, nor described in publication or patent in this or any foreign country for more than two years prior to the application in this country. Applicants for reissue must also make oath. So also guardians, administrators and executors, when applicants. Caveats and pending applications are kept secret in Patent Office. After patent granted, all models, specifications and documents are open for inspection. Applications are, as a rule, taken up in the order of filing, but there is a class of privileged cases. After abandonment or forfeiture, good cause must be shown for renewal of application, and that within two years.

An approved form of petition by sole inventor is as follows:

To the Commissioner of Patents:
Your petitioner, ——, a citizen of the United States and a resident of ——, in the county of ——, and State of —— (or subject, etc.), whose post-office address is ——, prays that letters patent may be granted to him for the improvement in ——, set forth in the annexed specification.
Signed at ——, in the county of ——, and State of ——, this —— day of ——, 19—.

The above form, with manifest changes, will answer as the petition by joint inventors, inventor and assignee, applicants by power of attorney, administrators, executors and guardians.

ARGUMENTS. Arguments in contested cases before the commission or examiner-in-chief will be heard on appointed days and hours. Oral arguments in contested cases are limited to one hour for each party; in other cases to a half hour each. Applicants have right to open and close in contested cases, unless otherwise ordered. Appellants must file a brief of arguments and authorities before the day of hearing, which brief, in contested cases, must be printed.

ASSIGNEE AND ASSIGNMENT. Patents may be assigned by an instrument in writing, which must be recorded in the Patent Office within three months of the date thereof. See FEES (*post*). But an unrecorded assignment is valid except as against a *bona fide* purchaser. Application for a patent may be assigned, and patent will then issue to patentee, if request be made before payment of final fee. Right to bring suit for damages may be assigned with patent. Assignee of an undivided in-

terest in a patent cannot alone bring suit for infringement. All interests must join. An assignee of territorial right may sue in his territory. A mere licensee cannot sue. Certificate of notary, commissioner, or consul, under seal, is *prima facie* evidence of validity of an assignment. When application for patent is in part assigned, the Patent Office will correspond with the inventor or his agent; if entire interest is assigned, with the assignee. A part assignee must join in all proceedings requiring the inventor's signature. Assignment, to secure record, must fully identify the patent or application to which it relates.

The following approved form of assignment of entire interest in an invention before the issue of letters patent will, *mutatis mutandis*, answer for assignment of entire interest in letters patent, for an undivided interest, and for territorial interest. See also assignment forms, p. 97.

Whereas I, ——, of ——, county of ——, and State of ——, have invented a certain new and useful improvement in ——, for which I am about to make application for letters patent of the United States; and whereas ——, of ——, county of ——, and State of ——, is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor;

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of —— dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ——, have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said —— the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the —— day of ——, 19—; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said ——, as the assignee of my entire right, title and interest in and to the same, for the sole use and behoof of the said —— and his legal representatives.

In testimony whereof I have hereunto set my hand and affixed my seal this —— day of ——, 19—. ——————— [L. S.]

In presence of

——— ———

———————

See forms of Acknowledgment, p. 15 (*ante*).

ATTORNEYS. Applicants may prosecute their own cases, but are advised to employ competent patent attorneys. A register of qualified attorneys is kept in the Patent Office. They must file their powers of attorney before permitted to act. General powers of attorney are not recognized. All members of a firm or partnership must join in a power of attorney. When an attorney has filed his power, correspondence will be had with him only. Powers of attorney may be revoked when not satisfactory. May examine cases in attorneys' room, but not in examiners' room. May be refused recognition for misconduct. Attorneys may select associates.

An approved form of power of attorney after application filed is:

To the Commissioner of Patents:

The undersigned having, on or about the —— day of ——, 19—, made application for letters patent for an improvement in —— (serial number), hereby appoints ——, of ——, in the county of ——, and State of ——, his attorney, with full power of substitution or revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all the business in the Patent Office connected therewith.

Signed at ——, in the county of ——, and State of ——, this —— day of ——, 19—.

———————

BRIEFS. Attorneys must file, in case of appeal, and in printed form if possible, a brief of their authorities and arguments before the day fixed for hearing. The same must be done in interference cases, both directly and upon appeal.

CAVEATS. A caveat is a description of an incomplete invention, which an inventor who desires time to complete his invention may file in the Patent Office on payment of the proper fee. See FEES (*post*). It entitles the caveator to notice, within one year, of the filing of an application for a like invention. After such notice, the caveator must file a complete application within three months, or lose the benefit of his caveat. If the subject of the caveat has been already patented, it will be recorded, but not further noticed. No caveat should be filed if the inventor believes his invention to be complete. Caveats can only be filed by citizens of the United States, and by foreigners resident here for one year, who have filed their declarations to become citizens.

The following is an approved form of petition for a caveat:

To the Commissioner of Patents:

Your petitioner, ——, a citizen of the United States, and a resident of ——, in the county of ——, and State of —— (or subject of), whose post-office address is ——, represents:

That he has made certain improvements in ——, and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office.

Signed at ——, in the county of ——, State of ——, this —— day of ——, 19—.

———————

CLAIMS. Claims in a patent must follow the specification in specific and distinct form. May be withdrawn and new application therefor filed, when not in conflict in interference. Claims must be twice rejected before appeal can be had. A copy of rejected claims must accompany appeal. Matter not claimed in a patent is presumed to be old and abandoned. Like claims by two or more inventors are said to interfere, and may become the subject of interference adjudication. Claims not involved in interference may become the basis of a separate application.

COMMISSIONER. The Commissioner of Patents makes the rules and appointments of his office subject to the approval of the Secretary of the Interior. Appeals lie to him from primary and chief examiners, and thence to the Court of Appeals of the District of Columbia.

COPIES. Copies of specifications, drawings and patents will be furnished at specified rates. See FEES (*post*). They may, when certified, be used in evidence where the original is not usable.

COMPOSITION OF MATTER. Applicants for patent on a compound must furnish not only the compound, but specimens of the ingredients. Patent may be declared void where relative proportions of substances are withheld or vaguely stated. Patent for a compound embraces the equivalents of its ingredients.

CORRESPONDENCE. All letters to the Patent Office should be addressed to the Commissioner of Patents. All business should be conducted by correspondence, postage prepaid. It will be conducted with the attorney, after his letter of attorney is filed, but if revoked, then resumed with the principal.

DATE, DURATION AND FORM OF PATENT. A patent bears date as of a day not later than six months from the time the application was passed and allowed. It is never antedated. Runs for seventeen years; but if of a design, may run for three and a half, seven, or fourteen years, as the applicant may elect in his application. A copy of the specifications and drawings will be annexed to the patent and form a part thereof.

DAMAGES. Damages for infringement not recoverable in suit, unless defendant was notified of the infringement, or the patented goods were marked "patented." Damages may be recovered by patentee or assignee, in action upon the case. Court may enter judgment for exemplary damages not exceeding three times the amount of actual damage. Damages for infringement of design patent will be at least $250. In suits for infringement the burden of proof is on the plaintiff. The profits of the defendant generally rule the amount of damage.

DEFENCE. See Sec. 4920 (*ante*).

DESIGN PATENTS. These are granted to inventors and producers of new and original designs for manufacture, bust, statue, alto-relievo, printing of woolen, cotton or silk, ornament, pattern, print or picture to be printed. The law and practice relating to the granting of them are similar to the case of other patents, except that they only run for three and a half, seven, or fourteen years, as the patentee may elect.

The following is an approved form of petition for letters patent for a design:

To the Commissioner of Patents:

Your petitioner, ——, a citizen of the United States and a resident of ——, in the county of ——, and State of —— (or subject of, etc.), whose post-office address is ——, prays that letters patent may be granted to him for the term of three years and a half (or seven years, or fourteen years) for the new and original design for ——, set forth in the annexed specification.

Signed at ——, in the county of ——, and State of ——, this —— day of ——, 19—.

——

DISCLAIMERS. When a patentee has claimed more than he was entitled to claim, he may file a disclaimer as to the excess. Failing to do so before the commencement of suit, he will forfeit his costs. Matter disclaimed ceases to be a part of the patent. The fee for filing ($10) must be paid in advance. A disclaimer must be in writing, attested by at least one witness. An approved form of disclaimer after patent is as follows:

To the Commissioner of Patents:

Your petitioner, ——, a citizen of the United States, residing at ——, in the county of ——, and State of ——, (or subject, etc.), represents that in the matter of a certain improvement in ——, for which letters patent of the United States No. —— were granted to ——, on the —— day of ——, 19—, he is (here state the exact interest of the disclaimant; if assignee, set out liber and page where assignment is recorded), and that he has reason to believe that through inadvertence (accident or mistake) the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters this disclaimer to that part of the claim in said specification which is in the following words, to wit:

——

Signed at ——, in the county of ——, and State of ——, this —— day of ——, 19—.

——

Witnesses:

——

——

DIVISION. Two or more independent inventions cannot be claimed in one application; but where several distinct inventions are dependent upon each other and mutually contribute to produce a single result, they may be claimed in one application.

DRAWINGS. Drawings are required by law, where the nature of the case permits. They must show every feature of the invention; must be signed and attested by two witnesses; three editions to be printed and published by the office, when patented. Drawings form part of the specification. Are not complete evidence of invention, but there must be a description also. Drawings for patent applications are on cards 10 x 15 inches, flat, not folded, must be in solid lines, and same characters must refer to different views. In the patent they are reproduced by photo-lithography and attached to the patent. Must be furnished with application for the correction or reissue of a patent. When they accompany a caveat they must be on paper or muslin so as to be folded. Can only be corrected by approval of office. Office will correct on payment of cost thereof.

EMPLOYER AND EMPLOYEE. Employer does not become possessed to title of an invention by his employee.

EVIDENCE. See TESTIMONY.

EXAMINATION. Examinations are taken up in Patent Office in the order of filing the applications. But there are certain privileged cases, such as requests by heads of Government departments, applications for reissues, interfering applications, applications previously acted upon.

EXAMINERS. Interviews with examiners in their rooms can only be had during office hours, and at such times as they may designate, unless the Commissioner gives special orders in writing. For appeals from, see APPEALS.

EXCEPTIONS. Evidence in objection must be substantial. Party objecting must act as soon as aware of ground of objection, by giving notice to the office and to the opposite party.

EXECUTORS. See ADMINISTRATORS

EXPRESS AND FREIGHT CHARGES. These must be prepaid in full.

EXTENSION. Term of a patent cannot be extended except by act of Congress.

FEES. The following fees, mostly fixed by law, and payable in advance, prevail in patent matters:

Filing each original application for patent, except in design cases	$15 00
On issuing each original patent, except in design cases	20 00
In design cases for 3½ years	10 00
" " " " 7 "	15 00
" " " " 14 "	30 00
On filing each caveat	10 00
On every application for reissue of patent	30 00
On filing each disclaimer	10 00
On appeal, first time, from primary examiners to examiner-in-chief	10 00
On every appeal from examiners-in-chief to commissioner	20 00
For certified copies of printed patents:	
For specification and drawing, per copy	5
For the certificate	25
For the grant	50
For certifying to duplicate of a model	50
For manuscript copies of records, for every hundred words or fraction thereof	10
If certified, for the certificate, additional	25
For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under	1 00
Over three hundred and under one thousand words	2 00
Over one thousand words	3 00
For abstracts of titles to inventions:	
For certificate of search	1 00
For each brief from digest of assignments	20
For searching titles or records, one hour or less	50
For each additional hour or fraction thereof	50
For assistance to attorney in examination of publications in Scientific Library, one hour or less	1 00
Each additional hour or fraction thereof	1 00
For copies of matter in any foreign language, for every hundred words or fraction thereof	10
For translations, for every hundred words or fraction thereof	50
The *Official Gazette:*	
To subscribers within the United States, Mexico and Canada, one year	5 00
To foreign subscribers, except Mexico and Canada	10 00
Single numbers	10

The final fee of $20 must be paid within six months after allowance of patent, or it will be withheld; but renewed application can be made on same papers on payment of a renewal fee ($15).

Witnesses in interference cases are allowed same fees as in United States Courts.

FOREIGN PATENTS. An inventor believing himself to be a first inventor is entitled to a patent, even though the invention had been known or used in a foreign country before his discovery thereof, but not if it had been before patented or described in any publication. Receipt of patent from a foreign country will not prevent inventor from receiving a patent in the United States, unless the application on which the foreign patent was issued was filed more than seven months prior to filing of the application in this country, in which case no patent will be granted in this country. Patents granted in the United States for seventeen years, dated prior to January 1, 1898, on inventions previously patented in a foreign country, will expire at the same time as the foreign patent. If there be more than one foreign patent, the United States patent expires with that one first to expire. But patents granted since January 1, 1898, are not limited in terms by foreign patents, except as to the seven months' time of application above mentioned. Patents may be obtained by citizens of the United States in those foreign countries with which conventions exist.

FORFEITURE. A patent is forfeited on failure to pay the final fee.

INFRINGEMENT. See DAMAGES.

INJUNCTION. The several courts having jurisdiction of patent cases have power to issue injunctions according to the principles of equity. To sustain an injunction it is not necessary that all the claims of the patent be infringed. The clear infringement of one valid claim is enough.

INVENTION. Invention, in law, is the finding out of something before unknown. It is not limited to the discovery of a new principle, but may be a new combination of old principles. It must be capable of practical use. Mere change of form without change of result is not invention. The mere function of a machine is not invention, although the machine may be. Production of a new and useful result is evidence of invention. Inven-

tion shown but not claimed may not bar other patents.

INTERFERENCES. An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention.

They are declared—(1) between original applicants each claiming the same subject matter; (2) between applicant and patentee, when, if within two years, the applicant makes oath that he made the invention before the patentee; (3) between an original and reissue application, or between reissue applications.

All questions in a pending application should be settled before an interference is declared. When interference is declared, the parties are notified and required to file preliminary statements under oath, giving the steps to the different inventions, the conceptions, disclosures, drawings, models, etc., in the completion of the invention. Where a part only of an application is involved, the rest may be patented on a separate application. After the filing of the preliminary statements, opponents have access to each other's papers. Where no interference appears in fact a contestant may move to dissolve the interference. Such motion is heard before a primary examiner. The burden of proof, in interference cases, is on the junior applicant. Testimony may be taken on due notice to opposing parties, with opportunity for cross-examination. It must be printed. Briefs may be filed and oral argument heard at a time fixed by the Patent Office. Decision is made, as to priority, by the examiner of interference. Appeal within limited time may be taken as in *ex parte* cases, on payment of proper fees. Any party may avoid the interference by filing a written concession of priority or a disclaimer of the invention.

The following is an approved form of Preliminary Statement of a domestic inventor in an interference case:

——————} Interference in the United
vs. } States Patent Office.
——————} Preliminary statement of ——
——, of ——, in the county of ——, State of ——, being duly sworn (or affirmed), doth depose and say that he is a party to the interference declared by the Commissioner of Patents, ——, 19—, between ——'s application for letters patent, filed ——, 19—, serial number ——, and the patent to ——, granted ——, 19—, numbered ——, for a ——; that he conceived the invention set forth in the declaration of interference on or about the —— day of ——, 19—; that on or about the —— day of ——, 19—, he first made drawings of the invention (if he has not made a drawing, then he should say that no drawing of the invention in issue has been made); that on or about the —— day of ——, 19—, he first explained the invention to others, and that he first made a model showing such invention on or about the —— day of ——, 19— (if he has not made a model, then he should allege that no model of the invention in issue has been made); that he first embodied his invention in a full-sized machine, which was completed about the —— day of ——, 19—, and that on the —— day of ——, 19—, the said machine was first successfully operated, in the town of ——, county of ——, and State of ——, and that he has since continued to use the same, and that he has manufactured others for use and sale to the following extent, viz, (if he has not embodied the invention in a full-sized machine, he should so state, and if he has embodied it, but has not used it, he should so state).

Subscribed and sworn to before me this —— day of ——, 19—. ——————

(*Signature of Justice or Notary.*)

——————

(*Official character.*)

ISSUE. A patent will issue on payment of final fee. After notice of allowance of application, the case will not be withdrawn from issue, except by approval of the Commissioner. The weekly issue closes on Thursday, and patents of that issue bear date the third Tuesday thereafter.

JOINT INVENTORS. Joint inventors are entitled to a joint patent; neither of them can obtain a patent for an invention jointly invented. Independent inventors of distinct improvements in same machine cannot obtain a joint patent for their separate inven tions. Where one invents and another fur nishes the capital they are not entitled to apply as joint inventors; but they may join if the inventor has assigned a part interest to the capitalist.

JOINT PATENTS. A joint patent may issue to joint inventors, or to an inventor and assignee, when assignment is made and recorded, and request made before payment of the final fee.

JURISDICTION. An examiner has no jurisdiction over a case after notice of allowance of the application. Applications, after appeal, are in the jurisdiction of the appellate tribunal until decision has been rendered, and are then returned to the primary examiner. The Circuit Courts of Appeal have final jurisdiction in patent cases, save in exceptional cases. See APPEALS. The United States Courts have jurisdiction in patent cases, to the exclusion of State Courts.

JURY TRIALS. The United States Courts may, when sitting in equity on patent cases, order a trial by jury, to which questions of fact may be submitted.

LABELS. Artistic labels may be recorded in the Patent Office on payment of a fee of $6. Such record gives no special status to the registrant.

LICENSE. License may be oral or written. See ASSIGNEE AND ASSIGNMENTS.

MANUFACTURE. An article of manufacture is a complete entity, ready for use. To be patentable, it must be new, useful and the result of invention. Mere change of material of which an article is composed is generally not patentable, if the material be old.

MARKING OF PATENTED ARTICLES. Patentees and manufacturers should give notice of the patent by marking on the article or package the date of the patent. If this is not done, a plaintiff cannot recover damages in an action for infringement, except on proof that the defendant was duly notified, and afterwards

continued the infringement. A person who marks an unpatented article as patented, with intent to deceive, is liable to a fine of $100 for each offence, one-half to the person who brings suit, the other half to the United States.

MODELS. Are not required to be filed with the application. Will be called for if found necessary upon examination. They must clearly exhibit every feature of the machine which forms the subject of a claim for invention, but must exclude matter not sought to be patented. Must be neatly and substantially made of durable material, metal preferred; but when the material forms an essential feature of the invention, the model should be of that material. Must not be more than one foot in length, width or height, except when the Commissioner admits a working model of larger dimensions. If of wood, must be painted or varnished. Glue not to be used. Parts must be connected so as to resist heat and moisture. If possible, name of inventor should appear thereon. When model is not strong, examination will be suspended till a proper one is furnished. Model may be returned to applicant when claims have been rejected for over a year; in less than a year if applicant has not filed an abandonment. Not to be taken from office except in custody of sworn employee. Models used in contested cases may be returned to parties at their expense. If not claimed in a reasonable time, may be disposed of at discretion of Commissioner. In reissue applications, to correct errors in patents, the drawing can be corrected only by the model. Old models may be used with new applications. In application for a design a model will not be required when a sufficient representation can be made by a drawing.

MONEYS. See FEES.

MOTIONS. In contested cases reasonable notice of motions, copies of motion papers and affidavits must be served in accordance with the established rules of the office. Motions will not be heard in the absence of either party, except upon default after due notice. Will be heard first by officer or tribunal before which the case is pending. Appeal from a decision upon a motion may be taken to Examiners-in-Chief or to the Commissioner. The moving party has a right to the opening and closing argument.

NOTICE. In appeal to Court of Appeals of District of Columbia, appellant must notify Commissioner of Patents. In all equity proceedings in patent cases notice of taking of testimony must be given to opposing party. Same in interference cases. Proof of service of notice must go with the record filed in the Patent Office. Patent Office will notify a caveator immediately on the filing of a like patentable invention within one year after the filing of the caveat. Notice of all actions on applications for patent is given to applicants or their attorneys.

NOVELTY. Every patent raises the presumption of novelty. It is essential to patentability. Burden of proof is on the defendant to prove want of novelty.

OATH TO APPLICATION. Applicant for patent must make oath to originality of his invention. Must be made by inventor, if alive. May be made by administrator, executor, guardian or legal representative. Oath must accompany a caveat, stating that caveator is a citizen of the United States, or, if an alien, that he has resided in the United States for one year, and declared his intention to become a citizen, and that he believes himself to be the first and original inventor of the subject matter of the caveat. Applicant for correction of patent by a reissue must make oath setting forth in full why he seeks to thus correct. All oaths must bear signature of affiant. Oaths may be made in the United States before any officer qualified to administer them; but if officer has no seal, he must be certified to by a court of record. In foreign countries oaths may be made before a United States minister, consul, or notary public. The following approved form of oath by an inventor, to accompany his application, will answer, *mutatis mutandis*, for other classes of applicants:

_____ } ss.
_____ }

I, —— (if inventor be dead, insert name of executor or administrator; if insane, name of guardian, conservator or legal representative), the above-named petitioner, being sworn (or affirmed), depose— and say— that ——, citizen of —— (if applicant be an alien, state of what foreign country he is a citizen or subject), and resident— of —— (give residence address in full; as "a resident of ——, in the county of ——, and State of ——," or "of No —— street, in city of ——, county of ——, and State (kingdom, republic or empire) of ——); that —— verily believe —— to be the original, first and —— (sole or joint) inventor— of the improvement in —— (insert title of invention) described and claimed in the annexed specification; that —— do— not know and do— believe that the same was ever known or used before —— invention or discovery thereof, or patented or described in any printed publication in any country before —— invention or discovery thereof, or more than two years prior to this application, or in public use or sale in the United States for more than two years prior to this application; and that no applications for patent on said improvement have been filed by —— or —— representatives or assigns in any country foreign to the United States, exept as follows —— (name each country in which an application has been filed, and in each case give the date of the filing. If no application has been filed, strike out the words "except as follows").

Inventor's name in full } _____
_____

Sworn to and subscribed before me this —— day of ——, 19—.

[L. S.] _____
(*Signature of Notary or Justice.*)

_____
(*Official character.*)

See above as to officers without seals.

OFFICERS. Officers and employees of the Patent Office are prohibted from having any interest in a patent, save by inheritance or bequest. Officials of United States Government may obtain patents without payment of fees, provided they relinquish all title to the invention.

OFFICIAL ACTION. Will be based exclusively on the written record. Patent Office cannot act as adviser.

OFFICIAL BUSINESS. Should be transacted in writing.

OFFICIAL GAZETTE. Published weekly by Patent Office. Contains claims and generally part of the drawings of patents granted that week; also all important decisions of office and courts in patent cases. Mailed free to each State capital and to eight public libraries in each Congressional district. Private subscription $5 per year; foreign subscription $10 per year; single copies ten cents.

OFFICIAL FEES. See FEES.

OWNERS. Joint owner of patent can sue his co-owner for infringement. Joint owner can only assign in respect of his own share. Joint owners of patent are held to be tenants in common. All parties to title in patent become parties to a suit, whether plaintiffs or defendants. Disputants of a title should be made defendants.

PATENTABILITY. To secure patent, an inventor must have produced a new or improved machine, manufacture, article or composition of matter, or have made an improvement in an art, method or process. To devote an old thing to new use, without change, is not patentable; but to change an old thing so as to make it capable of new use is generally patentable. Mere change of form without change of result is not patentable. To be patentable an invention need not be superior to all others, but it must be new, useful and a result of invention. A mere result is not patentable, but the means by which a result is attained may be. A mere idea is not patentable. Bookkeeping and teaching systems are not patentable; nor are abstract principles.

PATENTS. All matter connected with granted patents are accessible to the public—"Patent" implying "public." Applications for patents are kept in the secret archives of the office Patents are entirely the creation of statute law, and to be valid must conform to the statutes. They are granted only for the subject matter mentioned in Sec. 4886 (see *ante*). Designs are excepted. See DESIGN PATENTS (*ante*). Foreign use of a patent is no bar to patentability, if the statutory requirements of novelty and originalty are complied with. Publication of a patent anywhere in the world for more than two years before application filed is a bar to a patent. Patents are issued in the name of the United States, under seal of the Patent Office, signed by Secretary of Interior, countersigned by Commissioner of Patents, and recorded in Patent Office. An allowed application is not issued as a patent unless final fee ($20) is paid within six months. But the application may be once renewed within 18 months after forfeiture, on payment of first fee ($15). A valid patent must so specifically describe the invention as to enable a person skilled in the art to which it most nearly relates to use the invention; and it must distinctly claim the part, improvement or combination which the inventor records as his own. A patent is personal property. Patentee cannot have two valid patents for same invention, but separate patents for separate parts of an invention may be valid. Patentee is entitled to all the uses of which his invention is capable, though he may not have contemplated all of them. A patent claiming the entire machine is good for the actual invention only. If the claims cover less than the actual invention, the patent is to that extent inoperative. A patent is lawfully granted only to the first and original inventor of the patentable matter under statutory regulation, or to his executor, administrator, guardian or assignee. Patent may issue in whole or in part to an assignee, when so requested by the inventor, the assignment being of record.

PETITION. Application for patent must be by petition to Commissioner of Patents. See APPLICANTS AND APPLICATIONS.

POSTAGE. Must be paid in full.

POWERS OF ATTORNEY. See ATTORNEYS.

PRACTICE. Equity rules of the Supreme Court obtain in all the courts. Objections not taken in the answer cannot be raised on hearing. On appearing in the suit a party becomes amenable to the jurisdiction of the court. Where complaint joins several causes of action defendant may demur to part and answer as to the rest. If parts of a bill are maintainable, demurrer to the whole will be overruled. Preliminary injunctions are generally denied, but where a decree has been obtained in one jurisdiction, injunction may be asked for in another jurisdiction. Experts may be examined to explain art terms and status, but their opinions are of value only when based on satisfactory reasons. The rules of equity of the United States Courts are followed in the practice of the Patent Office, so far as the same apply.

PRELIMINARY STATEMENT. In interference cases a preliminary statement, in the nature of pleading, must be filed by each party under oath in the time fixed in the declaration of interference. Contestant will be bound by his statement therein, to the extent that he cannot introduce evidence at variance with it. Such statement must contain date of conception of the invention claimed, date of drawing, model, disclosure, reduction to practice, and extent of use of the invention. It must be sealed before filing and addressed to Examiner of Interferences, Patent Office. It must be endorsed with the title of the interferences, the subject matter involved and the name of the party filing it. Such statements may be amended. They are opened by the examiner of interferences, and, if found satisfactory, are then subject to the inspection of opposing parties. If unsatisfactory, time for correction will be given.

Party failing to file satisfactory statement will be limited to record date of filing the application as the date of invention. For cause shown, upon motion, party notified of time to file preliminary statement may obtain an extension of time. An appeal lies from decision of examiner of interferences to Commissioner of Patents. Showing of reasons for amending preliminary statements must be very satisfactory.

PRIORITY OF INVENTION. The sole question to be determined in interference cases is the priority of invention. A prior inventor is one who first completes an invention in practical and operative form; not he who first conceives, discloses or makes drawings. A prior inventor must proceed with diligence to reduce his invention to practice, in order to hold his priority against another, later to conceive, but first to complete his invention. Application for a patent is supposed to mean the completion of the invention, whether reduced to practice or not.

PUBLICATIONS. See OFFICIAL GAZETTE.

RECORDS. Records of patents and models of inventions are open to public inspection. Records of applications not patented are secret, and only accessible by authority of applicant. Assignments of patents must be recorded within three months. Public records may be used in interference cases, with notice of intent to so use them. Official records must not be mutilated.

REHEARINGS. Rehearings of decided cases may be had only under equity rules.

REISSUES. Reissue of a patent is a proceeding to correct error in a patent, made by inadvertence, accident or mistake. The error must have been such as to render the patent inoperative or invalid in whole or in part. Application for reissue should be made as soon as possible after error discovered, and in any event within two years. A patentee may reissue at any time where he erred in claiming too much; but his disclaimer will generally reach the same result. A reissued patent runs only for the remainder of the term of the original. Reissued patents may be granted to original patentee, his legal representatives or assigns. Application for reissue must be sworn to by inventor, if living. See OATHS. Petition for reissue must be accompanied by abstract of title, and all owners of an interest must assent to the reissue. Original patent must be surrendered with the application for reissue. If lost, a certified copy must be furnished. After reissue suit cannot be brought for infringement of the original and surrendered patent. New matter may be introduced into a reissued patent, and more elaborate explanations of the original may be made. A drawing in a reissued patent may be corrected by the model, if one exists; otherwise the specification and drawing can be corrected only so as to make them conform. Where invention is divisible, reissue may be made in divisions. Matter cancelled in the original cannot enter into the reissue. Courts are strict to see reissue is for the same invention as the original.

The following is an approved form of petition, or application, for reissue by the inventor, to which assignee subscribes:

To the Commissioner of Patents:

Your petitioner, ——, a citizen of the United States and a resident of ——, in the county of ——, and State of —— (or subject, etc.), **whose post-office address is ——, prays that he may be allowed to surrender the letters patent for an improvement in ——, granted to him ——, 19—, whereof he is now sole owner** (or whereof ——, on whose behalf and with whose assent this application is made, is now sole owner, by assignment), **and that letters patent may be reissued to him** (or the said ——) **for the same invention upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases.**

Signed at ——, in the county of —— and State of ——, this —— day of ——, 19—.

——————————

[Assent of assignee to reissue.]

The undersigned, assignee of the entire (or of an undivided) **interest in the above-mentioned letters patent, hereby assents to the accompanying application.** ——————————.

RENEWAL. A forfeited application may be renewed once, using the old papers. A caveat may be renewed frequently, on payment of a new fee, using the old papers. Renewal of application is forfeited by failure to complete or prosecute. See ABANDONMENT.

REVENUE STAMPS. Must be furnished by the parties in interest. Under existing law 25 cents for a power of attorney; 10 cents for a certificate furnished by Patent Office; 25 cents for conveyances offered for record, for each $500 in excess of $1000.

SERVICES OF NOTICES. Notices in interference cases for all parties must be given to the examiner of interferences by the primary examiner. The examiner of interferences forwards them to all the parties. In appeals to the Court of Appeals of the District of Columbia the appellant must file notice thereof and statement of reasons with Commissioner of Patents within 40 days of date of decision appealed from. In contested cases reasonable notice of all motions must be served upon opposing parties, and their service proved. So, for taking testimony, and for discovery on appeal.

SIGNATURES. Applications and oaths must be signed by inventor, if alive, otherwise by his legal representatives or assigns. So, of abandonments, specifications, drawings, models, disclaimers, concessions, etc.

SPECIFICATION. Specification of a patent is required by law to be full, clear and exact, without being prolix. It must carefully distinguish what is new from old. Where it includes drawings, they must be described and referred to by figures or letters. Specification should state the name and object of the invention, describe it with relation to the drawing, if any, and close with distinct claims. Must be signed and sworn to by inventor, if

living, and witnessed by two witnesses. Must be legibly written or printed on one side only of paper like legal cap, with wide left-hand margin. Amendments to specifications must conform to original invention, and must specify the exact part or parts to be cancelled, as well as all part or parts to be substituted. Must not be changed by applicant after execution, and will not be amended at office without written request, which becomes a part of the record. The following is an approved form of specification:

To all whom it may concern:

Be it known that I, ——, a citizen of the United States, residing at ——, in the county of ——, and State of —— (or subject of, etc.), have invented new and useful improvements in ——. The object of my invention is (here state object generally.)

In the drawings:

Fig. 1 is a (plan, section or elevation, as the case may be) **of the improved ——.**

Fig. 2, etc.

The reference letter A indicates, etc. (giving full description of all parts).

What I claim as new is:

(Here summarize under separate claims the parts supposed to be new.)

In testimony whereof I have signed my name to this specification in the presence of two witnesses.

Witnesses:

TESTIMONY. Testimony in all patent cases is taken and transmitted under rigid rules framed in accordance with Sec. 4905 of Revised Statutes. See NOTICE, INTERFERENCE, etc.

UNITED STATES COURTS. Have exclusive jurisdiction in patent cases; but contracts under patents may fall under local jurisdiction, as other contracts. Courts are jealous to secure the best possible testimony in patent cases, and expert evidence may be used.

USE. An inventor may, in law, make practical and experimental use of his invention without jeopardy to his right to a patent; but the use of a completed invention in public must be followed by application for patent within two years if inventor would preserve his rights. Foreign use of a device does not bar grant of a patent to original inventor. When prior use is set up as a defence, the defendant must give in his answer the names and residences of those having knowledge of such use.

WITNESSES. In interference cases witnesses may be summoned by any Commissioner of a United States Court, but will not be required to travel over forty miles. Witnesses failing to respond to a subpœna are in contempt of court.

LAWS, RULES AND PRACTICE RELATING TO TRADE-MARKS.

A trade-mark is any symbol, mark, name or other characteristic or arbitrary indication secured to the user by legal registration adopted and used, as by a manufacturer or merchant to designate the goods he manufactures or sells, and to distinguish them from the goods of a competitor.

The statutes relating to trade-maks are brief, and have changed but little since the trade-mark act of 1881. They provide, in substance, that owners of trade-marks used in commerce with foreign nations or Indian tribes, provided such owner be domiciled in the United States, or located in any foreign country or tribes, which, by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade-marks by complying with the following requirements:

First. Must record in Patent Office a statement of name, domicile, location and citizenship of party applying; class of merchandise, and description of goods of the class to which the trade-mark has been appropriated; description of the trade-mark, with fac-simile thereof, and statement of mode in which same is applied and fixed to goods, also length of time during which the trade-mark has been used.

Second. Must pay into Treasury of the United States $25, and comply with Patent Office regulations.

Sec. 2. Application prescribed must be accompanied by written declaration verified by person, member of firm, or officer of corporation applying, to the effect that such party has at the time a right to the use of the trade-mark sought to be registered, either in identical form or such close resemblance as not to deceive; that such trade-mark is used in commerce with foreign nations or Indian tribes, and that the description and fac-simile presented for registry truly represent the trade-mark sought to be registered.

Sec. 3. Time of receipt of application will be noted and recorded. No trade-mark will be registered unless same appears to be lawfully used by applicant in foreign commerce or with Indian tribes, as above, or is within the provision of a treaty, convention or declaration with foreign power; nor which is merely the name of the applicant; nor which is identical with a registered or known trade-mark owned by another, and appropriate to the same class of merchandise, or so similar as to lead to confusion or mistake, or to deceive purchasers. Application decides presumptive lawfulness of claim to the alleged trade-mark; and in dispute between applicant and previous registrant, or between registrants, he shall follow, so far as same is applicable, the practice of United States Courts of Equity in analogous cases.

Sec. 4. Certificate of registry of trade-mark shall issue in name of the United States, under seal of the Department of Interior, and signature of the Commissioner of Patents. A record thereof and printed copies of specifications to be kept in books for that purpose. Copies of trade-marks, and of statements filed therewith, and signed and sealed certificates

of registry to be evidence in any suit respecting such trade-marks.

Sec. 5. Certificate of registry remains in force for thirty years from date, except when the trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country, under this act, at the time it ceased to be exclusive property elsewhere. It may be renewed for a further thirty years on application made within six months of expiration of term.

Sec. 6. Applicants for registration are credited with any fee, or part thereof, before paid with intent to procure protection for same trade-mark.

Sec. 7. Registration of trade-mark is *prima facie* evidence of ownership. Any person who reproduces, counterfeits, copies, or colorably imitates a registered trade-mark, or fixes same to merchandise similar to that described in the registration, shall be liable to action in damages for wrongful use at suit of the owner, and he shall have remedy in equity by injunction to restrain such wrongful use in any court having jurisdiction over the guilty party. Courts of United States have original and appellate jurisdiction in such cases without regard to amount in controversy.

Sec. 8. No action or suit can be had when the trade-mark is used in unlawful business, or upon an injurious article, or has been used with design to deceive the public, or under certificate of registry fraudulently obtained.

Sec. 9. Any person procuring registry of trade mark, or of himself as owner, or entry respecting trade-mark, by false or fraudulent representation, orally or in writing, or by fraudulent means, is liable to pay any damages sustained in consequence thereof to the injured party, to be recovered in an action on the case.

Sec. 10. Nothing in the act shall prevent, lessen, impeach or avoid any remedy at law or in equity which a party aggrieved might have had for wrongful use of any trade-mark.

Sec. 11. Nothing in the act shall affect unfavorably a claim to trade-mark after the term of registration shall have expired; nor give cognizance to any United States Court in action for suit between citizens of the same State, unless the trade-mark in controversy is on goods intended to be exported to a foreign country or in lawful commercial intercourse with an Indian tribe.

Sec. 12. Commissioner of Patents is authorized to make rules, regulations and forms for transfer of right to use trade-marks and for recording such transfers.

Sec. 13. Citizens and residents wishing the protection of trade-marks in foreign countries, the laws of which require registration here, as a condition precedent to getting such protection there, may register their trade-marks for that purpose, as is above allowed to foreigners, and have certificates therefor from the Patent Office.

Sec. 11, of Act of July 24, 1897, prohibits the importation of goods which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer.

Conventions for reciprocal registration of trade-marks were, by the beginning of 1901, entered into between the United States and Austria-Hungary, Belgium, Brazil, Denmark, France, Germany, Great Britain, Italy, Japan, Netherlands, Russia, Servia, Spain and Switzerland.

In obedience to the statutes the following rules governing the registration of trade-marks prevail in the Patent Office:

CORRESPONDENCE. Business with office to be conducted in writing. Except by consent of parties, action of office is based on written record. In case of disagreement or doubt, no attention paid to oral promises, stipulations or understandings. Applicants and attorneys to conduct business with decorum. Papers violating this requirement will be returned, after submission to commissioner, and by his order. All letters must be addressed to "Commissioner of Patents." Postal orders, checks or drafts should be to his order. Separate letters required for each distinct inquiry or application. Separate letters for separate complaints. Letters relating to applications must name applicant and date of filing; and to registered trade-marks must name registrant, number and date of certificate, and class of merchandise. Personal attendance of applicants at Patent Office not necessary. All business can be conducted by correspondence. Correspondence will be with attorneys who have filed their powers of attorney. Double correspondence with applicant and attorney forbidden. Copies of rules, with marked paragraphs, will be furnished as replies to inquiries for information the office is not otherwise authorized to give out. Express, freight, postage and other charges on matter sent to Patent Office must be prepaid.

ATTORNEYS. Applicant may prosecute own case, but advised to employ competent attorney. Office cannot aid in selection of attorney. Attorney must file power and be registered as qualified. General power of attorney not recognized. Written authorization must be filed with each application. All members of a firm or partnership must sign power of attorney. Revenue stamp (25 cents) must be affixed to each power of attorney. Attorney may select associate on written authority of principal. Power of attorney may be revoked on application to the Commissioner. He will be notified of revocation. On revocation, correspondence will be resumed with the applicant. For misconduct Commissioner may refuse to recognize any person or attorney, subject to approval of Secretary of Interior.

WHO MAY REGISTER TRADE-MARK.—

Trade-mark may be registered by any person, firm or corporation in the United States, or in any foreign country which, by treaty, convention or law affords similar privileges to citizens of the United States, and who is entitled to the exclusive use of any trade-mark and uses the same in commerce with foreign nations or Indian tribes; also, by any citizen or resident of this country wishing the protection of his trade-mark in any foreign country the laws of which require registration in the United States as a condition precedent, and who pays the legal fees, and conforms to legal requisites. Owners of trade-marks issued prior to July 8, 1870, may register for same goods without fee; but application pending before that date must be prosecuted under the rules subsequent to that date. No trade-mark will be registered unless it appears that the same is used by applicant in commerce between the United States and some foreign nation or Indian tribe, or is within the provisions of a treaty, convention or declaration with a foreign power, or which is merely the name of an applicant, or which is identical with a like trade-mark owned and used by another, or which is so nearly identical with another as to lead to confusion or to deceive purchasers.

APPLICATION. Application for trade-mark must be made to Commissioner of Patents and be signed by the owner. Its requisites are: (*a.*) A brief letter requesting registration, signed by applicant, and running as follows:

To the Commissioner of Patents:
The undersigned presents herewith a fac-simile of his lawful trade-mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided.
Dated——, 19—, A. B.

(*b.*) A statement or specification which, as in patents, must discriminate between essential and non-essential features. If applicant be a corporation, the laws of what State or nation under which incorporated must be set forth.

(*c.*) A declaration or oath complying with the foregoing statutes.

(*d.*) A fac-simile of drawing or mark.

(*e.*) A fee of $25.

All must be in the English language, and written only on one side of the paper. Pending applications are preserved in secrecy. No information given out without consent of applicant.

OATH OR DECLARATION. When in the United States, may be before any one authorized to take oaths; in foreign country, before any minister, consul, charge d'affairs, notary. In all cases must be attested by official seal; or, if no seal, official character must be attested by a court of record or other officer with seal. Declaration cannot be amended. When faulty a new one must be filed.

DRAWING OR FAC-SIMILE. When drawing does not constitute a satisfactory fac-simile of the trade-mark, two copies of trade-mark as actually used must be deposited in addition to required drawing. Drawing must be upon white paper, as thick as three-sheet Bristol board; surface calendered and smooth; India-ink alone to be used to secure black and solid lines; size to be 10x15 inches; marginal line one inch from edges, leaving "sight" exactly 8x13 inches; all work and signatures to be within this margin. Drawings to be all made with pen only; every line, letter and signature to be in black, not too fine or crowded, but clear, sharp and solid; surface shading to be open. Signature of proprietor must be placed at lower right-hand corner, of witnesses at lower left-hand corner; all within marginal lines, but must not to encroach on drawing. For transmission drawings should be rolled, not folded. Office, at applicant's request, will furnish drawings at cost.

EXAMINATION. Applications for registration are first considered by trade-mark examiner. When registration is refused, applicant will be notified, and reasons for refusal given, together with information and references for aiding applicant to judge of propriety of a new application. Examinations are directed to merits, but examiner refers to all his objections.

AMENDMENTS. Statement may be amended for any reason arising in course of examination. In every amendment the exact words stricken out or inserted must be referred to and their place pointed out. Amendments must be on paper separate from papers filed, and written on one side only. Applicant must not make erasures, additions, insertions or mutilations of papers and records. Amendatory clauses must be wholly rewritten, and without erasures or interlineations. Amendments not permitted after notice of allowance of application, except on recommendation of examiner, approved by Commissioner. After completion of application, Office will not return papers, but will furnish copies.

INTERFERENCES. In case of conflicting applications, or disputes as to right to use, Office will declare interference, that parties may prove their priority of use. Proceedings will be, as near as may be, like those in patent interferences. See INTERFERENCE (*ante*).

APPEALS. Appeals, as in patent cases, lie from examiner and examiners-in-chief to Commissioner, without fee.

ISSUE, DATE AND DURATION. All requirements met, the Commissioner issues a certificate to applicant to the effect that he is entitled to the protection of his trade-mark. Attached to it are a fac-simile of the trade-mark and printed copy of his statement and declaration. Applicant must furnish revenue stamp. Weekly issue closes on Thursday, and the certificate bears date as of third Tuesday thereafter. Certificate remains in force for thirty years from date, except where trade

mark is claimed for goods not manufactured in the United States, and in which it receives protection in a foreign country for a shorter period, then the term here ends with that abroad. Term may be extended for thirty years on application within six months of its expiration.

ASSIGNMENTS. Right to use of trade-mark is assignable, and assignment may be recorded in Patent Office, if in English, if application for registration shall have been first filed, and if the assignment fully identifies by serial number the application, date of filing, or where the mark has been registered, its certificate and date thereof. No particular form of instrument required, but see ASSIGNMENT (*ante*), and at p. 97.

COPIES AND PUBLICATIONS. After registry of trade-mark, printed copies of statement and declaration, with fac-simile, can be furnished on payment of the fee. Order for copy of assignment must give book and page of record and name of proprietor, or extra charge will be made for searching. *Official Gazette* of Patent Office contains a list of all registered trade-marks, names of registrants and statement of essential features.

FEES. Application for registration . $25 00
Certificate of search 1 00
Each brief from digests 20
Copies from foreign language, for every hundred words or fraction..... 10
Translation, every hundred words or fraction thereof..... 1 00
Recording assignment, power of attorney, or other paper of more than three hundred words and less than one thousand 2 00
Over one thousand words 3 00
Assistance in examination, one hour or less 50
Each additional hour or fraction..... 50
Single printed copy of statement, etc... 05
Certified copy of same..... 25

Money paid in excess or by mistake will be refunded; but a mere change of purpose, as after filing application, will not entitle party to a return. Most of the forms prescribed in rules and practice as to trade-marks are so analogous to those relating to patents that, *mutatis mutandis*, the latter may be used. There are seventy-seven different classifications of registered trade-marks, and applicants must first ascertain to which class they belong.

PRINTS AND LABELS.

The "print and label" section of the patent, copyright and trade-mark statutes of the United States is construed as providing for the registration of any print or label without examination as to novelty. An adverse decision by the examiner of the registration of prints and labels will be reviewed by the Commissioner without fee. The word "print," as to registration, is defined as an artistic representation or intellectual production not borne by an article of manufacture or vendible commodity, but in some fashion pertaining thereto —such, for instance, as an advertisement thereof. The word "label," as to registration, is an artistic representation or intellectual production impressed or stamped directly upon the articles of manufacture, or upon a slip or piece of paper or other material, to be attached to manufactured articles, or to bottles, boxes and packages containing them, to indicate contents, name of manufacturer, place of manufacture, quality of goods, directions for use, etc. By "articles of manufacture," to which prints and labels are applicable under the statutes, is meant all vendible commodities produced by hand, machinery or art. No print or label can be registered unless it properly belongs to an article of commerce and is as above defined. Application for the registry thereof must be made to the Commissioner of Patents, and be signed by the proprietor or his agent. Certificate of such registration remains in force for twenty-eight years. It may be continued for fourteen years further on filing a second application.

Pathology. See MEDICAL LAW.

Pawn. See BAILMENTS.

Pawnbroker. See AGENCY.

Payment. See CONTRACTS.

PAYMENT is the fulfilment of a promise, or the performance of an agreement. The discharge, in money, of a sum due. The word payment is not a technical term; it has been imported into law proceedings from the exchange, and not from law treatises. When payment is pleaded as a defence, the defendant must prove the payment of money or something accepted in its stead made to the plaintiff, or some person authorized in his behalf to receive it.[a] Payment in its most general acceptation is the accomplishment of every obligation, whether it consists in giving or doing. In a more restricted sense payment is the discharge in money of a sum due.[b]

Payment must be made in coined money (or treasury notes made legal tender) if the creditor insists upon having it.[c] Copper cents are not legal tender under the United States Constitution.[d] Payment by merchant must be made in money or by bill.[e] But the creditor may waive this right, and anything which he has accepted as satisfaction for the debt will be considered as payment.

Upon a plea of payment, the defendant may prove a discharge in bank-notes. Negotiable notes of individuals, or a debt already due from the payee, delivered and accepted, or discounted as payment.[f] Bank-notes in conformity to usage and common understanding, are regarded as cash,[g] unless objected to.[h] Treasury notes are not cash.[i] Giving a check is not considered as payment; but the holder may treat it as a nullity if he derives no benefit

452; 3 Id. 1516; 9 Johns. 120; 6 Md. 37. In-Met. Mass. 356; 8 Ohio, 169; 10 Me. 475; 2 Cr. & J. 16, n.; 5 Yerg. 199; 4 Esp. 267; 3 Humph. 162; 6 Ala. (N. S.) 226. 1-3 Conn. 534.

from it, provided he has not been guilty of negligence, so as to cause injury to the drawer.[j]

Payment in forged bills is generally a nullity.[k] So also of counterfeit coin; but an agreement to sell goods and accept specific money is good, and payment of these coins is valid, even though they be counterfeit.[l] And the forged notes must be returned in a reasonable time, to throw the loss upon the debtor.[m] Payment to a bank of its own notes which are received and afterwards discovered to be forged is a good payment.[n] A forged check received as cash, and passed to the credit of a customer, is a good payment.[o] Payment in bills of an insolvent bank, where both parties were innocent, has been held no payment.[p] On the other hand, it has been held good payment.[q]

If a bill of exchange or promissory note be given to a creditor, and accepted as payment, it shall be a good payment.[r] But regularly a bill of exchange or note given to a creditor shall not be a discharge of the debt till payment of the bill, unless so accepted.[s] If a debtor gives his own promissory note, it is not payment, unless it is so expressly agreed,[t] and when so expressed it extinguishes the debt.[u] Whether there was such an agreement is a question for the jury.[v] And if payment be made in the note of a factor or agent employed to purchase goods, or intrusted with the money to be paid for them; if the note be received as payment it will be good in favor of the principal,[w] but not if received conditionally; and this is a question of fact for the jury.[x] A bill of exchange drawn on a third person, and accepted, discharges the debt as to the drawer.[y] And in an action to recover the price of goods, payment by a bill not dishonored has been held as good defence.[z] Retaining a draft on a third party an unreasonable length of time will operate as payment if loss be occasioned thereby.[a] In the sale of a chattel, if a note of a third person be accepted for the price, it is good payment.[b] Not so, however, if the note be the promise of one of the partners in payment of a partnership debt.[c]

Payment may be made through the intervention of a third party who acts as the agent of both parties; as, for example, a stakeholder. If money be deposited with him to abide the event of a legal wager, neither party can claim it until the wager is determined, and then he is bound to pay it to the winner.[d] If the wager is illegal, the depositor may reclaim the money any time before it is paid over.[e] So also with an auctioneer.[f]

A transfer of funds called by the civil law phrase a payment by delegation, is payment only when completely effected;[g] and an actual transfer of claim or credit assented to by all the parties is a good payment.[h] When money is sent by letter, even though the money is lost, it is good payment, and the debtor is discharged, if he was expressly authorized or directed by the creditor so to send it, or if such authority can be presumed from the course of trade.[i] But even if the authority be given or inferred, at least ordinary diligence must be used by the debtor to have the money safely conveyed.[j]

Payment must be of the whole sum; and even where a receipt in full has been given for a payment of part of an ascertained sum, it has been held not to be an extinction of the debt.[k] But payment of a part may be left to the jury as evidence that the whole has been paid;[l] and payment of a part at a different time,[m] or place,[n] or in any way more beneficial to the creditor than that prescribed by the contract, is good.[o] Giving a chattel, though of less value than the debt, is a discharge,[p] or rendering certain services, with the consent of the creditor,[q] or assigning certain property.[r] So if a stranger pay a part, or give his note for a part, and this is accepted, it is a good payment of the debt.[s] And where a creditor, by process of law, compels the payment of a part of his claim, this is generally a discharge of the whole.[t]

The Payment must have been Accepted Knowingly. Thus, if the money is counted out, and the payee takes a part and puts it in a bag, this is a good payment, and if any is lost it is the payee's loss.[u] Where A. paid B. £100, in the redemption of a mortgage, and B.

j-2 Parsons' Contr. 136; 2 Campb. 515; 8 T. R. 451; 2 Bos. & P. 518; 4 Ad. & El. 952; 4 Johns. 296; 1 Hall (N. Y.) 56; 30 N. H. 256; but see 14 How. 240. k-10 Wheat. 333; 2 Johns. 455; 6 Hill, 340; 7 Leigh, 617; 3 Hawks, 568; 2 Harr. & J. 368; 4 Gill. & J. 463; 4 Ill. 392; 11 Id. 137; 3 Penn. St. 330; 5 Conn. 71. l-1 T. R. 225; 14 S. & R. 51. m-7 Leigh, 617; 11 Ill. 137. n-1 Parsons' Contr. 220. o-4 Dall. 234; S. C. 1 Binn. 27; 10 Vt. 141. p-7 T. R. 64; 13 Wend. 101; 11 Vt. 576; 10 N. H. 365; 22 Me. 85. q-1 W. & S. 92; 6 Mass. 185; 12 Ala. 280; 8 Yerg. 175. The point is still unsettled, and is said to be a question of intention rather than of law. Story Prom. Notes 125,* 477,* 641. r-Comm. Dig. *Merchant* (F.); 30 N. H. 540; 27 Ala. (N. S.) 254; 16 Ill. 161; 2 Duer. 133; 14 Ark. 267; 4 Rich. 600; 34 Me. 324. s-Skinn. 410; 1 Salk. 124. t-10 Pet. 567; 6 Cranch. 253; 4 Mason, 142; 1 Wend. 424; 9 Id. 278, 279; 15 Johns. 247; 9 Id. 310; 8 Cow. 77; 1 Id. 359; 3 Wend. 66; 5 Id. 85; 8 Johns. 389; 9 Conn. 23; 8 Id. 472; 2 N. H. 525; 4 Gill & Johns. 305; 2 Id. 493; 3 Harr. & Johns. 193; 2 Vt. 290; 4 Id. 555; 1 M'Cord, 94; 1 Wash. C. C. 328, 449; 3 Serg. & R. 233; 6 T. R. 52; 7 Id. 64; 5 Id. 513; Wrightw. 32; 1 Neville & Man. 229; 6 Mass. 143; Poth. Ob. *pt.* 3, *c.* 8, art. 4; 1 Domat. *bk.* 4, *tit.* 3, § 1, p. 515; Inst. Just. *lib.* 3, § 3; Thompson Bills, 192, 194. u-5 Wend. 85. v-9 Johns. 310. w-1 B. & Ald. 14; 7 B. & C. 17. x-6 Cow. 181; 9 Johns. 310; 10 Wend. 271. y-10 Mod. 37. z-4 Esp. Cas. 46; 3 Campb. 411; 1 M. & M. 28; 4 Bingh. 454; 5 M. & S. 62. a-3 Wils. 553; 2 Dall. 100; 13 S. & R. 318; 2 Wash. C. C. 191. b-3 Cow. 272; 1 Dev. & B. 291. c-4 Dev. 91, 460. d-4 Campb. 37. e-4 Taunt. 474; 5 T. R. 405; 8 B. & C. 221; 29 Eng. L. & Eq. 424; 31 Id. 452; see 2 Parsons' Contr. 138. f-2 M. & W. 244; 1 Mann. & R. 614. g-2 Parsons' Contr. 137. h-4 Bingh. 112; 2 B. & Ald. 30; 5 Id. 228; 7 N. H. 345, 397; 17 Mass. 400. This seems to be very similar to payment by drawing and acceptance of a bill of exchange. i-Peake 67; 11 M. & W. 233. j-See 3 Mass. 249; Ry. & M. 149; 1 Exch. 477; Peake 186. k-5 Co. 117; 2 B. & C. 477; 5 East. 230; 3 N. H. 518; 11 Vt. 60; 26 Me. 88; 37 Id. 361; 10 Ad. & El. 121; 4 Gill & J. 305; 9 Johns. 333; 17 Id. 169; 11 How. 100. l-5 Cranch, 11; 3 N. H. 518. m-2 Met. (Mass.) 283. n-3 Hawks. 580. o-15 M. & W. 23. p-Dyer. 75, *a*; 2 Littell, 49; 3 Barb. Ch. 621. q-5 Day, 359. r-5 Johns. 386; 13 Mass. 424. s-11 East. 390; 4 B. & C. 500; 13 Ala. (N. S.) 353; 14 Wend. 116; 2 Met. (Mass.) 283. t-11 S. & R. 78; 16 Johns. 121; 2 Seld. 179; 6 Cush. 28; 2 Parsons' Contr. 232. u-5 Mod. 398.

bade C. put it in his closet, and C. did so, and A. demanded his papers, which B. refused to deliver; and A. demanded back his money, and B. directed C. to give it to him, and C. did, it was held to be a payment of the mortgage.[v] Generally, there can be but little doubt as to acceptance and non-acceptance, and the question is one of fact for the jury to determine under the circumstances of each particular case. Of course, where notes or bank-bills are given in payment of the debt, the evidence that they were so given is to be the same as evidence of any other fact relating to payment.

PAYMENT INTO COURT is depositing a sum of money with the proper officer of the court by the defendant in a suit, for the benefit of the plaintiff and in answer to his claim.

In the absence of statutory provisions it may be made under a rule of court granted for that purpose, in which case notice of an intention to apply must, in general, have been previously given.

The effect is to divest the plaintiff of all right to withdraw the money[w] except by leave of court,[x] and to admit conclusively every fact which the plaintiff would be obliged to prove in order to recover the money;[y] as, that the amount tendered is due,[z] for the cause laid in the complaint,[a] to the plaintiff in the character in which he sues,[b] the jurisdiction of the court;[c] that the contract was made[d] and broken as alleged,[e] but only in reference to the amount paid in,[f] and nothing beyond such facts.[g]

Generally, it relieves the defendant from the payment of costs until judgment is recovered for a sum larger than that paid in.[h]

THE EFFECT of payment is: 1. To discharge the obligation; and it may happen that one payment will discharge several obligations by means of a transfer of the evidences of obligation.[i] 2. Payment does not prevent a recovery when made under a mistake of fact. The general rule is, that mistake or ignorance of law furnishes no ground to reclaim money paid voluntarily under a claim of right.[j] But acts done under a mistake or ignorance of an essential fact are voidable and relievable. Laws of a foreign country are matters of fact,[k] and the several United States are foreign to each other in this respect. In Kentucky and Connecticut there is a power of recovery equally, in cases of mistake of law and of fact.[l] In Ohio it may be remedied in equity.[m] In New York a distinction is taken between ignorance of law and mistake of law, giving relief in the latter case.[n] In England money paid under a mistake of law cannot be recovered back.[o] 3. Part payment of a note will have the effect of waiver of notice as to the whole sum. 4. Payment of a part of the debt will bar the application of the statute of limitations as to the residue,[p] even though made in goods and chattels.[q] But it must be shown conclusively that the payment was made as a part of the larger debt.[r]

EVIDENCE that anything has been done and accepted as payment is evidence of payment.

A receipt is *prima facie* evidence of payment; but a receipt acknowledging the reception of ten dollars and acquitting and releasing from all obligations, would be a receipt for ten dollars only.[s] And a receipt is only *prima facie* evidence of payment.[t] And it may be shown that the particular sum stated in the receipt was not paid, and also that no payment has been made.[u]

Payment may be presumed by the jury in the absence of direct evidence: thus, possession by the debtor of a security after the day of payment, which security is usually given upon payment of the debt, is *prima facie* evidence of payment by the debtor.[v] If the acceptor produce a bill of exchange, such possession is *prima facie* evidence of payment.[w]

Payment is also conclusively presumed from lapse of time. After twenty years' non-demand, unexplained, the court will presume a payment without the aid of a jury.[x] Facts which destroy the reason of this rule may rebut the presumption.[y] And a jury may infer a payment from a shorter lapse of time, especially if there be attendant circumstances favoring the presumption.[z]

A presumption may arise from the course of dealing between the parties on the regular course of trade; thus, after two years it was presumed that a workman had been paid, as it was shown that the employer paid his workmen every Saturday night, and this man had been seen waiting among others.[a]

A receipt for the last year's or quarter's rent is *prima facie* evidence of the payment of all the rents previously due.[b] If the last instalment on a bond is paid in due form, it is evidence that the others have been paid; if paid in a different form, that the parties are acting under a new agreement.

v-Viner Abr. *Payment* (E). w-1 Wend. 191; 1 E. D. Smith, 398; 3 Watts. 248. x-1 Coxe, 298. y-1 B. & C. 3; 6 M. & W. 9; 2 Scott (N. S.) 56; 9 Dowl. 21; 1 Dougl. (Mich.) 330; 24 Vt. 140; and see 7 Cush. 556. z-1 Campb. 558; 2 Id. 341; 5 Mass. 365; 2 Wend. 431; 7 Johns. 315. a-5 Bingh. 28, 32; 2 Bos. & P. 550; 5 Pick. 285; 6 Id. 340. b-2 Campb. 441. c-5 Esp. 17. d-3 Campb. 52; 3 Taunt. 95. e-1 B. & C. 3. f-7 Johns. 315; 3 Eng. L. & Eq. 548. g-1 Greenl. Ev. § 206; and see 2 Man. & G. 208, 233; 5 C. & P. 247. h-1 Wash. 10; 3 Cow. 36; 3 Wend. 326; 2 Miles, 65; 2 Rich. 64; 24 Vt. 140. As to the capacity in which the officer receiving the money acts, see 1 Coxe, 298; 2 Bailey, 28; 17 Ala. 293. i-Poth. Ob. 554 *n*. j-2 Kent Comm. 491; 2 Greenl. Ev. § 123. k-Story Const. §§ 407, 411; 9 Pick. 112. l-19 Conn. 548; 3 B. Mon. 510; 4 Id. 290. m-11 Ohio, 223. n-18 Wend. 422; 2 Barb. 508. o-4 Ad. & El. 858. p-22 N. H. 219; 6 Md. 201; 8 Mass. 134; 28 Eng. L. & Eq. 454. q-2 Cr. M. & R. 337; 4 Ad. & El. 71; 4 Scott (N. R.) 119. r-1 Cr. M. & R. 252; 2 Bingh. (N. C.) 241; 6 M. & W. 824; 2 Miss. 663; 24 Id. 92; 9 Ark. 455; 11 Barb. 554; 24 Vt. 216; see also 2 Parsons' Contr. 353–359. s-2 Ves. Ch. 10; 5 B. & Ald. 606; 18 Pick. 325; 1 Edw. Ch. 341. t-2 Taunt. 241; 7 Cow. 334; 4 Ohio, 346. For cases explaining this rule see also 2 Mas. C. C. 141; 11 Mass. 27; 9 Johns. 310; 4 Harr. & M'H. 219; 3 Caines, 14. u-2 T. & R. 366; 26 N. H. 12; 9 Conn. 401; 2 N. J. 59; 10 Humph. 168; 13 Penn. St. 46. v-1 Stark, 374; 9 S. & R. 385. w-7 S. & R. 116; 4 Johns. 296; 2 Pick. 204. x-1 Campb. 27; 14 S. & R. 15; 6 Cow. 401; 2 Cranch. 180. y-1 Pick. 60; 2 La. 481. z-7 S. & R. 410. As to presumptions against the existence of the debt, see 5 Barb. 63. a-1 Esp. 296; see also 3 Campb. 10. b-2 Pick. 204.

Where receipts have been regularly given for the same amount, but for a sum that was smaller than was due by the agreement, it was held evidence of full payment.[c]

WHEN TO BE MADE. Payment must be made at the exact time agreed upon. Where payment is to be made at a future day, of course nothing can be demanded till the time of payment, and, if there be a condition precedent to the liability, not until the condition has been performed. And where goods had been sold "at six or nine months' credit" the debtor was allowed the option.[d] Where no time of payment is specified, the money is to be paid immediately on demand.[e] When payment is to be made at a certain time, it may be made at a different time if the plaintiff will accept.[f] The debtor cannot compel the creditor to receive payment before the debt is due.

WHERE TO BE MADE. Payment must be made at the place agreed upon, unless both the parties consent to a change. If no place of payment is mentioned, the payer must seek out the payee.[g] So, too, the creditor is entitled to call for payment of the whole of his claim at one time, unless the parties have stipulated for payment in parcels. Questions of payment by executors, administrators, and guardians are regulated by statute. As a general rule debts are to be paid first, then specific legacies. The personal property is made liable for the testator's debts, and after that is exhausted, the real estate.

WHO MAY MAKE. Payment may be made by the primary debtor, and by other persons from whom the creditor has a right to demand it. An agent may make payment for his principal. An attorney may discharge the debt against his client.[h] One of any number of joint and several obligors, or one of several joint obligors, may discharge the debt.[i] Payment may be made by a third person, a stranger to the contract.

It may be stated generally, that any act done by any person in discharge of the debt, if accepted by the creditor, will operate as payment.

TO WHOM TO BE MADE. Payment is to be made to the creditor. But it may be made to an authorized agent. And if made in the ordinary course of business, without notice requiring the payment to be made to himself, it is binding upon the principal.[j] Payment to a third person by appointment of the principal, will be substantially payment to the principal.[k] Payment to the agent who made the contract with the payee (without prohibition) is payment to the principal.[l] But payment may be made to the principal after an authority given to an agent to receive.[m] Payment to a broker or factor who sells for a principal not named is good.[n] Payment to an agent when he is known to be such will be good if made upon the terms authorized,[o] if there be no notice not to pay him;[p] and even after notice, if the factor had a lien on the money when paid.[q] If the broker sell goods as his own, payment is good though the mode varies from that agreed on.[r]

Payment to an attorney is as effectual as payment to the principal himself.[s] The attorney of record may give a receipt and discharge the judgment[t] if made within one year.[u] Not so of an agent appointed by the attorney to collect the debt.[v] Payment by an officer to an attorney whose power had been revoked before he received the execution did not discharge the officer.[w] Payment to one of two copartners discharges the debt,[x] even after dissolution.[y] So payment to one of two joint creditors is good, though they are not partners.[z] But payment by a banker to one of several joint depositors, without the assent of the others, was held a void payment.[a]

Payment to the wife of the creditor is not a discharge of the debt unless she is expressly or impliedly his agent.[b] An auctioneer employed to sell real estate has no authority to receive the purchase money by virtue of that appointment merely.[c] Usually the terms of the sale authorize him to receive the purchase money.[d] Payment was made to a person sitting in the creditor's counting-room, and apparently doing his business, and it was held good,[e] but payment to an apprentice so situated was held not to be good.[f] Generally, payment to the agent must be made in money to bind the principal.[g] Power to receive money does not authorize an agent to commute[h] nor submit to arbitration.[i]

An agent authorized to receive money cannot bind his principal by receiving goods,[j] or a note:[k] but a subsequent ratification would remedy any such departure from authority; and it is said that slight acts of acquiescence will be deemed ratification. Payment to one of several joint creditors of his part, will not alter the nature of the debt so as to enable the others to sue separately.[l] Payment to one of several executors is sufficient.[m] Payment to a trustee generally concludes the *cestui que trust* in law.[n]

c-4 Martin, 698. d-5 Taunt. 338. e-Viner Abr. *Payment* (H.); 1 Pet. 455; 4 Rand. 346. f-Viner Abr. *Payment* (H). g-J. B. Moore Priv. Connc. 274; Shep. Touchst. 378; 2 Brod. & B. 165; 2 M. & S. 120; 2 M. & W. 223; 20 Eng. L. & Eq. 498. h-5 Bingh. 506. i-Viner Abr. *Payment* (B). j-11 East. 36; 6 Mann. & G. 166; Cowp. 257; 4 B. & Ald. 395; 3 Stark. Cas. 16; 1 Campb. 477. k-1 Phill. Ev. 200. l-1 Campb. 339; 16 Johns. 86; 2 Gall. C. C. 565; 10 B. & C. 755. m-6 M. & S. 156. n-11 East. 36. o-11 East. 36. p-3 B. & P. 485; 15 East. 65. q-5 B. & Ald. 27. r-11 East. 36; 5 M. & S. 147; 2 C. & P. 49. s-1 W. Bl. 8; 1 Wash. C. C. 9; 1 Call, 147. t-1 Call, 147; 1 Coxe, 214; 1 Pick. 347; 10 Johns. 220; 2 Bibb. 382. u-1 Me. 257. v-2 Dougl. 623. w-13 Mass. 465; 3 Yeates, 7; see also 1 Des. Ch. 461. x-8 Wend. 542; 15 Ves. Ch. 198; 2 Blackf. 371; 1 Ill. 107; 6 M. & S. 156; 1 Wash. C. C. 77. y-4 C. & P. 108; and see 7 N. H. 568. z-4 J. J. Marsh, 367. a-1 M. & R. 145; Ry. & M. 364; 4 Eng. L. & Eq. 342. b-2 Scott (N. R.) 372. 1 Addis. 316; 2 Freem. 178; 22 Me. 335. c-1 Mood. & R. 326. d-5 M. & W. 645. e-1 M. & W. 200; 5 Taunt. 307. f-2 Cr. & M. 304. g-11 Mod. 71; 10 B. & C. 760. h-1 Wash. C. C. 454; 1 Pick. 347. i-5 How. 891; see also Story Ag. § 99. j-4 C. & P. 501. k-1 Salk. 442; 2 Ld. Raym. 928; 5 M. & W. 645. l-1 Tyrwh. 488. m-3 Atk. Ch. 695. n-5 B. & Ad. 96.

Subsequent ratification of the agent's acts is equivalent to precedent authority to receive money.[z]

Peace—Surety to Keep, etc. See CRIMINAL LAW.
Penalty. See BONDS OR OBLIGATIONS; CONTRACTS, ETC.
Performance. See CONTRACTS.
Peril, Perils of the Sea. See INSURANCE.
Perjury. See CRIMINAL LAW.
Perpetuating Testimony. See EVIDENCE.

PERSONS. See various sub-heads, ante and post.

A PERSON is a man, woman, or child, considered as opposed to things, or distinct from them. A human being. A natural being. A man considered according to the position (private or official) which he holds in law, with all the rights to which the place he holds entitles him, and the duties which it imposes.[a] A corporation which is an artificial person.[b] The term "person," as is seen, is more extensive than man—including artificial beings, as corporations, as well as natural beings. But when the word "persons" is spoken of in legislative acts, natural persons will be intended, unless something appear in the context to show that it applies to artificial persons.[c] Natural persons are divided into males, or men, and females, or women. Men are capable of all kinds of engagements and functions, while women are restricted by the law, both civil and political. Persons are also divided into citizens and aliens, when viewed with regard to their political rights. When they are considered in relation to their civil rights, they are living or civilly dead. Persons are again divided into legitimate and illegitimate, when considered as to their rights by birth. When viewed in their domestic relations they are divided into parents and children; husbands and wives; guardians and wards; and masters and servants.

Personal Chattels. See PERSONAL PROPERTY.
Personal Contract. See CONTRACTS.
Personal Covenant. See CONTRACTS.

PERSONAL PROPERTY. See REAL PROPERTY.

PERSONAL PROPERTY is the right or interest which a man has in things personal. The right or interest less than a freehold which a man has in realty, or any right or interest which he has in things movable. Every tangible thing which is the subject of ownership not forming a part or parcel of real property. Personal property is to be distinguished from things personal. There may be, for example, a personal estate in realty, as chattels real; but the only property which a man can have in things personal must be a personal property. The essential idea of personal property is that of property in a thing movable or separable from the realty, or of perishability or possibility of brief duration of interest as compared with the owner's life in a thing real, without any action on the part of the real owner.[d]

A crop growing in the ground is personal property so far as not to be considered an interest in land under the statute of frauds.[e] It is a general principle in this country, that stock held in corporations is to be considered as personal property.[f] Title to personal property is acquired: 1. By original acquisition by occupancy; as, by capture in war, by finding a lost thing. 2. By original acquisition, by accession. 3. By original acquisition, by intellectual labor; as, copyrights and patents for inventions. 4. By transfer, which is by act of law, by forfeiture, by judgment, by insolvency, by intestacy. 5. By transfer by act of the party, by gift, by sale.[g]

Persuasion. See ACTS.
Petit Larceny. See CRIMINAL LAW.
Petit Treason. See CRIMINAL LAW.
Physician. See MEDICAL LAW.
Piracy. See COPYRIGHT; CRIMINAL LAW.
Place of Business. See BILLS, BONDS, AND NOTES.

PLEADINGS. See COPYRIGHTS; PATENTS, ETC.

PLEADINGS are the written statements of the parties, to an action, suit, or other judicial proceeding, by which the matter in controversy is brought to an issue, *i. e.*, a single point, affirmed on one side and denied on the other. The written statements of the plaintiff's cause of action, and of the defendant's ground of defence.

IN CIVIL PRACTICE, pleadings are statements in a logical and legal form of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; it is the formal mode of alleging that on the record (this is in writing, whereby it is made a part of the record by filing, entering, or recording by the proper officer of the court) which constitutes the support or the defence of the party in evidence.[h] The object of pleading is to secure a clear and distinct statement of the claims of each party, so that the controverted points may be exactly known, examined, and decided, and the appropriate remedy or punishment administered.[i] Good pleading consists in good matter pleaded in good form, in apt time, and due order.[j] Good matter includes all facts and circumstances necessary to constitute the cause of complaint, or ground of defence, and no more. It does not include argument or matters of law. But some matters of fact need not be stated, though it be necessary to establish them as facts. Such are, among others:

1. Facts of which the courts take notice by virtue of their being courts: as, the time of accession of the head or ruler of the government;[k] time and place of convening the legislature or of

z-Poth. Ob. n. 528. a-See 1 Bouv. Inst. n. 137. For the derivation of the word person as it is understood in law, see 1 Toullier, n. 168; 1 Bouv. Inst. n. 1890, note. b-1 Sharsw. Bl. Comm. 123; 4 Bingh. 669; Woodeson Lect. 116; 1 Mod. 164. c-2 Ill. 178. d-See 2 Sharsw. Bl. Comm. 14, and notes; 384, and notes. e-11 East. 362; 12 Me. 337; 5 B. & C. 829; 9 Id. 561; 10 Ad. & El. 753. f-Walker Am. L. 211; 4 Dane Abr. 670; Sullivan Land Titles, 71; Hilliard Real Prop. 18. g-See generally 16 Vin. Abr. 335; 8 Com. Dig. 474, 562; 1 Belt. Supp. Ves. Ch. 49, 121, 160, 198, 255, 368, 369, 399, 412, 478; 2 Id. 10, 40, 129, 290, 291, 341; 1 Vern. Ch. 3, 170, 412; 2 Salk. 449; 2 Ves. Ch. 59, 176, 261, 271, 336, 683; 7 Id. 453. h-3 T. R. 159; Dougl. 278; Com. Dig. Pl. (A); Bac. Abr. Pl. & Pl.; Cowp. 682. i-See Cowp. 682; Dougl. 159. j-Co. Litt. 303. k-2 Ld. Raym. 794.

Congress;[e] public statutes, and the facts they ascertain,[f] including ecclesiastical, civil, and marine laws;[g] but not private[h] or foreign laws;[i] common law rights, duties, and general customs;[j] the days of the week; public holidays, etc.;[k] political divisions;[l] the meaning of English words and terms of art in ordinary acceptation;[m] their own course of proceedings;[n] and that of courts of general jurisdiction.[o]

2. Facts which the law presumes: as, the innocence of a party; illegality of an act, etc.[p]

3. Matters which the other party should plead, as being more within his knowledge.[q]

4. Mere matters of evidence of facts.[r]

5. Unnecessary matter: as, a second breach of condition, where one is sufficient;[s] or intent to defraud, where the facts alleged constitute fraud.[t]

6. Irrelevant matter.[u] Such matter may be rejected without injury to the pleading, if wholly foreign to the cause, or repugnant;[v] but in many cases matter must be proved as stated, if stated.[w]

7. The matter stated must be true and susceptible of proof; but legal fictions when allowable may be stated as facts.[x]

The pleadings should be according to the established forms.[y] This rule is, however, one merely of caution, as many radical changes have been made in the various States in the law of pleading. Still, reference to and some regard for old forms will be found quite profitable. In general, facts should be stated logically, in their natural order, with certainty, clearly and distinctly. So that, the party who is to answer, the court and jury, who is to try the cause, may readily understand what is meant[z] with precision,[a] and with brevity.[b] The facts stated must not be insensible or repugnant,[c] nor ambiguous or doubtful in meaning,[d] nor argumentative,[e] nor by way of recital;[f] and should be stated according to their legal effect and operation.[g] As to the time of pleading, see GENERAL STATUTES.

The order of pleading different matters is of importance as affecting the defendant, who may oppose the plaintiff's suit in various ways. The order is as follows:

1. To the jurisdiction of the court.

2. To the disability, etc., of the person; 1. Of the plaintiff; 2. Of the defendant.

3. To the plaintiff's complaint, correct declaration, or petition (in other words to the plaintiff's cause of action as it appears in his first pleading).

4. To the writ (or summons, etc.) 1. To the form of the writ, first matter, apparent on the face of it. Second matter not appearing on the writ. 2. To the action of the writ.

5. To the action itself in bar.

This is the natural order of pleading, because each subsequent plea admits that there is no foundation for the former.[h] An exception exists where matter is pleaded which has arisen or come to the plaintiff's knowledge since the last continuance, or since the last stage of the suit, and where the subject-matter is one over which the court has no jurisdiction, a failure to plead such new matter cannot confer jurisdiction.[i]

Whatever may be the names given, rules made by courts, or methods prescribed by the legislature, or pursued by the parties, court, or jury, the end of pleading is still the same, namely, the production of one or more points in issue, where a single fact is affirmed by one party and denied by the other.[j] See GENERAL STATUTES, title CIVIL PRACTICE.

IN CRIMINAL PRACTICE the rules of pleading are the same as in civil practice; there is, however, less liberty of amendment of indictments and informations.

The order of the defendant's pleading is as follows:

1. To the jurisdiction.

2. In abatement.

3. Special pleas in bar, as, former acquittal, former conviction, pardon, etc.

4. The general issue. See GENERAL STATUTES, title CRIMINAL PRACTICE.

IN EQUITY PRACTICE pleadings consist in formal written allegations or statements of the respective parties on the record to maintain the suit, or to defeat it, of which, when contested in matters of facts they propose to offer proofs, and in matters of law to offer arguments to the court.[k] The substantial object of pleading is the same, but the forms and rules of pleading are very different in law and in equity. See EQUITY, ante, and GENERAL STATUTES, title PRACTICE.

Pledge. See BAILMENTS.
Poison. See MEDICAL LAW.
Policy. See INSURANCE.
Polygamy. See CRIMINAL LAW, "Bigamy."
Pounds. See ANIMALS.

e-See 1 Saund. 131. f-1 T. R. 45. g-Ld. Raym. 338. h-2 Dougl. 97. i-2 Carth. 273; 4 R. I. 523. j-Ld. Raym. 1542; Co. Litt. 175; Cro. Car. 561. k-Salk. 269; 6 Mod. 81; 4 Dowl. 48; 4 Fla. 158. l-Marsh. 124; Co. 2d Inst. 557; 4 B. & Ald. 242; 6 Ill. 73. m-1 Rolle Abr. 86, 525. n-1 T. R. 118; 2 Lev. 176; 10 Pick. 470; see 16 East. 39. o-1 Saund. 73; 5 McLean C. C. 167; 10 Pick. 470; 3 B. & P. 183; 1 Greenl. Ev. §§ 4–6. p-4 M. & S. 105; 1 B. & Ald. 463; 2 Wils. 147; 6 Johns. 105; 16 East. 343; 6 Conn. 130. q-1 Sharsw. Bl. Comm. 293, n.; 8 T. R. 167; 2 H. Bl. 530; 2 Johns. 415; 9 Cal. 286; 1 Sandf. 89; 3 Cow. 96. r-9 Co. 96; Willis, 130; 25 Barb. 457; 7 Texas, 603; 6 Blackf. 173; 1 N.Chipm. 293. s-2 Johns. 443; 1 Saund. 58, n. 1; 33 Miss. 474; 4 Ind. 409; 23 N. H. 415; 12 Barb. 27; 2 Green. 577. t-16 Texas, 335; see 2 M. & S. 182. u-1 Chitty Pl. 209. v-7 Johns. 462; 3 Day, 472; 2 Mass. 283; 8 S. & R. 124; 11 Ala. 145; 16 Texas, 656; 7 Cal. 348; 23 Conn. 134; 1 Duer, 242; 6 Ark. 468; 1 Ala. N. S. 320. w-7 Johns. 321; 3 Day, 283; Phill. Ev. 160. x-2 Barr. 667; 4 B. & P. 140. y-Co. Litt. 303; 6 East. 561; 8 Co. 48, *b*. z-Cowp. 682; 2 B. & P. 267; Co. Litt. 303; 13 East. 307; 33 Miss. 669; 1 Hempst. 228. a-13 Johns. 437; 19 Ark. 695; 5 Duer, 689. b-36 N. H. 458; 1 Chitty Pl. 212. c-1 Salk. 324; 7 Co. 25; 25 Conn. 431; 5 Blackf. 339. d-5 M. & S. 38; Yelv. 36. e-Co. Litt. 303; 5 Blackf. 557. f-2 Bulstr. 214; Ld. Raym. 1413. g-Steph. Pl. 378–392; 16 Mass. 443; 12 Pick. 251; 3 Stew. 319; see GENERAL STATUTES. h-13 La. An. 147; 41 Me. 102; 7 Gray, 38; 5 R. I. 235; 2 Bosw. 267; 1 Grant Cas. 359; 4 Johns. 241; 3 Miss. 704; 20 Id. 656; 1 Chitty Pl. 425; see 16 Tex. 114; 4 Iowa, 158. i-10 S. & R. 229; 17 Texas, 52. j-4 Gower, 464. k-Story Eq. Pl. § 4, n.

Power. See AUTHORITY.
Power of Attorney. See AGENCY, "Attorneys in Fact."

PRACTICE. See COPYRIGHTS; PATENTS; PLEADINGS.

PRACTICE is the form, manner, and order in which legal or equitable proceedings are instituted, conducted, and concluded in the various courts, whether civil, criminal, or equitable, according to the rules prescribed by the law and in such courts. It includes jurisdiction, limitation, parties, and pleading. A settled, uniform, and long-continued practice, without objection, is evidence of what the law is; and such practice is based on principles which are founded in justice and convenience.[k]

Precedents. See AUTHORITY.
Pregnancy. See MEDICAL LAW.
Premeditation. See CRIMINAL LAW, "Intention," etc.
Premises. See CONVEYANCES, "Deeds, Leases, Mortgages," etc.
Premium. See INSURANCE.
Presentment. See BILLS, BONDS, AND NOTES.
Presumptions. See EVIDENCE.
Price. See CONTRACTS.
Prima Facie. See EVIDENCE.
Principals. See AGENCY.
Promissory Notes. See BILLS, BONDS, AND NOTES.
Property. See PERSONAL PROPERTY; REAL PROPERTY; ETC., ETC.
Proposals. See CONTRACTS.
Protest. See BILLS, BONDS, AND NOTES.
Proviso. See BONDS OR OBLIGATIONS, CONVEYANCES, ETC.
Publisher. See COPYRIGHT.
Quack. See MEDICAL LAW, "Malpractice."
Question. See EVIDENCE.
Quickening. See MEDICAL LAW.
Quiet Enjoyment. See CONVEYANCES, "Deeds."
Quit Claim. See CONVEYANCES, "Deeds."
Quotations. See AUTHORITIES.
Railway. See BAILMENTS.
Rape. See CRIMINAL LAW.
Ratification. See ACTS; AGENCY.

REAL PROPERTY. See BONDS, ETC.; CONVEYANCES, ETC.; PERSONAL PROPERTY.

REAL PROPERTY includes land and whatever is erected or growing thereon, and whatever is above or beneath the surface thereof,[a] including houses standing and trees growing upon the land but not chattels like stock upon a farm, or furniture in a house. Houses and even growing trees may acquire the character of personal property; and various chattels, originally movable, may acquire the character of real property. Thus a dwelling-house erected upon the land of another with his assent, is the personal property of the builder.[b] So, if a nurseryman plant trees for the purpose of growing them for market, upon land hired by him, they would be personal property.[c] So, crops while growing, planted by the owner of the land, are a part of such real property; but if sold by him when fit for harvesting they become personal,[d] and a sale of such crops, though not fit for harvest, as personal, is good.[e] So, trees growing, though not in a nursery, may be changed into the category of personal property, if sold to be cut without any right to have them stand to occupy the land.[f] But if the owner of land in fee sold the trees growing thereon to another and his heirs, to be cut at his pleasure, the property in the trees would be real.[g] The same rule would apply to property in fee in a dwelling-house, though the owner only has the right to have it stand upon the land of another. And one may own a chamber in a house as his separate real estate.[h] So, a large class of articles originally wholly movable, and which may be at the time even disconnected with the land, may be regarded as real property, from having been fitted or actually applied to use in connection with real estate, such as keys in locks fastened upon doors; mill-stones and irons, though taken out of the mill for repairing; window-blinds, though temporarily removed from the house; and fragments of a dwelling-house destroyed by a tempest;[i] and a conveyance of a "saw-mill" with the land, passed iron bars and chains then in it, which had been fitted for and used in operating it.[j] See various subjects, below.

ABANDONED LAND. See DERELICT, ETC., below.

ADVERSE ENJOYMENT (or possession or exercise of an easement or privilege under a claim of right against the owner of the land out of which the easement is derived)[k] if open[l] and continued uninterruptedly[m] for the term of twenty years, raises a conclusive presumption of a grant, provided that there was, during the time, some one in existence, in possession, and occupation, who was not under disability to resist the use.[n]

ADVERSE POSSESSION, or the enjoyment of land or such estate as may be conveyed, etc., under such circumstances as to indicate that such enjoyment has been commenced and continued under an assertion or color of right on the part of the possessor.[o] When actual[p] and has been adverse for twenty years, of which a jury are to judge from the circumstances, the law raises the presumption of a grant.[q] But this presumption arises only when the use or occupation would otherwise have been unlawful.[r]

Possession is not adverse: 1. When both parties claim under the same title.[s] 2. When the possession of the one party is consistent with the title of the other.[t] 3. When, in contemplation of law, the claimant has never been out of possession.[u] 4. When the occupier has acknowledged the claimants' titles.[v]

k-2 Russ. 19, 570; 2 Jac. 232; 5 T. R. 380; 1 Younge & J. 167, 168; 2 Cr. & M. 55; Ram. Judg't Ch. 7; see 8 S. Coll. (N. C.) 599, 600. a-2 Bl. Comm. 17–19; 1 Am. L. Mag. 271; Co. Litt. 4, *a*. b-6 N. H. 555; 6 Me. 452; 8 Pick. 404. c-1 Met. (Mass.) 27; 4 Taunt. 316. d-5 B. & C. 829. e-4 M. & W. 343; 2 Dana, 206; 2 Rawle, 161. f-4 Met. (Mass.) 584; 9 B. & C. 561; 7 N. H. 523. g-4 Mass. 266. h-1 T. R. 701; 1 Met. (Mass.) 541; 10 Conn. 318. i-Wms. Ex. 613–615; 11 Co. 50; 10 Paige Ch. 162; 30 Penn. St. 185. j-6 Me. 154. k-2 Washb. R. Prop. 427. l-4 M. & W. 500; 4 Ad. & E. 369. m-9 Pick. 251; 8 Gray, 441; 17 Wend. 564; 26 Me. 440; 20 Penn. St. 331; 2 N. H. 255; 9 Id. 454; 2 Rich. 136; 1 Ad. & E. 788. n-2 Washb. R. Prop. 48. o-3 East. 394; 1 Pick. 466; 2 S. & R. 527; 3 Penn. St. 132; 8 Conn. 440; 2 Aik. 364; 9 Johns. 174; 18 Id. 40 355; 5 Pet. 402; 4 Bibb. 550. p-3 S. & R. 517; 7 Id. 192; 2 Wash. C. C. 478. q-Angell Water-Courses, 85, *et seq.* r-3 Me. 120; 6 Cow. 617, 677; 8 Id. 589; 4 S. & R. 456; see 2 Smith L. Cas. 307–416. s-Co. Litt. s. 396. t-8 East. 248. u-1 Ld. Raym. 329. v-See 1 B. & P. 542; 8 B. & C. 717; 2 Bouv. Inst. nn. 2193, 2194, 2351.

AIR is not a subject of property; it belongs equally to all men, being indispensable to their existence. But no man has a right to use the air over another man's land in such a manner as to be injurious to him. And to poison or materially change the air, to the annoyance of the public, is a nuisance.[v] An easement of light and air coming over the land of another cannot be acquired by prescription in the United States,[w] though the rule is otherwise in England.[x]

ALLUVION is that gradual and imperceptible increase of the earth on a shore or bank of a river, by the force of water, as the current or waves (alluvion differs from avulsion in this, the latter is sudden and perceptible). Such increase is so gradual that no one can judge how much is added at each moment of time.[y] The proprietor of the bank, increased by the alluvion, is entitled to the addition, this being regarded as the equivalent for the loss he may sustain for the breaking in or encroachment of the waters upon his land.[z] The increase is to be divided among riparian proprietors by the following rule: Measure the whole extent of their ancient line on the river, and ascertain how many feet each proprietor owned on this line; divide the newly-formed river line in equal parts, and appropriate to each proprietor as many of these parts as he owned feet on the old line, and then draw lines from the points at which the proprietors respectively bounded on the old to the points thus determined as the points of division on the newly-formed shore. In applying this rule allowance must be made for the projections and indentations on the old line.[a] When the increase is instantaneous, it belongs to the State, upon the ground that it was a part of the bed of the river of which it is proprietor.[b] Sea-weed which is thrown upon the beach, partaking of the nature of alluvion, belongs to the owner of the beach.[c] But sea-weed below low-water mark, on the bed of a navigable river, belongs to the public.[d]

APPURTENANCES. See CONVEYANCES.

AREAS are enclosed yards or openings in houses; also, open places adjoining to the house.[e]

AVULSION, or the tearing away or removal of a considerable quantity of soil from the land of one man, and its deposit upon or annexation to the land of another, suddenly and by the perceptible action of the water,[f] does not deprive the first owner of the property thus torn away or removed.[g]

BENCHES. See WASTE, below.

BETTERMENTS are improvements of a higher character than mere repairs,[h] and also denote additional value which the property acquires from some public improvement, as laying out, widening, etc., streets, etc.

BOUNDARIES are those separations, natural or artificial, which mark the confines or line of two contiguous estates,[i] and those objects placed or existing at the angles of the boundary lines Boundaries are frequently denoted by monuments fixed at the angles; in such case the connecting lines are always presumed to be straight, unless described to be otherwise.[j]

Artificial boundaries are those erected by man; the ownership in case of such boundaries must of course turn mainly upon circumstances peculiar to each case,[k] generally extending to the centre.[l] A tree standing directly on the line is the joint property of both proprietors;[m] otherwise, where it only stands so near that the roots penetrate.[n] Land bounded on a highway extends to the centre, though a private street,[o] unless the description excludes the highway.[p] See COURSES; LINES and CORNERS; MONUMENTS; below.

Natural boundaries are natural objects remaining where they were placed by nature. A river or stream is a natural boundary, and the centre of the stream is the line.[q]

The order of marshalling boundaries is as follows:

1. The highest regard is had to natural boundaries.

2. To lines actually run and corners marked at the time of the grant.

3. If the lines and courses of an adjoining tract are called for, the lines will be extended, if they are sufficiently established, and no other departure from the deed is required, preference being given to marked lines.

4. To courses and distances.[r]

Parol evidence is often admissible to identify and ascertain the locality of monuments called for by a description;[s] and where the description is ambiguous the parties may be shown.[t] Common reputation may be admitted to identify monuments, especially if of a public or questionable nature.[u]

v-Cro. Car. 510; 2 Ld. Raym. 1163; 1 Burr. 333; 1 Str. 686; Dane Abr. w-6 Gray, 255; 14 Id. 583; 2 Watts, 327; 10 Barb. 543; 13 Wend. 263; 19 Id. 309; 4 Sandf. Ch. 438; 2 Conn. 597; 16 Ill. 217; 1 Greene Ch. 57; 1 Dudl. 131; 5 Rich. 311; 26 Me. 436; 11 Md. 1; 10 Ala. (N. S.) 63. x-8 Ell. & B. 39; see 2 Washb. R. Prop. 62, *et seq.* y-Inst. 1, 2, t. 1, § 20; 3 B. & C. 91. z-1 Washb. R. Prop. 451; 2 Md. Ch. Dec. 485; 1 Gill. & J. 249; 4 Pick. 273; 17 Id. 41; 1 Hawks, 56; 6 Martin, 19; 11 Ohio, 311; 10 Pet. 662; 5 Wheat. 380. a-17 Pick. 41; 9 Me. 44; 17 Vt. 387. b-17 Ala. 9; 2 Bl. Comm. 69. c-7 Met. (Mass.) 373; 2 Johns. 322; 3 B. & Ad. 967. d-9 Conn. 38. e-1 Chitty Pr. 176. f-2 Washb. R. Prop. 452. g-Bract. 221; Hargr. Tract, d'Jure mar.; Schuttes Aq. Rights, 115–138. h-11 Me. 482; 23 Id. 110; 24 Id. 192; 13 Ohio, 308; 10 Yerg. 477; 13 Vt. 533; 17 Id. 109. i-Toullier n. 171. j-16 Pick. 235; 6 Monr. 179; 3 Ohio, 382; 1 McL. C. C. 519; 2 Washb. R. Prop. 632. k-5 Taunt. 20; 3 Id 138; 8 B. & C. 259. l-4 Hill, 309; 6 Conn. 471. m-12 N. H. 454. n-1 Mood. & M. 112; 2 Rolle, 141; 2 Greenl. Ev. § 617. o-8 Cush. 595; 1 Sandf. 323, 334. p-15 Johns. 454; 11 Conn. 60; 1 Allen, 443; 2 Washb. R. Prop. 635. q-12 Johns. 252; 20 Id. 91; 6 Cow. 579; 1 Rand. 417; 3 Id. 33; 4 Pick. 268; 1 Halst. 1; 4 Mason C. C. 349; 9 N. H. 461; 1 Tayl. 136; 11 Miss. 366; 5 H. & J. 195, 245. As to a pond, see 13 Pick. 261; 9 N. H. 461; 10 Me. 224; 13 Id. 198; 16 Id. 257. As to sea-shore, see 2 Johns. 362; 5 Gray, 335; 13 Id. 254. r-1 Greenl. Ev. § 301, n. s-13 Pick. 267; 19 Id. 445. t-1 Met. (Mass.) 378; 7 Pick. 274. u-2 Washb. R. Prop. 636; 1 Greenl. Ev. § 145; 1 Hawks, 116; 1 McLean C. C. 45, 518; 10 N. H. 432; 4 Id. 214; 2 A. K. Marsh, 158; 9 Dana, 322, 465; 6 Pet. 341; 8 Leigh, 497; 3 Ohio, 282.

BRICK EARTH. See WASTE, below.

BUILDINGS. Every edifice erected or fixed upon or over the soil, whether composed of stone, brick, marble, wood, or other proper substance connected together and designed for use in the position in which it is erected or fixed, is an accessory to the soil, and is therefor real estate and belongs to the owner of the soil.[v] See LAND; WASTE, below.

CAVEAT EMPTOR. ("Let the purchaser take heed," that is, let the person buying see that the title be good.)[w] In every sale of real property a purchaser's right to relief at law or in equity on account of defects or incumbrances in or upon the property sold, depends solely upon the covenants for title which he has received,[x] unless there be a fraud on the part of the vendor.[y]

CLAY. See WASTE, below.

COAL. See WASTE, below.

COASTS, or margins of a country bounded by the sea, include the natural appendages of the territory which rise out of the water, although they are not of sufficient firmness to be inhabited or fortified. Shoals perpetually covered with water are not, however, comprehended under the name of coast. The small islands situate at the mouth of the Mississippi, composed of earth and trees drifted down by the river, which are not of sufficient consistency to support the purposes of life, and uninhabited, though resorted to for shooting birds, are a part of the coast.[z]

CORPORATIONS. In case of corporations, the same property may assume character of both real and personal. Thus, if a corporation hold real estate, such as a mill or banking house, it would be in the hands of the corporation real estate, but as constituting a part of the property owned and represented in the form of stock by the members constituting the body of the corporation it is personal estate.[a] But the shares in corporate property may be real estate when declared to be so by the charter creating it, or when the corporation is merely constituted to hold and manage lands.[b]

COURSES are directions of a line with reference to a meridian. Where there are no monuments, the land must be bounded by the courses and distances mentioned in the patent or deed.[c] When the lines are actually marked, they must be adhered to, though they vary from the course mentioned in the deed.[d] See BOUNDARIES, above.

CREEKS are lesser streams than rivers.[e] A creek passing through a deep, level marsh, and navigable by small craft, may, under legislative authority, be obstructed by a dam, or wholly filled up and converted into house lots, such obstructions not being in conflict with any act of Congress regulating commerce.[f]

CURTESY is the estate to which a man is entitled by common law, on the death of his wife, in the lands or tenements of which she was seized in possession in fee simple or otherwise during their coverture, provided they have had lawful issue born alive which might have been capable of inheriting the estate. It is the freehold estate for the term of his natural life.[g] See title CONVEYANCES, ante.

CURTILAGE is the enclosed space immediately surrounding a dwelling-house, contained within some enclosure.[x]

DEEDS. See title CONVEYANCES, ante.

DERELICT LAND is that which is abandoned or diverted by its former owner. Also land left uncovered by the receding of water from its former bed.[h] When left so by degrees the derelict land belongs to the owner of the soil adjoining; but when the sea retires suddenly it belongs to the government.[i]

DEVISE. See CONVEYANCES, "Wills."

DETAINER is the withholding of possession of real property from its owner. This may be either lawful and peaceable, or unlawful and forcible. The detainer is lawful where the entry has been lawful, and the estate is held by virtue of some right. It is unlawful and forcible where the entry has been unlawful and with force, and it is retained by force against right; or even where the entry has been peaceable and lawful, if the detainer be by force and against right: as, if a tenant at will should detain with force after the will has determined, he will be guilty of a forcible detainer.[j]

A forcible entry or detainer consists of the unlawful or forcible taking or keeping possession of lands or tenements by means of threats, force, or arms, and without authority of law.[k] If a party enter peaceably, and then turn out the possessor by force, or frighten him out of the possession by threats, it is a forcible entry.[l] As to forcible detainer, the same violence or terror which will make an entry forcible will also make a detainer forcible.[m] A forcible entry and a forcible detainer are separate and distinct causes of action and offences.[n] Force, either actually applied or justly to be feared from the conduct of the defendant, is essential .

v-Cruise Dig. tit. 1, § 46. w-Tayler. x-Sugd. Vend. 425; Co. Litt. 384, *a.*; Butl. note; Dougl. 665; 1 Salk. 211; 2 Freem. Ch. 1; 3 Swanst. Ch. 651; 1 Co. 1; 17 Pick. 475; 11 Ga. 311; 1 S. & R. 52. y-3 B. & P. 162; 14 Me. 133; 30 Id. 266; 2 Caines, 192; 2 Johns. 519; 5 Id. 79; 9 Id. 36; 24 Penn. St. 142; 4 Gill. 300; 3 Md. 351; 1 Spence, 353; 4 Ill. 334; 11 Id. 146; 8 Leigh, 658; 7 Gratt. 238; 15 B. Mon. 627; Freem. Ch. 134, 276; 3 Ired. 408; 3 Humphr. 347; 5 Iowa, 293; consult Rawle Cor. z-5 C. Rob. Adm. 385, *c.* a-3 M. & W. 422; Angell & Ames, § 557. b-2 P. Wms. 127; 2 Conn. 507; 10 Mass 150. c-4 Wheat. 444; 3 Pet. 96; 3 Murph. 82; 2 Harr. & J. 267; 5 Id. 254. d-2 Overt. 304; 7 Wheat. 7. e-12 Pick. 184; Cowp. 86. f-2 Pet. 245; 1 Pick. 180; 21 Id. 344; 3 Met. (Mass.) 202; 2 Stockt. 211; see 4 B. & Ald. 589. g-1 Washb. R. Prop. 127. x-See Blount Spelman; 10 Cush. 480; 4 Bl. Comm. 224; 1 Hale Pl. Cr. 558; 2 Russ. Cr. 13; 1 Id. 790; Russ. & R. 289; 1 C. & K. 84; 2 Mich. 250. h-2 Rolle Abr. 170; 2 Bl. Comm. 262; 1 Crabbe R. Prop. 109. i-2 Bl. Comm. 262; 1 Brown Civ. L. 239; 1 Sumn. C. C. 328, 490; 1 Gall. 133; Bee Adm. 62, 178, 260; Ware Dist. Ct. 332. j-Hawk. Pl. Cr. Ch. 64, § 22; 2 Chitty Pr. 238; Com. Dig. *Det.* B. 2; 8 Cow. 216; 1 Hall, 240; 4 Johns. 198; 4 Bibb. 501. k-See Com. Dig. *h. t.*; Gabbett Crim. L. l-Bac. Abr. Forc. Ent. B. m-1 Russ. 311. n-32 Cal. 339; 1 Serg. & Rawle, 124; 8 Cowen, 226.

to support the action or prosecution.[o] Generally, the person having the right of possession to land entered upon by another, or kept from him unlawfully by a tenant holding over, may enter and take possession, using as much force as may be necessary for that purpose: provided, that in so doing he commits no act amounting to a breach of the peace, or leading directly thereto.[p] See ESTATES AT SUFFERANCE, below.

DOORS. See WASTE, below.

DOVEHOUSE. See WASTE, below.

DRAINAGE through another man's land can only be had under legislative authority, or where the right is granted or exists by prescription,[q] or by consent of the owner.

DRIPPING water from one house upon another can only be allowed where the owner has acquired the right by grant or prescription; and no one has a right to construct his house so as to let the water drip over his neighbor's land.[r]

EASEMENTS are rights in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with the general property of such owner.[s] Easements are as various as the exigencies of domestic convenience or the purposes to which buildings or lands may be applied.

The following easements or rights attach to land as incidents or appurtenances, viz.:

1. Pasture in other land.
2. Fishing in other waters.
3. Taking game on other land.
4. Taking wood, minerals, or other produce of the soil, from other land.
5. Receiving air, light, or heat from or over other land.
6. Receiving or discharging water over, or having support to buildings from, other land.
7. Going on other land to clear a mill-stream, or repair its banks.
8. To draw water from a spring there, or do some other act not involving ownership.
9. Carrying on an offensive trade.[t]
10. Burying in a church or a particular vault.[u]

Some of these are affirmative or positive; that is, authorizing the commission of acts on the lands of another actually injurious to it; as, a right of way; or negative, being only consequently injurious; as, forbidding the owner from building to the obstruction of light to the dormant (or existing) tenement.[v]

All easements must originate in a grant of the property, or an agreement, express or implied, of the owner of the servient (or subordinate) tenement. The evidence of their existence, by the common law, may be by proof of the agreement itself, or by prescription requiring actual and uninterrupted enjoyment immemorially, or for upwards of twenty years, to the extent of the easement claimed, from which a grant is implied. A negative easement does not admit of possession; use therefore is not essential to its existence.[w]

Easements are extinguished: 1. By release. 2. By merger, when the two tenements or parcles of land are united under the same title and to the same person. 3. By necessity, as by a license to the servient owner to do some act inconsistent with its existence. 4. By cessation of enjoyment, when acquired by prescription, the non-user being evidence of a release, when the abandonment has continued at least as long as the user from which the right arose. In some cases a shorter time will suffice.[x]

EMINENT DOMAIN is a power to take private property for public use,[y] which exists only in cases where public convenience or necessity demands its exercise.[z] This right may be exercised upon both corporeal property, as land, or incorporeal, as franchises.[a]

Eminent domain is distinguished from public domain, which is property owned absolutely by the State in the same manner as an individual holds his property.[b]

ENTRY. See DETAINER, above.

EQUITY OF REDEMPTION is a right which a mortgagee of property, or other person having an interest in it, has of redeeming it after it has been forfeited at law by the non-payment of the money secured when due, with interest and costs. Any person who is interested in the mortgaged property, or any part of it, or who has a legal estate therein, or a legal or equitable lien thereon, provided he comes in as privy (a partaker, person interested, etc.) in estate with the mortgagor, may exercise the right. These include heirs, devisees, executors, administrators, and assignees of the mortgagor;[c] subsequent incumbrancers;[d] judgment creditors;[e] tenants for years;[f] a janitress;[g] dowress and tenant by curtesy;[h] one having an easement.[i]

ESCROW. See CONVEYANCES, ante.

ESTATES may be limited in duration to the life of one's self—to the life of another, or others.[j]

—— IN COMMON are those held in joint possession by two or more persons at the same time by several and distinct titles.[k]

o-5 Cal. 156. p-1 Handy, 521; 8 Eng. C. L. 280; 7 T. R. 421; 2 Foster (N. H.) 13; 4 Johns. 149; 1 Watts & Serg. 90; 7 Metc. 147–157; 13 Pick. 39; 6 Car. & P. 284; 1 Man. & Gr. 644; 55 Eng. C. L. 757; 8 T. R. 360; 31 Me. 293. q-See 3 Kent Comm. 436; 7 M. & G. 354; Washb. Easm. r-1 Rolle Abr. 107; see 3 Kent Comm. 436; Dig. 43, 23, 4, 6; 11 Ad. & E. 40. s-2 Washb. R. Prop. 25. t-2 Bingh. (N. C.) 134; 5 Met. (Mass.) 8. u-Washb. Easm.; 8 Ho. L. Cas. 362; 3 B. & Ad. 735; 11 Q. B. 666. v-Tudor L. Cas. 107; 2 Washb. R. Prop. 26. w-Gale Easm. 23, 81, 128; 2 Bl. Comm. 263. x-2 Wash. R. Prop. 56–60, 82–85, 453–456; Washb. Easm. y-6 How. 536. z-6 How. 545. a-23 Pick. 360; 6 How. 529; 1 Rice, 383; 11 N. H. 19; 17 Conn. 454. b-37 Am. Jur. 121; 2 Kent Comm. 339; 3 Yerg. 389; 6 How. 540. c-Coote Mortg. 516; 2 Root. 509; 2 Hayw. 22; 14 Vt. 501; 10 Paige Ch. 49; 9 Mass. 422. d-5 Johns. Ch. 35; 2 Barb. Ch. 371; 1 Dana, 23; 8 Cush. 46. e-2 Litt. 382, 4 Hen. & M. 101; 4 Yerg. 10; 2 Cal. 595; 2 Dev. & B. 285. f-8 Met. (Mass.) 517; 7 N. Y. 44. g-1 Vern. Ch. 190; 2 White & L. L. Cas. 752. h-14 Pick. 98. i-22 Pick. 401. j-1 Washb. R. Prop. 88; 2 Sharsw. Bl. Comm. 120. k-1 Washb. R. Prop. 415; 2 Bl. Comm. 191; 2 Flintoff R. Prop. 345; 1 Prest. Est. 139.

ESTATES ON CONDITION. See CONVEYANCES; CONDITIONS.

—— IN COPARCENARY are those which several persons hold as one heir, whether male or female. Such estates have three unities, time, title, and possession; but the interests of the coparceners may be unequal.[j]

—— BY THE CURTESY are those to which a husband is entitled upon the death of his wife, in the lands or tenements of which she was seized and possessed in fee simple or fee tail during their coverture, provided they have lawful issue born alive, and possibly capable of inheriting her estate.[k]

—— IN DOWER are those which a widow has for her life in some portion of the lands and tenements of which her husband was seized at any time during coverture, and which her issue might have inherited if she had any, and which is to take effect in possession from the death of her husband.[l]

—— IN EXPECTANCY are those giving a present or vested contingent right of future enjoyment; one in which the right to taking or receiving the profits is postponed to some future period.[x]

——, FEE SIMPLE. See CONVEYANCES, ante.

——, FEE TAIL. See CONVEYANCES, ante.

—— OF INHERITANCE are those which may descend to heirs.[z] Such are all freehold estates, except estates for life.[m]

—— OF JOINT TENANCY are those where several persons have any subject of property jointly between them in equal shares by purchase.[n] The right of survivorship is the distinguishing characteristic of these estates.[o]

—— FOR LIFE are freehold estates, not of inheritance, but which are held by the tenant for his own life, or the life or lives of one or more other persons, or for an indefinite period, which may endure for the life or lives of persons in being, and not beyond the period of a life.[p]

—— IN POSSESSION are those where the tenant is actually taking or receiving the rents and other advantages arising therefrom.[q]

—— IN REMAINDER are those limited to take effect in possession or in enjoyment, or in both, subject only to any term of years or contingent interest that may intervene immediately after the regular expiration of a particular estate of freehold, previously created together with it, by the same instrument, out of the same subject of property.[r]

—— IN REVERSION are residues of estates left in the grantor, to commence in possession after the determination of some particular estate granted out by him.[s] The residue of an estate which always continues in him who made a particular grant.[t]

—— IN SEVERALTY are those held by single persons in their own right only, without any other person being joined or connected with them in point of interest during their estate.[u]

—— AT SUFFERANCE are interests of tenants who have come rightfully into possession of lands by permission of the owner, and continue to occupy the same after the period for which he is entitled to hold by such permission.[v] This estate is uncommon, but is recognized as an estate so far, that the landlord must enter before he can bring ejectment against the tenant.[w] If the tenant has personally left the house, the landlord may break the doors.[x] And generally, the landlord may use force to regain possession, subject only to indictment if any injury is committed against the public peace.[y] See DETAINER, above.

—— AT WILL are those by which the tenant has made entry under a lease to hold during the joint wills of the parties to the same.[z] Such estates are rare, being generally construed into estates for years, or from year to year by the decisions of the courts, or by statute.[a]

—— FOR YEARS are interests in lands by virtue of a contract for the possession of them for a definite and limited period of time[b] to suit the contracting parties. The length of time for which the estate is to endure is of no importance in ascertaining its character, unless otherwise declared by statute.[c]

EVICTION is total where a possessor is wholly deprived of his rights in the premises. It is partial where the possessor is deprived of only a portion of them, as if a third person comes in and ejects him from the possession of half his land, or establishes a right to some easement over it by a title prior to that under which he holds. With respect to the premises leased, an eviction consists in taking from a tenant some part of the premises of which he was in possession, not in refusing to put him in possession of something which by the agreement with his landlord he should have en-

j-1 Washb. R. Prop. 414; 2 Sharsw. Bl. Comm. 188; 4 Kent Comm. 366. k-1 Washb. R. Prop. 128; 2 Crabb R. Prop. § 1074; Co. Litt. 30, *a.*; 2 Sharsw. Bl. Comm. 126; 1 Greenl. Cruise Dig. 153; 4 Kent Comm. 373, n. *a.* l-1 Washb. R. Prop. 149; Park. Dow. 5; 2 Sharsw. Bl. Comm. 129; 4 Kent Comm. 41; 1 Greenl. Cruise Dig. 64. x-1 Greenl. Cruise Dig. 701. z-1 Washb. R. Prop. 51; 1 Steph. Comm. 218. m-Crabb R. Prop. 945. n-1 Washb. R. Prop. 406; Wms. R. Prop. 112; 1 Bl. Comm. 180. o-Litt. § 280. p-1 Washb. R. Prop. 88; 2 Crabb R. Prop. § 1020; 1 Greenl. Cruise Dig. 102; Co. Litt. 42, *a.*; Broct. Lib. 4 Ch. 28, § 207. q-2 Crabb R. Prop. § 1322; 2 Sharsw. Bl. Comm. 163; 1 Greenl. Cruise Dig. 701. r-2 Fearne Cont. Rem. (Sm. Ed.) § 159; 2 Sharsw. Bl. Comm. 163; Greenl. Cruise Dig. 701; 4 Kent Comm. 209. s-2 Sharsw. Bl. Comm. 175; Co. Litt. 22; Crabb R. Prop. § 2345. t-Plowd. 151; 1 Greenl. Cruise Dig. 817; Co. Litt. 22 *b*, 142 *b*. u-2 Bl. Comm. 179; 1 Greenl. Cruise Dig. 829; 1 Washb. R. Prop. 112. v-1 Washb. R. Prop. 392; 2 Bl. Comm. 150; Co. Litt. 57 *b*; Smith Landl. & T. 217; Crabb R. Prop. § 1543. w-3 T. R. 292; 8 Id. 403; 1 M. & G. 644. x-1 Bingh. 58; 17 Pick. 263, 266. y-7 T. R. 431; 1 Cush. 482; 7 Met. (Mass.) 147; 14 M. & W. 437; 4 Johns. 150; 1 W. & S. 90; 1 Washb. R. Prop. 390, 396; 7 M. & G. 316; 13 Johns. 235; 13 Pick. 36. z-Co. Litt. 55, *a.*; Tudor L. Cas. 10; Smith Landl. & T. 16; 2 Sharsw. Bl. Comm. 145; 4 Kent Comm. 110; 1 Washb. R. Prop. 370. a-1 Washb. R. Prop. 370; 4 Kent Comm. 115; Tudor L. Cas. 14; 4 Rawle, 123; 1 T. R. 159. b-2 Sharsw. Bl. Comm. 140; 2 Crabb R. Prop. § 1267; Bac. Abr. Leases; Wms. R. Prop. 195; 1 Washb. R. Prop. 298; 1 Platt Leases, 47. c-15 Mass. 439; 1 N. H. 350; 13 S. & R. 60; 4 Kent Comm. 93.

joyed,[d] and in order to effect a suspension of rent there must be something equivalent to an expulsion from the premises, and not a mere trespass or disturbance in the enjoyment of them.[e] It is not necessary, however, in order to produce the eviction of a tenant, that there should be actual physical expulsion, for a landlord may do many acts tending to diminish the enjoyment of the premises, short of an expulsion, which will amount to an eviction in law; as, if he erects a nuisance so near the leased premises as to deprive the tenant of the use of them, or if he otherwise intentionally disturbs the tenant's enjoyment to such an extent as to injure his business or destroy the comfort of himself and family, it will amount to an eviction.[f]

FEE SIMPLE. See CONVEYANCES, ante.

—— TAIL. See CONVEYANCES, ante.

FENCES are, in general, regulated by local laws. Generally, fences or boundaries are to be built on the line; the expense, when made according to law, is borne equally between the parties. A partition fence is presumed to be the common property of both owners of the land.[g] When built upon the land of one of them it is his; but if it were built equally upon the land of both, at their joint expense, each would be the owner in severalty of the part standing on his own land.[h] See WASTE, below.

FIELDS. See WASTE, below.

FIREWOOD. See WASTE, below.

FISH-POND. See WASTE, below.

FIXTURES are personal chattels affixed to real estate, which may be severed and removed by the party who has affixed them, or by his personal representative, against the will of the owner of the freehold. Questions frequently arise as to whether given appendages to a house or land are to be considered part of the real estate, or whether they are to be treated as personal property. The latter are movable, the former are not. The annexation may be actual or constructive. 1. By actual annexation is understood every mode by which a chattel can be joined or united to the freehold. The article must not be merely laid upon the ground; it must be fastened, fixed, or set into the land, or into some such erection as is unquestionably a part of the realty; otherwise it is in no sense a fixture.[i] Locks, iron stoves set in brick work, posts, and window blinds, afford examples of actual annexation.[j] Some things, however, have been held to be parcel of the realty which are not annexed or fastened to it; for example, deeds or chattels which relate to the title of the inheritance, and go to the heir.[k] But loose, movable machinery, used in prosecuting any business, to which the freehold is adapted, cannot be considered part of the real estate, nor in any way appurtenant to it;[l] so deer in a park, fish in a pond, and doves in a dove-house, go to the heir, and not to the executor, being, like keys and heirlooms, constructively annexed to the inheritance.[m]

The general rule is, that fixtures once annexed to the freehold become a part of the realty. But to this rule there are exceptions; as, 1. Where there is a manifest intention to use the fixture in some employment distinct from that of the occupant of the real estate;[n] 2. Where it has been annexed merely for the purpose of carrying on a trade;[n] for the fact that it was put up for such a purpose indicates an intention that the thing should not become a part of the freehold.[o] But if there is a clear intention that the thing should be permanently annexed to the realty, its being used for purposes of trade would not, perhaps, bring the case within one of the exceptions.[p]

Where the question arises between an executor and the heir-at-law, the rule is strict that whatever belongs to the estate to which the fixture appertains will go to the heir; but if the ancestor manifested an intention (which may be inferred from circumstances) that the things affixed should be considered personalty, they will be so treated, and will go to the executor.[q]

As between a vendor and vendee the same strictness applies as between an executor and an heir-at-law; for all fixtures which belong to the premises at the time of the sale, or which have been erected by the vendor, whether for purposes of trade or manufacture, or not, as potash kettles for manufacturing ashes, and the like, pass to the vendee of the land, unless they have been expressly reserved by the terms of the contract.[r]

The same rule applies as between mortgagor and mortgagee.

As between devisee and executor, things permanently annexed to the realty at the time of the testator's death pass to the devisee—his right to fixtures being similar to that of a vendee.[s]

As between a landlord and his tenant the strictness of the ancient rule has been much relaxed. The rule is understood to be that a tenant, whether for life, for years, or at will, may sever at any time before the expiration of his tenancy, and carry away all such fixtures of a chattel nature as he has himself erected upon the demised premises for the purposes of ornament, domestic convenience, or to carry on trade, provided, always, that the removal can be effected without material injury to the freehold.[t]

d-12 Wend. 529. e-4 Wend. 505; 5 Sandf. 542; T. Jones, 148; 1 Yerg. 379. f-8 Conn. 727; 2 Ired. 350; 1 Sandf. 260; 4 N. Y. 217. g-8 B. & C. 257, 259, n. a; 20 Ill. 334. h-5 Taunt. 20; 2 Greenl. Ev. 617; see 2 Washb. R. Prop. 79, 80. i-B. N. P. 34; 3 East. 38; 9 Id. 215; 1 Taunt. 21; Poth. Traite des. Ch. § 1. j-See 5 Hayw. 109; 20 Johns. 29; 1 Harr. & J. 289; 3 M'Cord, 553; 9 Conn. 63; 1 Miss. 508, 620; 7 Mass. 432; 15 Id. 159; 4 Ala. 314. k-Shep. Touchst. 469. l-12 N. H. 205; see, however, 2 W. & S. 116, 390. m-Shep. Touchst. 90; Poth. Traite des. Ch. § 1. n-3 East. 88; 4 Watts. 330. o-See H. Bl. 260. p-1 H. Bl. 260; and see title LANDLORD AND TENANT, ante. q-See Bac. Abr. *Exr. Admr.*; 2 Str. 1141; 1 P. Wms. Ch. 94; B. N. P. 34. r-6 Cow. 663; 20 Johns. 29. s-15 Mass. 159; 1 Atk. Ch. 477; 16 Vt. 124; 12 N. H. 205. t-2 Barn. & C. 80. u-16 Day, 322; 16 Mass. 449; 4 Pick. 310; 2 Dev. 376; 1 Bail. 541; 7 Barb. 263; 1 Denio, 92; 19 N. Y. 234. And see for adjudications to this effect upon specific articles, Taylor Landl. & Ten. § 544–560, and post, title LANDLORD AND TENANT.

A tenant for years may remove fixtures at any time before he gives up the possession of the premises, although it may be after his term has expired, and he is holding over;[v] but tenants for life, or at will, having uncertain interests in the land, have, after the determination of their estates, not occasioned by their own fault, a reasonable time within which to remove their fixtures.[w]

If a tenant quits possession of land without removing such fixtures as he is entitled to, the property in them immediately vests in the landlord; and though they are subsequently severed, the tenant's right to them does not revive. If, therefore, a tenant desires to have any such things upon the premises after the expiration of his term, for the purpose of valuing them to an incoming tenant, or the like, he should take care to get the landlord's consent, otherwise he will lose his property in them entirely.[x] The rights of parties with respect to particular articles are sometimes regulated by local customs, especially as between outgoing and incoming tenants; and in cases of this kind it becomes a proper criterion by which to determine the character of the article, and whether it is a fixture or not. See LANDLORD AND TENANT; GROWING CROPS; EMBLEMENTS; FIXTURES, ETC.

FLOORS. See WASTE, below.

FREEHOLD. See ESTATES OF FREEHOLD, above.

FRUIT TREES. See WASTE, below.

FUELLING MILL. See WASTE, below.

FURNACES. See WASTE, below.

GARDENS or grounds, set apart for flowers and plants, are parcels of the houses to which they belong, and pass with them.[y]

GATES. See WASTE, below.

GRANT. See CONVEYANCES, ante.

GRAVEL. See WASTE, below.

GRIST MILL. See WASTE, below.

GROUND-RENT is a rent paid for the privilege of building on another man's land. It is a freehold estate created by deed, and perpetual by the terms of its creation; and no mere lapse of time without demand raises, at common law, a presumption that the estate has been released.[z] See CONVEYANCES, ante.

GROWING CROPS. See LANDLORD AND TENANT, ante.

HEDGES. See WASTE, below.

HEIRLOOMS include charters, deeds, and other evidences of the title of land, together with the box or chest in which they are. contained, the keys of a house, and the fish in a fish pond.[a]

HOUSES, if divided into several apartments having no communication with each other, are considered as so many distinct and separate houses.[b] In a conveyance or lease of a house, the enclosed space immediately surrounding it and contained within some enclosure, and the garden, will pass, even without the words "with the appurtenances" being added.[c] In a conveyance or lease of a house with the appurtenances, no more will pass, although other lands have been occupied with the house.[d] See WASTE, below.

IMPROVEMENTS, as between the rightful owner and an occupant who in good faith has put them on, belong to the rightful owner of the land, without compensation for the increased value. This is the common law,[e] though the rule is otherwise in equity,[f] and by the statutes of some States.

INCUMBRANCES are any rights, or interests in land, which may be held by third persons, which diminishes the value of, but not the right to pass such land.[g] Of these are public highways;[h] a private right of way;[i] a claim of dower,[j] though inchoate only;[k] an outstanding mortgage,[l] other than one which the covenantee is bound to pay;[m] a liability to tax laws.[n] But does not include a condition on which an estate is held.[o] The vendor of real estate is bound to disclose incumbrances, and to deliver to the purchaser the instruments by which they were created or on which the defects arise; and the neglect of this is to be considered fraud.[p] The interest on incumbrances is to be kept down by the tenant for life,[q] to the extent of rents accruing;[r] and for any sum paid beyond that he becomes a creditor of the estate.[s] When the whole incumbrance is removed by a single payment, the share of the tenant for life is the present worth of the annuity, for the life of the tenant, equal to the annual amount of the interest which he would be obliged to pay.[t] This rule applies to estates held in dower;[u] in curtesy;[v] in tail only in special cases.[w]

INNINGS or lands may be gained from the sea by drainage.[x]

IRRIGATION. The owner of land over which there is a current stream is, as such, the proprietor of the current.[y] A riparian proprietor may avail himself of the river for irrigation, provided such river be not materially lessened, and the water absorbed be imperceptible or trifling.[z] See SPRINGS, below.

v-1 B. & C. 79; 2 East. 88. w-3 Atk. Ch. 13. x-1 B. & Ad. 394; 2 M. & W. 450. y-2 Co. 32; Plowd. 171; Co. Litt. 5 *b*, 56 *a*, *b*; see F. Moore, 24; Bac. Abr. Grants. 1. z-1 Whart. 229. a-Co. Litt. 3 *a*, 185 *b*; 7 Co. 17 *b*; Cro. Eliz. 372; Broke Abr. Charters pl. 13; 2 Bl. Comm. 28; 14 Viner Abr. 291. b-6 Mod. 214; Woodfall Landl. & T. 178. c-Cro. Eliz. 89; 3 Leon, 214; 1 Plowd. 171; 2 Wms. Saund. 401, n. 2; 4 Penn. St. 93. d-1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 *d*, 36 *a*, *b*; 2 Wms. Saund. 401, n. 2. e-8 Wheat. 1; 1 Dana, 481; 3 Ohio St. 463; 4 McLean C. C. 489; 5 Johns. 272; 2 Paine C. C. 74. f-3 Atk. Ch. 134; 3 Sneed. 228; 1 Yerg. 360; 24 Vt. 560; 2 Johns. Cas. 441. g-See 2 Greenl. Ev. § 242. h-2 Mass. 97; 3 N. H. 335; 10 Conn. 431; 12 La. An. 541; 27 Vt. 739. i-15 Pick. 68; 7 Gray, 83; 5 Conn. 497. j-4 Mass. 630; 23 Ala. (N. S.) 616. k-2 Me. 22; 22 Pick. 447; 3 N. J. 260. l-5 Me. 94; 30 Id. 392. m-2 N. H. 458; 12 Mass. 304; 8 Pick. Mass. 547; 11 S. & R. 109; 4 Halst. 139. n-30 Vt. 655; 5 Ohio St. 271; 5 Wis. 407. o-3 Gray, 515; 6 Id. 572. p-Sugden Vend. 6; 1 Ves. Sr. 96. q-1 Washb. R. Prop. 95-97, 257, 573; 3 Edw. Ch. 312; 5 Johns. Ch. 482; 5 Ohio, 28. r-31 Eng. L. & Eq. 345; Tudor L. Cas. 60. s-2 Atk. Ch. 463; 1 Bail. Eq. 397. t-1 Washb. R. Prop. 96, 573. u-10 Mass. 315, n.; 5 Pick. 146; 10 Paige Ch. 71, 158; 3 Md. Ch. Dec. 324; 7 H. & J. 367. v-1 Washb. R. Prop. 142. w-1 Washb. R. Prop. 80; Tudor L. Cas. 613; 2 Law Gaz. 265, 270; 3 P. Wms. 229. x-Law of Sewers, 31. y-4 Mason C. C. 400. z-Angell Water Courses, 34.

ISLANDS when they first arise in the open sea belong to the first occupant; but when they are newly formed so near the shore as to be within the boundary of some State, they belong to that State. Islands which arise in rivers, when in the middle of the stream, belong in equal parts to the riparian owners. When they arise merely on one side, they belong to the riparian owner up to the middle of the stream.[a] See COASTS, above; WATER, below.

JOINTURE. See ESTATES, ante.

KEYS of a house are considered real estate, and descend to the heir with the inheritance.[b]

LAND includes any ground, soil, earth, mineral, or liquids, and all natural and artificial growth. It may be wild, cultivated, arable, or otherwise. It includes in general all buildings erected upon it,[c] with some exceptions; if a stranger voluntarily erects buildings on another's land, they will belong to the owner of the land, and will become a part of it,[d] though under peculiar circumstances they would be considered as personal property.[e] It includes mines, except mines of gold and silver; and a grant of public lands will include these also.[f]

LEASE. See title CONVEYANCES, ante.

LICENSE may be by conveyance duly acknowledged,[g] by parol,[h] or by implication from circumstances, as opening a door in response to a knock.[i] It is distinguished from an easement, which implies an interest in the land to be affected, and is also distinguished from a lease, which is a right to take the profits of land. It may be and often is coupled with a conveyance of some interest in the land itself, or right to take the profits.[j] It may be granted by the owner, or, in many cases, by a servant.[k] An executory license may be revoked at the pleasure of the grantor.[l] In general, a mere license may be revoked at the grantor's pleasure,[m] although the licensee has incurred expense.[n] Not so a license closely coupled with a transfer of title to personal property.[o] An executed license, which destroys an easement enjoyed by the licenser in the licensee's land, cannot be revoked.[p] The effect of an executed license, though revoked, is to relieve or excuse the licensee from liability for acts done properly in the pursuance thereof, and their consequences.[q] The licensee's improvements on lands are without compensation, in equity.[r]

LIENS. See that title, ante.

LIME. See WASTE, below.

LINES. When a line is mentioned in a deed as ending at a particular monument it is to be extended in the direction called for without regard to distance until it reach the boundary,[s] and a marked line is to be adhered to although it depart from the course.[t] Where a number of persons settle simultaneously, or at short intervals, the same neighborhood, and their tracts, if extended in certain directions, would overlap each other, the settlers sometimes by agreement determine upon dividing lines, which are called consentible lines. These lines, when fairly agreed upon, have been sanctioned by the courts; and such agreements are conclusive upon all persons claiming under the parties to them, with notice, but not upon *bona fide* purchasers for a valuable consideration without notice, actual or constructive.[u] Lines fixed by compact between nations are binding on their citizens and subjects.[v]

LINES AND CORNERS in conveyances and surveys are the boundary lines and their angles with each other.[w]

MEADOWS. See WASTE, below.

METALS. See WASTE, below.

MILLS conveyed with their appurtenances, even without the land, carries the whole right of water enjoyed by the grantor, as necessary to its use, and as a necessary incident;[x] and a devise of a mill carries the land used with it and the right to use the water.[y] A mill includes not only the building in which the business is carried on, but includes the site, the dam, and other things annexed to the freehold necessary for its beneficial enjoyment.[z] As to manufacturing machinery, see FIXTURES, above, and title LANDLORD AND TENANT, "Crops," "Emblements," "Fixtures," etc. See WASTE, below.

MINES of gold and silver and the precious metals belong to state or sovereign,[a] but pass by a grant of land, without exception or reservation, from the state or government.[b] Mines of other minerals belong to the owner of the soil, and pass by a conveyance thereof, unless separated;[c] but the owner may convey his mines by a separate and distinct conveyance so as to create one freehold in the soil and another in the mines.[d] In case of a separate ownership the owner of the mine must support the

a-Washb. R. Prop.; Kent Comm. b-11 Co. 50 *b*; 30 Eng. L. & Eq. 598; see 5 Blackf. 417; 5 Taunt. 518. c-9 Day, 374. d-16 Mass. 449. e-4 Miss. 514; 5 Pick. 487; 8 Id. 203, 402; 6 N. H. 555; 10 Me. 371; 1 Dana, 591; 1 Burr. 144. f-3 Kent Comm. 378, n.; 1 N. Y. 572. g-2 Parsons' Contr. 22. h-13 M. & W. 838; 4 M. & S. 562; 7 Barb. 4; 1 Washb. R. Prop. 148. i-Hob. 62; 2 Greenl. Ev. § 427. j-1 Washb. R. Prop. 146. k-Cro. Eliz. 246; 2 Greenl. Ev. 427. l-1 Washb. R. Prop. 148. m-11 Mass. 433; 15 Wend. 380. n-10 Conn. 378; 23 Id. 223; 3 Duer, 355; 11 Met. (Mass.) 251; 2 Gray, 302; 24 N. H. 364; 13 Id. 264; 4 Johns. 418; 3 Wis. 117; 1 Dev. & B. 492; 13 M. & W. 838; 37 Eng. L. & Eq. 489; 5 B. & Ad. 1; see 14 S. & R. 267. o-8 Met. (Mass.) 34; 11 Conn. 525; 13 M. & W. Exch. 856; 11 Ad. & E. 34. p-9 Met. (Mass.) 302; 2 Gill. 221; 3 Wis. 124; 3 Duer, 255; 7 Bingh. 682; 3 B. & C. 332; 5 Id. 221. q-6 Duer, 263; 22 Barb. 336; 18 Pick. 569; 2 Gray, 302; 10 Conn. 378; 13 N. H. 264; 7 Id. 237; 7 Taunt. 374; 5 B. & C. 221. r-3 Wis. 117; Story Eq. Jur. § 1237; Angell Water Courses, § 318. s-1 Tayl. 110, 303; 2 Id. 1; 2 Hawks, 219; 3 Id. 21. t-7 Wheat. 7; 2 Overt. 304; 3 Call. 239; 4 Monr. 29; 7 Id. 333; 2 Bibb. 261; 4 Id. 503. u-3 S. & R. 323; 5 Id. 273; 17 Id. 57; 9 W. & S. 66. v-11 Pet. 209; 1 Overt. 269; 1 Ves. Sr. Ch. 450; 1 Atk. Ch. 2; 1 P. Wms. 723-727; 1 Vern. Ch. 48; 1 Ves. Ch. 19; 2 Id. 284; 3 S. & R. 331. w-17 Miss. 459; 21 Ala. 66; 9 Foster & H. 471; 10 Gratt. 445; 16 Ga. 141. x-Cro. Jac. 121. y-1 S. & R. 169; see 5 S. & R. 107; 10 Id. 63; 2 Caines Cas. 87; 3 N. H. 190; 7 Mass. 6; 6 Me. 154, 436; 16 Id. 281. z-3 Mass. 280; see 6 Me. 436. a-1 Plowd. 310; 3 Kent Comm. 378, n. b-14 Cal. 375; 17 Id. 199; 2 Washb. R. Prop. 626. c-1 N. Y. 564; 19 Pick. 314. d-1 Penn. 726; 7 Cush. 361; 8 Id. 21; 5 M. & W. 50.

superincumbent soil,[e] and ancient buildings and other erections.[f] Opening new mines by a tenant is waste, unless the lease includes them;[g] but if mines be already open it is not waste to work them even to exhaustion.[h]

The occupant of public lands who holds them for agricultural purposes, holds them subject to the right of any person to dig for gold.[i] See WASTE, below.

MONEY often has the character of realty attached to it, so far as being heritable and the like, by equity, where it is the proceeds of real estate wrongfully converted into money, or which ought to be converted into real estate.[j]

MONUMENTS or permanent landmarks, established or erected to indicate and mark boundaries of lands, may be either natural or artificial objects: as, rivers, known streams, springs, or marked trees,[k] and even posts set up at the corners,[l] and in a clearing.[m] When monuments are established they must govern, although neither courses, nor distances, nor computed contents correspond.[n] See BOUNDARIES, above.

ORCHARDS. See WASTE, below.

PARCENARY. See ESTATES IN PARCENARY, above.

PARTITION FENCE. See FENCES, above.

PLATS, or map of land, on which are marked the courses and distances of the different lines, may be given in evidence in ascertaining the position of the land and what is included, and may serve to settle the figure of a survey and correct mistakes.[o]

PARK. See WASTE, below.

PARLOR. See WASTE, below.

PEWS in churches are sometimes real and sometimes personal estate, depending, generally, upon local statutes; though, in the absence of statute law, it would seem they were interests in real estate and partake of its character.[p]

POSSESSED applies to the right and enjoyment of a person having a term who is said to be possessed, but not seized.[q]

POSSIBILITIES are merely contingent interests in real or personal property.[r] It is uncertain whether the contingency may happen or not; whether the interest will be realized or not.

PRESCRIPTION is a mode of acquiring title to incorporeal hereditaments,[s] by immemorial or long continued enjoyment. The length of time necessary to raise a strict prescription was limited to sixty years.[t] Grants of incorporeal hereditaments are presumed upon proof of enjoyment of the requisite character for a period of years equal to that fixed by statute as the period of limitation of real actions.[u] Prescription properly applies only to incorporeal hereditaments,[v] such as easements of water, light and air, way, etc.[w] A class of franchises.[x]

QUARRIES. When a farm is let with an open quarry the tenant may, when not restrained by his contract, take out the stone; but he has no right to open new quarries. See MINES, above.

RELICTION is an increase of land by the retreat or recession of a sea, lake, or river. Lands left dry by the sudden or sensible recession of the sea, or of a river which flows and reflows with the tide, belong to the sovereign or State, unless the property in the land so relected has been granted to individuals; in other words, the right of property in the soil is not changed by the change of the water. But where the recession is gradual and insensible, or where it takes place in fresh water rivers, the soil of which belongs to riparian proprietors, the lands so relicted belong to the proprietors of the estates which are thereby increased.[y] But this reliction must be from the sea in its usual state, for if it should inundate the land and then recede, this would be no reliction.[z] If a navigable lake recede gradually and insensibly, the derelict land belongs to the adjacent riparian proprietors; but if the recession be sudden and sensible, such land belongs to the State.[a] See AVULSION; ALLUVION, above.

REMAINDERS are remnants of estates in real property expectant on a particular estate created together with it at the same and one time. A contingent remainder depends on a contingency which may or may not happen; a vested remainder is one by which the present interest passes to the property, though to be enjoyed in future.[b]

REPAIRS. What a party is bound to do, when the law imposes upon him the duty to make necessary repairs, does not appear to be very accurately defined. Natural and unavoidable decay in the buildings must always be allowed for, when there is no express covenant to the contrary; and, it seems, the lessee

e-12 Q. B. 739; 5 M. & W. 60; 12 Exch. 259. f-2 Hurlst. & N. 828. g-Co. Litt. 53, *b*; 2 Bl. Comm. 282; 1 Taunt. 410; Hob. 234. h-1 Taunt. 410; 19 Penn. St. 324; 6 Munf. 134; 1 Rand. 258; 10 Pick. 460; 1 Cow. 460; see Smith Landl. & Ten. 192, 193, n. i-5 Cal. 140, 308; 6 Id. 148. j-3 Wheat. 577; 1 Brown Ch. 6, 497; 13 Pick. 154. k-6 Wheat. 582; 7 Id. 10; 3 Ohio, 284; 5 Id. 534; 5 N. H. 524; 3 Dev. 75. l-5 Ohio, 534. m-7 Cow. 723; see 3 Dev. 75. n-1 Con. 605; 5 Id. 346; 6 Id. 706; 7 Id. 723; 2 Mass. 380; 6 Id. 131; 3 Pick. 401; 5 Id. 135; 3 Gill. & J. 142; 2 Harr. & J. 260; 5 Id. 163, 255; 1 Harr. & McH. 355; 2 Id. 416; Wright, 176; 5 Ohio, 534; Cooke, 146; 4 Hen. & M. 125; 1 Call. 429; 3 Id. 239; 11 Me. 325; 1 Hayw. 22; 3 Hawks. 91; 3 Murph. 88; 4 Monr. 32; 5 Id. 175; 5 J. J. Marsh. 578; 6 Wheat. 582; 4 Wash. C. C. 15. o-5 Monr. 160; see 17 Mass. 211; 5 Me. 219; 7 Id. 61; 4 Wheat. 444; 14 Mass. 149. p-1 Pick. 104; 16 Wend. 28; 5 Met. (Mass.) 132. q-Boc. Tr. 335; Poph. 76; Dyer, 369. r-1 Madd. Ch. 549. s-See title CONVEYANCES, ante. t-32 Hen. VIII; 8 Pick. 308; 7 Wheat. 79; 4 Mason C. C. 402; 2 Greenl. 539; see 9 Cush. 171; 29 Vt. 43; 24 Ala. (N. S.) 130; 29 Penn. St. 22. u-3 Kent Comm. 442; 12 Wend. 330; 19 Id. 365; 27 Vt. 265; 2 Bail. 101; 4 Md. Ch. Dec. 386; 13 N. H. 360; 4 Day, 244; 10 S. & R. 63; 9 Pick. 251; see 14 Barb. 511; 3 Me. 120; 1 B. & P. 400; 5 B. & Ald. 232. v-3 Barb. 105; Finch L. 132. w-4 Mas. C. C. 397; 4 Rich. 536; 20 Penn. St. 331; 1 Crompt. M. & R. 217; 1 Gale & D. 205, 210, n.; Tudor L. Cas. 114; Washb. Easm. x-Co. Litt. 114; 10 Mass. 70; 10 S. & R. 401. y-Woolrych Wat. 29–36; Schultes Agr. Rights, 138; Ang. Tide-wat. 264–267; 3 B. & C. 91; 9 Conn. 41; 2 Md. Ch. Dec. 485; 13 N. Y. 296; 5 Bingh. 163. z-Ang. Tide-wat. 264–267; Hargrave Tracts, 15; 16 Viner Abr. 574. a-1 Hawks. 56; 1 Gill. & J. 249. b-See 2 Johns. 288; 1 Yeates, 340.

will satisfy the obligation the law imposes on him by delivering the premises at the expiration of his tenancy in a habitable state. Questions in relation to repairs most frequently arise between the landlord and tenant. When there is no express agreement between the parties, the tenant is always required to do the necessary repairs.[c] He is, therefore, bound to put in windows or doors that have been broken by him, so as to prevent any decay of the premises; but he is not required to put a new roof on an old, worn-out house.[d] An express covenant on the part of the lessee to keep a house in repair, and leave it in as good a plight as it was when the lease was made, does not bind him to repair the ordinary and natural decay.[e] As to the time when the repairs are to be made, it would seem reasonable that when the lessor is bound to make them, he should have the right to enter and make them, when a delay until after the expiration of the lease would be injurious to the estate; but when no such damage exists, the landlord should have no right to enter without the consent of the tenant.[f] When a house has been destroyed by accidental fire, neither the tenant nor the landlord is bound to rebuild, unless obliged by some agreement so to do.[g]

REVERSION is the residue of an estate left in the grantor to commence after the determination of some particular estate granted out by him; the return of the land to the grantor and his heirs after the grant or lease is over.[h]

REVOCATION. See LICENSE, above.

ROOMS See WASTE, below.

SEASHORE is that space of land on the border of the sea between high and low water-mark.[i] At common law the seashore belongs to the State or sovereign.[j] The rights of fishery and navigation remain unimpaired by the grant of lands covered by navigable water.[k] The power of the States is absolute, except so far as it is controlled by the federal constitution,[l] and they may regulate the use of their shores and the fisheries thereon, provided such regulations do not interfere with the acts of Congress.[m] The public right of fishing includes shrimping and gathering all shell-fish, or other fish, whose natural habitat is between high and low water-mark.[n]

SEA-WEED when cast upon the land belongs to the owner of the land adjoining the seashore, upon the ground that it increases gradually, it being useful as a manure or in protection of the ground, and being some compensation for the encroachment of the sea upon the land.[o]

SEEDS which have been sown in the earth immediately become a part of the land in which they have been sown.[p]

SEIZIN is the possession of real property with an intent on the part of the occupant to claim a freehold interest.[q]

SHELVES. See WASTE, below.

SHOALS. See COASTS, above.

SHORE includes only such land on the side of a sea, lake, or river, where the water ebbs and flows, as lies between high and low-water mark.

SOIL. See WASTE, below.

SPRINGS are the exclusive property of the owner of the soil. When another has an easement or right to draw water from such a spring, acquired by grant or prescription, and the spring fails, the easement ceases; but if it returns the right revives. The owner of land on which there is a natural spring has a right to use it for domestic and culinary purposes, and for watering his cattle; and he may make an aqueduct to another part of his land, and use all the water required to keep the aqueduct in order, or to keep the water pure.[r] He may also use it for irrigation, provided the volume be not materially decreased.[s] The owner of the spring cannot lawfully turn the current, or give it a new direction; he is bound to let it enter the inferior estate on the same level it has been accustomed to, and at the same place, for every man is entitled to a stream of water flowing through his land without diminution or alteration.[t] The owner of the superior inheritance, or land on which there is a spring, has no right to deprive the owner of the estate below him;[u] nor can he detain the water unreasonably.[v]

STATUTE. See WASTE, below.

STILES. See WASTE, below.

STONE. See WASTE, below.

STRAWBERRY BEDS. See WASTE, below.

SURRENDER. See CONVEYANCES, ante.

SURVEYS made by authority of law, and duly returned into the land office, are matters of record, and of equal dignity with the patent.[w]

TENURE is the mode by which one holds an estate in lands; the species of right or title to real property.

TIMBER. See WASTE, below.

TRANSFER. See title CONVEYANCES, ante.

TREES are a part of the real estate while growing and before they are severed from the

c-Woodfall Landl. & Ten. 244; 6 Cow. 475. d-2 Esp. 590. e-Woodfall Landl. & Ten. 256; see 7 Gray, 550. And it has been held that such a covenant does not bind him to rebuild a house which has been destroyed by a public enemy. 1 Dall. 210; see 1 Dyer, 33, *a*. f-See 18 Toullier, *n*. 297. g-4 Paige Ch. 355; 1 T. R. 708; Foublanque, *b*. 1, *e*. 5, *s*. 8; see 6 T. R. 650; 4 Campb. 275; Com. 627; 2 Show. 401; 3 Ves. Ch. 34; Co. Litt. 27, a note, 1; 3 Johns. 44; 6 Mass. 63; Platt. Cov. 266; Com. Dig. *Condition* (L. 12); 1 Saud. 322, *n*. 1, 323, *n*. 7; 2 Id. 158, *b*. *n*. 7 & 10; Bouv. Inst. Index. h-Co. Litt. 142, *b*. i-Hargr. St. Tr. 12; 6 Mass. 435, 439; 1 Pick. 180, 182; 5 Day, 22; 12 Me. 237; 2 Zabr. 441; 27 Eng. L. & Eq. 242; 4 DeG. M. & G. 206. j-Angell Tide-w. 20, *et seq.*; 3 Kent Comm. 347; 27 Eng. L. & Eq. 242; 6 Mass. 435; 1 Dutch, 525; 16 Pet. 367; 3 How. 221; 3 Zabr. 624. k-6 Gill. 121. l-Angell Tide-w. 59. m-4 Wash. C. C. 371; 18 How. 71; 4 Zabr. 80; 2 Pet. 245. n-5 Day, 22; 2 B. & P. 472; 22 Me. 353. o-2 Johns. 313, 323; see 5 Vt. 223. p-Inst. 2, 1, 32. q-8 N. H. 58; 1 Washb. R. Prop. 35. r-15 Conn. 366. s-Angell Water Courses, 34. t-6 East. 206; 2 Conn. 584; see 3 Rawle, 84; 12 Wend. 330; 10 Conn. 213; 14 Vt. 239. u-1 Yeates, 574; 5 Pick. 175, 3 Harr. & J. 231; 12 Vt. 178; 13 Conn. 303; 14 Ill. 492. v-17 Johns. 306; 2 B. & C. 910. w-3 A. K. Marsh. 226; 2 J. J. Marsh. 160; see 3 Me. 126; 5 Id. 24; 14 Mass. 149; 1 Harr. & J. 201; 1 Overt. 199; 1 Dev. & B. 76.

freehold; but as soon as they are cut down they are personal property. Trees belong to the owner of the land where they grow; but if the roots go out of one man's land into that of another, or the branches spread over the adjoining estates, such roots or branches may be cut off by the owner of the land into which they thus grew.[x] When the roots grow into the adjoining land, the owner of such land may lawfully claim a right to hold the tree in common with the owner of the land where it was planted; but if the branches only overshadow the adjoining land, and the roots do not enter it, the tree wholly belongs to the owner of the estate where the roots grow.[y] When the tree grows directly on the boundary-line, so that the line passes through it, it is the property of both owners, whether it be marked as a boundary or not.[z] See WASTE, below.

VEST. An estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest when there is a present fixed right of future enjoyment.[a]

VESTED REMAINDERS are estates by which the present interest passes to the party, though to be enjoyed in the future, and by which the estate is invariably fixed to remain to a determinate person, after a particular estate is extinguished.[b]

VIEW. Every one is entitled to a view from his premises; but he thereby acquires no right over the property of his neighbors. The erection of buildings which obstruct a man's view, therefore, is not unlawful, and such buildings cannot be considered a nuisance.[c]

WARRANTY. See title CONVEYANCES, "Covenants," ante.

WAINSCOT. See WASTE, below.

WARREN. See WASTE, below.

WASTE is any spoil or destruction done, or permitted, to lands, houses, or other real property to the prejudice of the owner or his heirs. It may be voluntary or permissive.

Permissive waste to buildings consists in omitting to keep them in tenantable repair; suffering the timbers to become rotten by neglecting to cover the house; or suffering the walls to fall into decay for want of plastering; or the foundation to be injured by neglecting to turn off a stream of water, and the like. At common law, the mere suffering of a house to remain unroofed, if it was so at the commencement of the lease, would not be waste; but a tenant assumed the responsibility of any other part of the house thereby becoming ruinous or decayed; and so although no injury or destruction of a house by lightning, tempest, or the public enemy, would not be waste, yet to suffer it to remain ruined would be.[d] Permissive waste in houses, as a general rule, is now only punishable when a tenant is bound to repair, either expressly or by implication.[e]

Voluntary waste is committed upon cultivated fields, orchards, gardens, meadows, and the like, whenever a tenant uses them contrary to the usual course of husbandry, or in such a manner as to exhaust the soil by negligent or improper tillage.[f] It is, therefore, waste to convert arable land into woodland, or the contrary.[g] Cutting down fruit trees, although planted by the tenant himself, is waste.[h] So if an outgoing tenant plough up strawberry beds which he has bought of a former tenant when he entered.[i] When lands are leased on which there are open mines of metal, or coal, or pits of gravel, lime, clay, brick earth, and the like, the tenant may dig out of such mines or pits, but he cannot open any new mines or pits without being guilty of waste; any carrying away of the soil is also waste.[k] Voluntary waste is committed in houses by pulling them down, or by removing wainscots, floors, benches, furnaces, windows, doors, shelves, and other things once fixed to the freehold, although they have been erected by the lessee himself, unless they were mere fixtures; and this kind of waste may take place not only in pulling down houses, or parts of them, but also in changing their forms, as if a tenant pull down a house and erect a new one in its place, whether it be larger or smaller than the first,[l] or convert a parlor into a stable, or a grist-mill into a fuelling-mill,[m] or turn two rooms into one.[n] The building of a house where there was none before, by the strict rules of the common law, was said to be waste;[o] and taking it down after it was built was waste also.[p] Voluntary waste may be committed upon timber; and in those countries where timber is scarce and valuable, the law is strict in this respect. The law of waste accommodates itself to the varying wants and conditions of different countries; that will not, for instance, be waste in an entire woodland country which would be so in a cleared one. The extent to which wood and timber on such land may be cut without waste, is a question of fact for a jury to determine under the direction of the court.[q] A tenant may always cut trees for the repair of houses, fences, hedges, stiles, gates, and the like;[r] and for making and repairing all instruments of husbandry; as plows, carts, harrows, rakes, forks, etc.;[s] and he may, when unrestrained by the terms of the lease, cut timber for firewood, if there be not enough dead timber for such purposes;[t] but where, under such circumstances, he is entitled to cut down timber, he is restrained, nevertheless, from cutting ornamental

x-Rolle, 394; 3 Bulstr. 198; Viner Abr. Trees, 6, Nuisance (W. 2); 1 Suppl. to Ves. Jr. 138; 2 Suppl. Ves. Ch. 162, 448; 6 Ves. Ch. 109. y-1 Ld. Raym. 737. z-12 N. H. 454. a-Fearne Cont. Rem. 2. b-2 Bouv. Inst. n. 1831. c-9 Co. 58, *b*. d-2 Rolle Abr. 818; F. Moore, 69; 10 Ad. & E. 398; 4 Leon, 240. e-4 B. & P. 298; 10 B. & C. 312. f-5 T. R. 373; 6 Ves. Ch. 328; 2 Hill, 157; 2 B. & P. 86. g-Co. Litt. 51, *b*. h-2 Rolle Abr. 817. i-1 Campb. 227. j-Co. Litt. 53, *b*. k-Com. Dig. *Waste*, D. 4; 14 East. 489; 2 Hill N. Y. 157; 6 Barb. 13; Co. Litt. 53, *b*; 1 Sch. & L. Ch. 8. l-2 Rolle Abr. 815. m-2 Rolle Abr. 814, 815. n-2 Rolle Abr. 815. o-Co. Litt. 53, *a*. p-Com. Dig. Waste (D. 2); 2 East. 88; 1 B. & Ad. 161; 8 Mass. 416; 1 Met. (Mass.) 27; 4 Pick. 310; 19 N. Y. 234; 16 Conn. 322; 2 M'Cord, 329; 1 Harr. & J. 289; 1 Watts, 378. q-7 Johns. 227. r-Co. Litt. 53, *b*. s-Wood Inst. 344. t-Com. Dig. Waste (D 5); Fitzherbert Nat. Brev. 59 *m*.

trees, or those planted for shelter;[u] or to exclude objects from sight.[v] A tenant of a dove-house, warren, park, fish-pond, or the like, would also be guilty of waste, if he took away animals therefrom to such an extent as not to leave as large a stock of them as he found when he came in.[w] Windfalls are the property of the landlord; for whatever is severed by inevitable events, as, by a tempest, or by a trespasser, and by wrong, belongs to him who has the inheritance.[x]

In general, a tenant is answerable for waste although it is committed by a stranger, for he is the custodian of the property, and must take his remedy over.[y] But he is not liable when the damage is caused by lightning, tempest, or a public enemy.[z] He is also liable at common law for all damages done by fire, accidental or otherwise, upon the premises, unless this be excepted in the lease, though accidental fires will not, through statutory enactment throughout the States, render him liable. The protection afforded by these statutes extends only to a case of accidental fire—that is, to one which cannot be traced to any particular or wilful cause—and stands opposed to the negligence of either servants or masters; and therefore an action still lies against a person upon whose premises a fire commences through the negligence of himself or his servants, and is productive of injury to his neighbor.[a]

The redress for injuries of the foregoing character are either preventive or corrective, which may forfeit the tenant's further occupancy of the premises, as well as subject him to exemplary damages for all injury done.

WATER. A pool of water, or a stream or water-course, is considered as part of the land; hence a pool of twenty acres would pass by the grant of twenty acres of land without mentioning the water.[b] A mere grant of water passes only a fishery;[c] but the owner of land over which water flows may grant the land, reserving the use of all the water to himself, or may grant the use of all or a portion of the water, reserving the fee of the land to himself.[d]

Water-courses in a legal sense are comprehended under the general name of land; so that a grant of land conveys to the grantee not only fields, meadows, and the like, but also all the rivers and streams which naturally pass over the surface of the land.[e] Those who own land bounding upon a water-course are generally known as riparian proprietors.[f] By the rules of the common law all proprietors of lands have precisely the same rights to waters flowing through their domains, and one can never be permitted so to use the stream as to injure or annoy those situated on the course of it, either above or below him. They have no property in the water itself, but a simple right to use it; accordingly while each successive riparian proprietor is entitled to the reasonable use of the water for the supply of his natural wants, and for the operation of mills and machinery, he has no right to flow the water back upon the proprietor above;[g] nor to discharge it so as to flood the proprietor below;[h] nor to divert the water,[i] even for the purpose of irrigation, unless it be returned without essential diminution;[j] nor to obstruct or detain it, except for some reasonable purpose, such as to obtain a head of water for a mill, and to be again discharged, so as to allow all on the same stream a fair participation;[k] nor to corrupt the quality of the water by unwholesome or discoloring impurities.[l] But while such are the rights of the riparian proprietors when unaffected by contract, these rights are subject to endless modifications on the part of those entitled by their enjoyment, either by grant,[m] or by reservation,[n] or by a license,[o] or by agreement,[p] or by twenty years adverse enjoyment, from which a grant or contract will be implied,[q] in such a way as to adapt the uses of the water to the complex and multiplying demands and improvements of civilization.

Wherever a water-course divides two estates each estate extends to the thread or central line of the stream; but the riparian owner of neither can lawfully carry off any part of the water without the consent of the other opposite, each riparian proprietor being entitled not to half or any other proportion of the water, but to the whole bulk of the stream undivided and indivisible.[r] Where an island is on one side of a river, so as to give the riparian owner of that side only one-fourth of the water, he has no right to place obstructions at the head of the island to cause one-half of the stream to descend on his side of the river, but the owner opposite is entitled to the natural flow of the remaining three-fourths.[s]

u-6 Ves. Ch. 419. v-16 Ves. Ch. 375; 7 Ired. Eq. 197; 6 Barb. 9. w-Co. Litt. 53; 2 Leon, 222. x-3 P. Wms. 268; 11 Co. 81; Bac. Abr. Waste, D. 2. y-2 Dougl. 745; 1 Taunt. 198; 1 Denio, 104. z-Co. 2d Inst. 303; F. Moore, 69; 5 Co. 21; Shepp. Touchst. 173; 4 Kent Comm. 77. a-1 Denio, 207; 8 Johns. 421; 2 Harring. 443; 21 Pick. 378; 1 Halst. 127; 6 Taunt. 44; Tayl. Landl. & T. 196. b-2 Bl. Comm. 18; 2 N. H. 255, 391; 1 Wend. 255, 391; 5 Cow. 216; 5 Conn. 497; 14 Mass. 49; 8 Metc. (Mass.) 466; 2 Harr. & J. 195; 8 Penn. St. 13. c-Co. Litt. 4 *b*; 5 Cow. 216. d-26 Vt. 64; 3 Hill N. Y. 418; 22 Pick. 333; 6 Met. (Mass.) 131; 18 Eng. L. & Eq. 164. e-Co. Litt. 4; 2 Brownl. 142; 2 N. H. 255; 5 Wend. 423. f-Angell Water Courses, 3; 3 Kent Comm. 354; 4 Mason C. C. 397. g-Cro. Jac. 556; 9 N. H. 502; 24 Id. 364; 9 Watts, 119; 20 Penn St. 85; 3 Rawle, 84; 4 Eng. L. & Eq. 265; 1 B. & Ald. 874; 3 Green, 116; 4 Ill. 452; 38 Me. 243. h-17 Johns. 306; 3 Hill, 531; 5 Vt. 371; 3 Harr. & J. 231. i-17 Conn. 288; 13 Johns. 212; 10 Barb. 518; 24 Ala. (N. S.) 130; 28 Vt. 670; 38 Eng. L. & Eq. 526. j-38 Eng. L. & Eq. 241; 13 Mass. 420; 5 Pick. 175; 8 Me. 253; 12 Wend. 330; 4 Ill. 496. k-17 Barb. 654; 10 Cush. 367; 6 Ind. 324; 28 Vt. 459; 6 Penn. St. 32; 29 Id. 98; 4 Mason C. C. 401; 17 Johns. 306; 13 Conn. 303. l-24 Penn St. 298; 22 Barb. 297; 3 Rawle, 397; 8 Eng. L. & Eq. 217; 3 Hill, 479; 4 Ohio, 833. m-3 Conn. 373; 13 Johns. 525; 17 Me. 281; 3 Hill N. Y. 418; 6 Met. (Mass.) 131; 7 Id. 94; 7 Penn. St. 318; 18 Eng. L. & Eq. 164; 9 N. H. 282; 3 N. Y. 253. n-6 N. Y. 33; 20 Vt. 250. o-2 Gill. 221; 13 Conn. 303; 1 Met. (Mass.) 331; 14 S. & R. 267; 4 East. 107. p-19 Pick. 449; 21 Id. 417; 22 Id. 333; 3 Harr. & J. 282; 17 Wend. 126. q-6 East. 208; 1 Campb. 463; 4 Mason C. C. 397; 6 Scott, 167; 9 Pick. 251. r-13 Johns. 212; 8 Me. 253; 3 Sumn. C. C. 189; 13 Mass. 507; 1 Paige Ch. 447. s-10 Wend. 260.

Where there is an underground flow of water so well defined as to be a constant stream, the owner of the land through which it flows has no right to divert it to the injury of the person on whose land it comes to the surface as a spring.[p]

WHARFS, the several States being owners of the soil of tide waters within their respective territories, may by law authorize and regulate the erection of wharfs thereon, until the general government shall have legislated upon the subject.[q] In the navigable fresh-water rivers the riparian proprietors, being the owners of the bed of the stream, may wharf out to the channel, subject only to the condition that they do not materially interrupt the navigation.

WINDFALLS. See WASTE, above.

WINDOWS. See WASTE, above.

WOODS. See WASTE, above.

Reason. See AUTHORITIES.

Rebutting. See EVIDENCE.

RECEIPTS. See BAILMENTS; CONTRACTS; CONVEYANCES; RELEASES.

A RECEIPT is a written acknowledgment of payment of money or delivery of chattels.

AN ACQUITTANCE is a discharge or release from a debt. The writing which is evidence of the discharge. A receipt in full, which bars a further demand. An agreement in writing to discharge a party from an engagement to pay a sum of money. It differs from a release in this, that the latter is under seal, while an acquittance is not.[r] But though not under seal it has nearly the same effect as a release.[s]

A receipt is often useful as evidence of facts collateral to those stated in it. It proves the payment, and whatever inference may be legally drawn from the fact of the payment described, will be supported by the receipt. Thus, receipts for rent for a given time have been held *prima facie* evidence of the payment of all rent previously accrued.[t] And they have been admitted on trial of a writ of right, as showing acts of ownership on the part of him who gave them.[u] A receipt given by A. to B. for the price of a horse, afterwards levied on as the property of A., but claimed by B., was once admitted as evidence of ownership against the attaching creditor.[v] A receipt "in full of all accounts," the amount being less than that called for by the accounts of the party giving it, was held in his favor evidence of a mutual settlement of accounts on both sides, and a payment of the balance ascertained to be due after setting off one account against the other.[w] A receipt given by an attorney for securities he was to collect and account for has been held presumptive evidence of the genuineness and justness of the securities.[x] And when a general receipt is given by an attorney for an evidence of debt then due, it will be presumed he received it in his capacity as attorney for collection; and it is incumbent on him to show he received it for some other purpose if he would avoid an action for neglect in not collecting.[y]

A receipt is executed by the person to whom the delivery or payment is made, and may be used as evidence against him on the general principle which allows the admission or declaration of a party to be given in evidence against himself. As an instrument of evidence, the receipt of one person is, in general, inoperative against another, although often useful as a voucher in the private settlement of accounts. And receipts of public officers are sometimes admissible *per se*.[z] It is essential to a receipt that it acknowledge the payment or delivery referred to.[a] Also, the receipt must, from the nature of the case, be in writing, and must be delivered to the debtor; for a memorandum of payment made by the creditor in his own books is no receipt.[b]

The mere acknowledgment of payment made is not treated in law as binding or conclusive in any high degree. So far as a simple acknowledgment of payment on delivery is concerned, it is presumptive evidence only,[c] and is, in general, open to explanation,[d] being an exception to the general rule that parol evidence cannot be admitted to contradict or vary a written instrument.[e] Thus, a party may always show, in explanation of a receipt limited to such acknowledgment, the actual circumstances under which it was made,[f] *e. g.*, that it was obtained by fraud,[g] or given under a mistake,[h] or that, in point of fact, no money was actually paid as stated in it.[i]

IN CONTRACTS, ETC.

A receipt may embody a contract, and, in this case, it is not open to the explanation or contradiction permitted in the case of a simple receipt.[j] The fact that it embodies an agreement, brings it within the rule that all matters resting in parol are merged in the writing.[k] Thus, a receipt which contains a clause amounting to an agreement as to the application to be made of the money paid—as when it is advanced on account of future transactions—is not open to parol evidence inconsistent with it.[l] A bill of parcels with prices affixed, rendered by a seller of goods to a purchaser, with a re-

p-25 Penn. St. 258; 29 Id. 59; 6 Paige Ch. 435; 1 Story C. C. 387; see 12 M. & W. 324; 28 Vt. 49; Angell Water Courses, §§ 109, 114. q-4 Ga. 26; 7 Cush. 53; 2 Harr. & M. H. 244; 11 Gill. & J. 351. r-Poth. Oblig. 781. s-1 Rawle, 391; 3 Salk. 298, pt. 2; Co. Litt. 212, a. 273. If not under seal it is necessary to show a consideration therefor. 3 P. R. 413; 1 Barr. 450. t-15 Johns. 479; 1 Pick. 332; 2 E. D. Smith, 58. u-7 C. B. 21. v-2 Harr. 78. w-9 Wend. 332. x-14 Ala. 500. y-3 Johns. 185. z-1 Ill. 45. a-Russ. & R. Cr. Cas. 227; 7 C. & R. 549. b-3 Dowl. & R. 332; 2 B. & Ald. 501, n; 11 Lond. Jur. 806; 1 East. 460; 1 Speers, 53. c-1 Pet. C. C. 182; 1 Rich. 32; 1 Harring. 5; 3 Id. 317; 4 Id. 206; 7 Cow. 334; 16 Wend. 460; 16 Me. 475; 5 Ark. 61; 11 Mass. 27, 363; 3 McLean C. C. 265; 6 B. Mon. 199; 2 Johns. Cas. 438; 1 Per. & D. 437; 3 B. & C. 431; 8 Gill. 179; 3 Jones, 501. d-2 Johns. 378; 9 Id. 310; 6 Ala. 811; 8 Ala. (N. S.) 59; 4 Vt. 308; 21 Id. 222; 3 McLean C. C. 387; 4 Barb. 265; 5 Duer, 294; 5 J. J. Marsh. 79; 5 Mich. 171. e-5 Johns. 68; 2 Met. (Mass.) 283. f-8 Johns. 389. g-Wright, 764; 4 Harr. & McH. 219. h-6 Barb. 58; 3 Dana, 427. i-2 Strobh. 390; 3 N. Y. 168; 10 Vt. 96; but see 1 J. J. Marsh. 583. j-4 Gray, 186. k-See ante, EVIDENCE. l-5 Ind. 109; 14 Wend. 116; 12 Pick. 40, 562; 15 Id. 437.

ceipt of payment executed at the foot, was held in one case to amount to a contract of sale of the goods, and therefore, not open to parol explanation, while, in another case, a similar bill was held merely a receipt, the bill at the head being deemed only a memorandum to show to what the receipt applied.[m] A bill of lading which usually contains words of receipt stating the character, quantity, and condition of the goods as delivered to the carrier, is the subject of a somewhat peculiar rule. It is held that so far as the receipt is concerned, it may be explained by parol.[n] But as respects the agreement to carry and deliver, the bill is a contract, to be construed like all other contracts, according to the legal import of its terms, and cannot be varied by parol.[o]

Where the payment is made in some particular currency or medium, as doubtful bank-bills, a promissory note of another person, etc., clauses are often inserted in receipts specifying the condition in which such mode of payment is accepted. The general rule is that negotiable paper given in payment is presumed to have been accepted on the condition that it shall not work a discharge of the demand unless the paper shall ultimately produce satisfaction; and if an intent to accept it absolutely does not affirmatively appear, the creditor is entitled, in case the paper turned out to him is dishonored, to return it and claim to be paid anew.[p] If the receipt is silent on that subject, it is open to explanation, and the creditor may rebut it by proof that the payment admitted was in fact made by a note, bill, check, bank-notes, afterwards ascertained to be counterfeit, or notes of a bank in fact insolvent, though not known to be so to the parties, etc.[q] But if the agreement of the parties is specified in the receipt, the clause which contains it will bind the parties, as being in the nature of a contract.[r] A receipt for a note taken in payment of an account will not, in general, constitute a defence to an action on the account, unless it appears by proof that the creditor agreed to receive the note as payment, and take the risk of its being paid.[s]

IN DEEDS.

The effect to be given to a receipt for the consideration-money, so frequently inserted in a deed of real property, has been the subject of numerous and conflicting adjudications. The general principle settled by weight of authority is, that for the purpose of sustaining the conveyance as against the vendor and his privies, the receipt is conclusive; they are estopped to deny that a consideration was paid sufficient to sustain the conveyance.[t] But in a subsequent action for the purchase money, or upon any collateral demand, *e. g.*, in an action to recover a debt which was in fact paid by the conveyance, or in an action for damages for breach of covenant in the deed, and the like, the grantor may show that the consideration was not, in fact, paid—that an additional consideration to that mentioned was agreed for, etc.[u] And when the deed is attacked for fraud, or is impeached by creditors as voluntary, and therefore void, or when the object is to show the conveyance illegal, the receipt may be explained or contradicted.[v]

IN FULL, ETC.

When a receipt acknowledges payment "in full" of a specified debt, or "in full of all accounts" or of "all demands" the instrument is of much higher and more conclusive character. It does not, indeed, like a release, operate upon the demand itself, extinguishing it by any force or virtue in the receipt, but it is evidence of a compromise and mutual settlement of the rights of the parties. The law infers from such acknowledgment an adjustment of the amount due after consideration of the claims of each party, and the payment of the specified sum as a final satisfaction.[w] This compromise, thus shown by the receipt, will often operate to extinguish a demand, although the creditor may be able to show he did not receive all that he justly ought.[x] If the rights of a party are doubtful, are honestly contested, and time is given to allow him to satisfy himself, a receipt in full, though given for less than his just rights, will not be set aside. Thus, in general, a receipt in full is conclusive when given with a knowledge of the circumstances, and when the party giving it cannot complain of any misapprehension as to the compromise he was making, or of any fraud.[y] But receipts of this character are not wholly exempt from explanation: fraud or misrepresentation may be proved, and so may such mistake as enters into and vitiates the compromise of the demand admitted.[z] The evidence in explanation must be clear and full, and addressed to the point that there was not in fact an intended and valid compromise of the demand. For if the compromise was not binding, the receipt in full will not aid it. The receipt only operates as evidence of a compromise which extinguished the claim.[a]

m-3 Cranch, 311; 1 Bibb. 271. n-6 Mass. 422; 7 Id. 297; 3 N. Y. 321; 10 Id. 529; 25 Barb. 16; 5 Duer, 538; 1 Abb. Adm. 209, 397; but see 1 Bail. 174. o-25 Barb. 16; 3 Sandf. 7. p-See ante, PAYMENT. q-1 Wash. C. C. 338; 1 W. & S. 521; 2 Johns. Cas. 438; 2 Johns. 455; 13 Wend. 101; 3 McLean C. C. 265; 5 J. J. Marsh. 78; but see 3 Caines Cas. 14; 1 Munf. 460; 1 Met. (Mass.) 156. r-4 Vt. 555; 1 Rich. 111; 16 Johns. 277; 23 Wend. 345; 2 Gill. & J. 493; 3 B. Mon. 353. s-10 Md. 27. t-1 Binn. 502; 26 Mo. 56; 4 Hill (N. Y.) 643. u-16 Wend. 460; 4 Johns. 23; 14 Id. 210; 2 Hill (N. Y.) 554; 10 Vt. 96; 12 Id. 443; 3 N. H. 170; 4 Id. 229, 397; 1 M'Cord, 514; 7 Pick. 533; 1 Rand. 219; 4 Dev. 355; 3 Hawks. 82; 6 Me. 364; 5 B. & Ald. 606; 5 Ala. 224; 5 Lond. Jur. 693; 2 Harring. 354; 13 Miss. 238; 5 Conn. 113; 1 Harr. & G. 139; 2 Humph. 584; 1 Gill. 84; 1 J. J. Marsh. 387; 3 Md. Ch. Dec. 411; 3 Ind. 212; 15 Ill. 230; 1 Stockt. Ch. 492. But there are many contrary cases. See 1 Me. 2; 5 Id. 232; 7 Johns. 341; 3 M'Cord, 552; 1 Johns. Ch. 390; 1 Harr. & J. 252; 1 Hawks. 64; 4 Hen. & M. 113; 2 Ohio, 182; 1 B & C. 704. v-3 Zabr. 465; 3 Md. Ch. Dec. 461; 21 Penn. St. 480; 20 Pick. 247; 12 N. H. 248. w-10 Vt. 491; 2 Dev. 247; Wright, 764; 21 N. H. 85. x-See ACCORD AND SATISFACTION. y-5 Vt. 520; 1 Esp. 173; 1 Campb. 392; 2 Strobh. 203. z-Brayt. 75; 1 Campb. 394; Coxe, 48; 2 Brev. 223; 4 Harr. & McH. 219; 4 Barb. 265; 1 Edw. Ch. 101, 427; 2 Harring. 392; 2 Harr. & P. 44. a-26 Me. 88; 4 Denio, 166; 2 M'Cord, 320; 4 Wash. C. C. 562.

LARCENY AND FORGERY OF.

A receipt may be the subject of larceny[b] or of forgery,[c] and it is a sufficient "uttering" of a forged receipt to place it in the hands of a person for inspection, with intent fraudulently to induce him to make an advance on the faith that the payment mentioned in the spurious receipt has been made.[d]

Receipt—Account Generally.

$—— Place ——, Date ——.

Received of A. B. the sum of —— dollars on account (for ——). C. D.

Receipt—Chattels, Papers, etc.

Place ——, Date ——.

Received of A. B. the chattels (*or* papers, etc.) described in the following schedule, viz.: (*describing them*).

(*If the chattels or papers are received for any special purpose, add:* For the purpose of, etc., *specifying the purpose.*) C. D.

Receipt—Debt.

Paid through Third Person.

Received this —— day of ——, of Mr. C. D., by the hand of E. F., the sum of twenty-five dollars in full, for certain goods (*or otherwise*) bought by said C. D. of me, between the —— day of —— and the —— day of ——. A. B.

Receipt—Debt.

Due from Intestate.

$—— Philadelphia.

Received this —— day of ——, of A. R., administrator of the estate of D. D. (late) of ——, deceased, the sum of —— dollars in full of a debt owing me by said D. D., in his lifetime, for household goods, by me sold him. [*Signed*] A. B.

Receipt—In Full of all Demands.

$—— Place ——, Date ——.

Received of A. B. the sum of —— dollars in full of all demands against him. C. D.

Receipt—Interest.

Received this —— day of ——, of C. D., —— dollars in full, for one year's interest of one thousand dollars, due me the —— day of ——, on a bond of said C. D., dated the —— day of ——. A. B.

Another.

Received this —— day of ——, of Mr. C. D., the sum of —— dollars, for one year's interest of one thousand dollars, due me on the —— day of —— last, on a bond from said C. D. to me.

[*Signed*] A. B.

Another.

July ——.

Received on the within obligation —— dollars interest. A. B.

Receipt—Legacy.

Received this —— day of ——, of E. X., executor of the last will and testament of D. D., of ——, deceased, the sum of four thousand dollars in full of a legacy bequeathed me by said last will and testament. [*Signed*] A. B.

Receipt—Money.

$—— Place ——, Date ——.

Received of A. B. —— dollars (for, etc.) C. D.

Another—On a Bond.

Received the —— day of ——, of C. D., the sum of —— dollars, in part payment of the sum of one thousand dollars, due me from said C. D., on his bond, bearing date the —— day of ——. A. B.

Another—For Money Paid by a Third Person.

$—— Place ——, Date ——.

Received of A. B., by C. F., the sum of —— dollars. C. D.

Another.

Received this —— day of ——, of Mr. C. D., the sum of —— dollars, in part payment of a greater sum due me on a bond executed by said C. D. A. B.

Another.

January ——.

Received on the within obligation —— dollars, principal. A. B.

Another.

Paid by a Third Person for the Use of Another.

Received this —— day of ——, of C. D., esq., the sum of fifty dollars in full, for work done by Mr. E. F. for work done said C. D. by the order and for the use of said E. F. A. B.

Another.

Received this —— day of ——, of E. F., esq., the sum of fifty dollars, by the order and for the use of C. D., for work and labor in ——. A. B.

Receipt—Purchase-Money.

Know all men by these presents:

That I, A. B. (of ——), hereby acknowledge the receipt from C. D. (of ——), of five hundred dollars, being the last payment, and in full, of one thousand dollars, by said C. D. paid as the consideration of the purchase of a certain tract and parcel of land, situate in ——, etc. (*as in the agreement, bond or conveyance described*).

That of the entire sum of the five hundred dollars aforesaid, and every part thereof, I do, by these presents, for me, my heirs, executors, and administrators, acquit and discharge said C. D. his heirs, executors, and administrators forever.

In witness, etc. A. B.

Another.

Received this —— day of ——, of the within-named C. D., the sum of five hundred dollars, being the full consideration and purchase-money within mentioned remaining to be paid me.

Witness, E. F. A. B.

Receipt—To take Care of and Redeliver Property on Demand.

A. B., plaintiff. } (Name of court.)
vs.
C. D., defendant. }

Place ——, Date ——.

Received of C. C., constable, of ——, of said county, the following property, by him levied on in the above entitled action, to wit: (*here describe the property specifically, so it can be identified*), promising to redeliver such property to said officer on demand. B. E.

Receipt—Rent.

$—— Place ——, Date ——.

Received of A. B. the sum of —— dollars, one month's rent, due this day, for my (*or* the dwelling-house of E. F.) on lot ——, in —— street, in ——, now occupied by A. B. C. D.

Recital. See CONVEYANCES.
Recognition. See AGENCY.
Refreshing Memory. See EVIDENCE.
Refusal. See ACTS.
Registers. See EVIDENCE.

RELEASES. See CONTRACTS; RECEIPTS.

A RELEASE is the giving up or abandoning a claim or right to the person against whom the claim exists, or the right is to be exercised or enforced. An express release is one directly made in terms by deed or other suitable means. An implied release is one which arises from acts of the creditor or owner, without any express agreement.[f]

A release by operation of law is one, which though not expressly made, the law presumes in consequence of some act of the releasor; for instance, when one of several joint obligors is expressly released, all others are also released by operation of law,[g] unless otherwise provided by statute.

Releases may either give up, discharge, or abandon a right of action, or convey a man's interest or right to another who has possession

b-2 Abb. Pr. 211. c-Russ. & R. 227; 7 C. & P. 459. d-14 Eng. L. & Eq. 556. f-See Poth. Ob. *nn.* 608, 609. g-3 Salk. 298; Hab. 10, 66; Mod. 380; 7 Johns. 207.

of it or some estate in the same.[h] In the former class, a mere right is surrendered; in the other, not only a right is given up, but an interest in the estate is conveyed and becomes vested in the releasee.

In general, the words of a release will be restrained by the particular occasion of giving it.[i]

In releasing an interest in real estate the words generally used in the conveyance are: "Remised, released, and forever quit-claimed."[j] See CONVEYANCES; QUIT-CLAIM DEEDS; ante.

RELEASE FORMS.

Release—Of all Claims, Demands, etc.

I, A. B., of ——, in the county of ——, and State of ——, for and in consideration of the sum of —— dollars, the receipt of which is hereby acknowledged, do hereby release and forever discharge C. D. (of ——, in, etc.), his heirs, executors, and administrators, of and from all actions, causes of action, suits, controversies, claims, and demands whatsoever, for and by reason of any matter, cause, or thing, from the beginning of the world to this —— day of ——.

In witness whereof, I have hereunto set my hand the day and year last above written.

Executed in presence of A. B.

Release—Mutual of all Demands, etc.

This release, made this —— day of ——, between A. B. (of ——), of the first part, and C. D. (of ——), of the second part, witnesseth:

That the said parties have this day cancelled and delivered up to each other certain covenants, bonds, notes, and other written agreements, upon which the one party claimed to have demands upon the other party. And the said claims and instruments, so cancelled and delivered up, being supposed and intended to be all the claims and evidence of claims by either of said parties upon the other. And in consideration thereof, each of said parties, the said A. B. and C. D., does hereby, for himself and his legal representatives, release and forever discharge the other of and from all actions, causes of action, suits, controversies, claims, and demands whatsoever, so that neither of them shall have any claim on the other, directly or indirectly, on any agreement, contract, or supposed liability, or thing undertaken, done, or omitted to be done, from the beginning of the world to the —— day of ——.

In witness whereof, the said parties have hereunto set their hands the day and year last above written.

A. B.

Executed in presence of C. D.

Rent. See LANDLORD AND TENANT.

Repairs. See LANDLORD AND TENANT, "Landlord."

Repeal. See LAW, "Statute Law."

Reports. See AUTHORITIES.

Reputation. See EVIDENCE.

Re-sale. See SALES.

Rescue. See CRIMINAL LAW, "Arrest," etc.

Reservation. See CONTRACTS.

Residence. See DOMICIL.

Retrospective. See LAW.

Revocation. See AUTHORITY; AGENCY; CONTRACTS.

Robbery. See CRIMINAL LAW.

Rudeness. See CRIMINAL LAW.

Rumor. See EVIDENCE.

Rules. See PATENTS.

h-Shep. Touchst. 320; Litt. 444; Nelson Abr.; Bac. Abr.; Vin. Abr.; Rolle Abr. i-1 Lev. 235; 3 Id. 273; 1 Show. 151; 2 Id. 47; 2 Mod. 108, *n*; 3 Id. 277; T. Raym. 399; Palm. 218. Littleton says, a release of all *demands* is the best and strongest release, § 508. Coke says, *claims* is a stronger word, Co. Litt. 291, *b*. In the following cases a construction has been given to the terms quoted. A release of "all actions, suits, and demands," 3 Mod. 277: "all actions, debts, duties, and demands," Id. 1, 64; 8 Co. 150, *b*; 2 Saund. 6, *a*; all demands, 5 Co. 70, *b*; 2 Mod. 281; 3 Id. 185, 278; 12 Id. 465; 1 Lev. 99; Salk. 578; 2 Rolle, 20; 2 Conn. 120. "All actions, quarrels, trespasses," Dyer, 217, Pl. 2; Cro. Jac. 487. "All errors and all actions, suits and writs of error whatsoever," T. Raym. 399. "All suits," 8 Co. 150. "Covenants," 5 Co. 70, *b*. j-Litt. § 445. a-Pardessus, Dr. Com. *n*; 6 Noy. Max. Ch. 42; Shep. Toust. 244; 2 Kent Comm. 363; Poth. Vente. *n*. 1. b-3 Salk. 157; 12 N. H. 390; 10 Vt. 457. c-See 11 Pick. 311. d-See 4 Wash. C. C. 588; 10 Pick. 522; 18 Johns. 141; 8 Vt. 154; 2 Rawle. 326; Coxe, 292; 2 A. K. Marsh, 430. e-An *exchange* is not a *sale*, 3 Salk. 157; 12 N. H. 309. f-10 Vt. 457.

SALES. See ASSIGNMENT; CONTRACTS; CONVEYANCES; PERSONAL PROPERTY; REAL PROPERTY; ETC.

A SALE is an agreement by which one of two contracting parties, called the seller, gives a thing and passes the title to it, in exchange for a certain price in current money, to the other party, who is called the buyer or purchaser, who, on his part, agrees to pay such price.[a] This contract differs from a barter or exchange in this: That in the latter, the price or consideration, instead of being paid in money, is paid in goods or merchandise susceptible of a valuation.[b] It differs from accord and satisfaction, because in that contract the thing is given for the purpose of quieting a claim, and not for a price. An onerous gift, when the burden it imposes is the payment of a sum of money, is, when accepted, in the nature of a sale. When partition is made between two or more joint owners of a chattel, it would seem the contract is in the nature of a barter.[c] An absolute sale is one made and completed without any condition whatever. A conditional sale is one which depends for its validity upon the fulfilment of some condition.[d] A forced sale is one made without the consent of the owner of the property, by some officer appointed by law, as by a marshal, constable, or sheriff, in obedience to a mandate of a competent tribunal. This sale has the effect to transfer all the rights the owner had in the property, but it does not, like a voluntary sale of personal property, guarantee a title to the thing sold; it merely transfers the rights of the person as whose property it has been seized. This kind of sale is sometimes called a judicial sale. A voluntary sale is one made freely, without constraint by the owner of the thing sold. This is the common case of sales, and to this class the general rules of the law of sales apply. A private sale is one made voluntarily, and not by auction. A public sale is one made at auction to the highest bidder. Auction sales are sometimes voluntary, as, when the owner chooses to sell his goods in this way, and then as between the seller and buyer the usual rules relating to sales apply; or they are involuntary or forced when the same rules do not apply.

A sale of a chattel is an exchange thereof for money.[e] And proof of an *exchange* will not support an averment of a *sale* of goods.[f] For a sale to be valid in law, there must be parties, a consideration, and a thing to be sold. All persons may be parties to a sale, unless they labor under the disabilities and restraints already mentioned. Consideration also has been considered. The existence of the thing to be

sold, or the subject-matter of the contract, is essential to the validity of the contract.[g] If a horse be dead before the sale, or merchandise be destroyed by fire, both parties being ignorant thereof, the sale is wholly void. If a substantial part of the thing sold be non-existent, the buyer has his option to rescind the sale, or take the remainder with a reasonable abatement of the price.[h] A mere contingent possibility, not coupled with an interest, is no subject of sale; as, all the wool one shall ever have.[i] But a valid sale may be made of the wine that a vineyard is expected to produce; or the grain that a field is expected to grow; or the milk that a cow may yield during the coming year; or the future young born of a female animal then owned by the vendor;[j] or the wool that shall hereafter grow upon his sheep. If rights are vested, or possibilities are distinctly connected with interest or property, they may be sold.[k] A sale may be good in part, and void as to the residue; good as between the parties, but void as to creditors; good as to some of the creditors, but void as to others.[l]

There is a presumption that every sale is to be consummated at once; that the chattel is to be delivered, and the price paid without delay. If, therefore, nothing appears but an offer and an acceptance, and the vendee goes his way without making payment, it is a breach of the contract, and the vendor is not bound by the sale. But if there was a delivery of the chattel, or the receipt of earnest, or of part payment, either of these is evidence of an understanding that something should remain to be performed *in futuro;* and the legal presumption is rebutted. So, where the terms of the contract expressly postpone delivery, or payment, or both, to a future day, here also the sale is valid. No one can give a good title who has no good title. If a mere finder, and still more if a thief, sells what he has found or stolen to A., and A. buys in good faith, and so sells to B., and B. to C., and C. to D., etc., the original owner may reclaim his property wherever it may be, and take it without any payment to the holder, any more than if that holder were the thief himself.[m] If the owner has been deceived and defrauded into parting with his property, so that he could claim it from the taker, yet if he voluntarily parted with the property, he cannot reclaim it from one who in good faith buys it from the fraudulent party; not even if the fraud amounted to a felony.[n] No one can be made to buy of another without his own assent. Thus, if A. sends an order to B. for goods, and C. sends the goods, he cannot sue for the price, if A. repudiates the sale, although C. had bought B.'s business.[o]

CAVEAT EMPTOR.

In sales of personal property, the purchaser buys at his own risk, unless the seller gives an express warranty, or unless the law implies a warranty from the circumstances of the case, or the nature of the thing sold, or unless the seller be guilty of fraudulent misrepresentation, or concealment in respect to a material inducement to the sale.[p]

CONDITIONAL SALES.

In General. In every sale, unless otherwise expressed, there is an implied condition that the price shall be paid before the buyer has a right to possession; this is a condition precedent. "If I sell my horse for money, I may keep him until I am paid."[q] But, although the vendee may not have the right of *possession* in the article bought until the price is paid, yet the right of *property* passes *by the bargain;* and if the property is lost while yet in the possession of the vendor, without his fault, the loss will fall on the purchaser.[r] But in an action for non-delivery the buyer need only aver that he was *ready* and willing to receive and pay for them, and that the seller refused to deliver them, without averring an actual tender.[s] Generally, wherever in a contract for sale it is stated that some precise act is to be done by either party, this may amount to a condition, though not so expressed As where in a contract for a sale of goods, the words were, "to be delivered on or before" a certain day, this is a condition precedent, and if they were not delivered on or before that day,[t] (and the delivery must have been made at a reasonable time on that day, or the vendee is not bound),[u] the purchaser is not bound to take the goods. So, if the goods are to be delivered on "request," the buyer must allege and prove a request, this being a condition precedent to his acquiring a complete right.[v] But if the seller has incapacitated himself from delivering, by reselling or otherwise, no request is necessary.[w]

In sales called "contracts of sale or return," the property in the goods passes to the purchaser, subject to an option in him to return them in a fixed time, or a reasonable time; and if he fail to exercise this option in so returning them, the sale becomes absolute, and the price of the goods may be recovered in an action for goods sold and delivered.[x] And what is a reasonable time within which a contract is to be performed, or an act to be done, is, in the absence of any contract between the parties, a question of law for the court, to be determined

g-1 Leon, 42; Hob. 132; 4 E. L. & E. 471; S. C. 7 Exch. 208; 5 M. & Sel. 228. h-2 Kent Comm. 469. i-Hob. 132; 1 Hare, 556. j-5 Yerg. 195; 26 E. L. & E. 493; S. C. 10 Exch. 298. k-3 T. R. 88; 3 Merriv. 667. l-11 Pick. 76. m-14 Martin (La.) 17; 5 Ohio, 202; 2 Harr. & Johns. 308; 8 Mass. 518; 1 Johns. 479; 1 Yeates, 478; 5 S. & R. 130; 1 Dana, 195; 10 Peters. 161; 22 Wend. 285. n-13 Barb. 372; 3 Duer. 373; 6 Gratt. 268; 13 Ill. 610; 38 Me. 561; 3 Duer, 341; 1 Seld. 41; 34 E. L. & E. 607; S. C. 11 Exch. 577. o-2 Hurlstone & Norm. Exch. 564. p-Story Sales (3d Ed.) § 348; 1 Pet. C. C. 301; 4 Johns. 421; 20 Id. 196; 1 Wend. 185; 11 Met. (Mass.) 559. q-Noy Max. p. 88; 7 East. 571; 8 Barb. 328. r-6 Dana, 49; 24 Me. 366; 6 Rand. (Va.) 473. s-2 B. & P. 447; 1 East. 203; 5 Johns. 179; 1 Caines, 45; 2 Wms. Saund. 350 *n.* (3). t-2 Man. & G. 395. u-Id. v-5 T. R. 409; 3 M. & W. 258. w-Yelv. (Met. s Ed.) 76 *n.;* 5 B. & Ald. 712; 14 Mass. 96. x-3 E. L. & E. 311 S. C.; 16 Q. B. 493; 6 A. & E. 829; Peake's Cas. 56; 16 Me. 17; 9 Pick. 441; 2 Fairf. 414; 7 Cush. 485; 2 East. 116.

by a view of all the circumstances of the particular case.[y]

In sales at auction there are generally conditions of sale; and where these are distinctly made known to the buyer, they are of course binding on him, and the auctioneer or the owner of the goods is bound on his part.[z]

Any misstatement, made fraudulently, and capable of having any effect on the sale, will avoid it. Nor will the conditions of sale be binding against a purchaser, if so framed as to give the seller advantages which the buyer could not readily apprehend or understand without legal knowledge or advice; for the buyer is discharged from a purchase made under "catching conditions."[a]

MORTGAGE OF PERSONAL PROPERTY.[b]

DELIVERY. While, as between the parties, the property passes by a sale without delivery, it is not valid, in general, as against a third party without notice, without delivery. For if the same thing be sold by the vendor to two parties, by conveyances equally valid, he who first gets possession will hold it.[c] In general where there is a completed sale, and no change of possession, this retention of possession by the vendor is a badge of fraud, and will avoid the sale in favor of a party who subsequently acquires title to the property in good faith, and without knowledge of the sale.[d] The delivery may be symbolical, or a part for the whole;[e] and a delivery of the key, the property being locked up, is so far a delivery of the goods that it will support an action of trespass against a subsequent purchaser, who gets possession of them.[f] Marking timber on a wharf, or goods in a warehouse, operates as a delivery; goods bought at a shop, weighed or measured, and separated, and left by the owner until called for, are sufficiently delivered. So selecting and marking sheep, then in possession of one who was requested by the vendee to retain possession of them for him, is a sufficient delivery.[g] But if goods are sent, even under a contract of sale, to be applied by the receiver to a particular purpose, to which purpose they were not and could not be applied, the sender does not lose his property in them by delivery, but may recover them back.[h] And if property be awarded to one by arbitrators, at a certain price, the tender of the price does not pass the property, unless the other party accept the price.[i]

If no time be appointed for delivery, or for payment, the acts must be done within a reasonable time; and if neither party does any thing within that period, the contract is deemed dissolved.[j] If the goods are to be delivered when requested, the purchaser may sue without proving a request, provided the seller has incapacitated himself from delivering them, as by a resale or the like,[k] but, in general, a request must be made before the seller can be sued for non-delivery.[l] And if the vendee, either by the express terms of the contract or from its nature, is to designate the manner or place of delivery, he must do this before he can maintain his action.[m] If a day be fixed either for delivery or payment, the seller has the whole of it; and if any one of several days, the seller has the whole of all of them. If on a certain day, at a certain place, then it must be done at a convenient time before sunset, because the presence of the other party is necessary, and the law does not require him to be there through the whole twenty-four hours.[n] The seller is to keep the thing sold until the time of delivery, with ordinary care, and is liable for the want of that care, or of good faith; but if he does so keep it, he is not liable for its loss,[o] unless it perish through a defect against which he has warranted. If the parties are distant from each other, the seller must follow the directions of the buyer as to the way of sending the thing sold to him, and then a loss in the transportation will fall on the buyer,[p] unless attributable to the negligence of the seller; if the seller disregards such orders, the loss in transportation falls on him, though it does not happen through his neglect. If the directions are general, as "by a carrier," without naming any one, usual and proper precautions must be taken, and will protect the seller. The vendor, in delivering goods to a carrier, must exercise due care and diligence, so as to provide the consignee with a remedy over against the carrier.[q] And it is a part of his duty to give such notice of the sending them by ship or otherwise as will enable the buyer to insure or take other precautions.[r] If the contract be to deliver the thing ordered at the residence or place of business of the buyer, the seller is liable, although such delivery becomes impossible, unless it becomes so through the act of the buyer.[s] If the seller refuse to deliver it at the time and place agreed on, and it perish afterwards without his fault, he is liable for it. But if he be ready, and the vendor wrongfully refuse or neglect to receive it, the seller is not liable, unless the thing perishes through his gross and wanton negligence. And if the vendee unreasonably neglect or refuse to comply with conditions precedent to delivery, or to receive the goods on delivery, the seller may, after due delay and proper precautions,

y-2 Greenl. 249; 16 Me. 164; 1 Hawks. 41; 3 Sumner, 530; 3 M. & W. 445; 1 Id. 545; 20 Me. 317. z-6 E. & B. 659. a-2 Jur. 1078; 4 Bing. N. C. 463; 3 A. & E. 355; 2 Jur. 29; 4 Camp. 140. b-See *ante*, MORTGAGES. c-2 Kent Comm. 522; 4 Binn. 258; 10 S. & R. 419; 2 Atk. 115. d-See 16 Ohio, 509. e-23 Vt. 265; 9 Barb. 511; 19 Id. 416; 11 Cush. 282; 39 Me. 496. f-2 Atk. 79. g-2 Vt. 374; 12 Cush. 27; Id. 31. h-1 B. & C. 5; 2 Id. 422; 9 East. 12; 1 Id. 544; 5 T. R. 294; 2 W. Bl. 1154. i-15 East. 100. j-1 Salk. 113; 13 M. & W. 27; 23 Vt. 114. k-10 East. 359; 5 B. & Ald. 712. l-5 T. R. 409; 3 M. & W. 254; 1 Taylor, 149; 3 Price, 68. m-1 Duer, 277; 14 Q. B. 728. n-2 Man. & G. 395. o-1 Busb. L. 253. p-Cowp. 294; 6 Foster, 415; 1 Gray, 536; 6 Port. (Ala.) 138; 3 P. Wms. 186; 3 B. & P. 584; 5 Price, 630; Dan. & L. 6; 28 E. L. & E. 586; S. C. 10 Exch. 342. q-3 Camp. 414; 14 East. 475; 1 Bing. N. C. 671; 8 T. R. 330. r-3 Camp. 129; Brown Sales § 526; 2 Kent Comm. 500; 2 T. R. 189. s-2 Camp. 56 *n*; 10 East. 530; 5 C. & P. 182; Pet. C. C. 85; Id. 221.

resell them, and hold the buyer responsible for any deficit in the price.[t] It is common and generally advisable to sell them at auction; but this is not necessary.[u] If the seller sell on cred the goods are to be delivered without payment; but if the buyer becomes insolvent before the time of delivery, the seller may demand security, and refuse to deliver the goods without it.[v] If no place of delivery be specially expressed in the contract, the store, shop, farm or warehouse where the article is sold, made, grown, or deposited, is in general the place of delivery.[w] If, however, a particular place be appointed by the contract, the goods must be delivered there before an action will lie for their price.[x] If expressly deliverable to the vendee, but no place is named, it may be delivered to him where he is, or at his house, or place of business. Except so far as this option of the seller is controlled by the nature of the article. For if the purchaser brought a load of cotton to be worked in his mill, it cannot, under an agreement of delivery, be delivered at his distant dwelling-house, nor should a load of hay for his stable, or cooking-range for his kitchen, be delivered at his store on the wharf.

The vendee is bound to receive and pay for the thing sold at the time and place expressed or implied in the contract of sale, and to pay all reasonable charges for keeping it after sale and before delivery.[y] And if he refuse so to take and pay for the goods sold, he will be liable to an action for the price, or in a special action for damages, unless he can show incapacity to contract, or sufficient error, duress, or fraud.

EFFECT. Upon a completed sale the property in the thing sold passes to the purchaser.[z] If it be sold for cash and the price be not paid, or if it be sold on a credit, but by the terms of the bargain is to remain in the hands of the vendor, the vendor has a lien on it for the price;[a] and only payment or tendor gives the vendee a right to possession. And if it be sold on credit, and the buyer by the terms of the bargain has the right of immediate possession without payment, but the thing sold actually remains in the possession of the seller until the credit has expired, and the price is still unpaid, the seller then has a lien for the price.[b] If it be sold on credit, and there is no agreement in respect to the delivery or possession of the goods, the purchaser at once has a complete right not only of property but of possession,[c] subject only to defeasance under the law of *stoppage in transitu*. If the property passes, though not the right of possession, and the thing sold perish, the loss falls on the purchaser.[d] The vendor's lien is destroyed by a delivery of the goods, or by a delivery of a part, without an intention to separate it from the rest, but with an intention thereby to give possession of the whole. Mere delivery of a part will not, however, divest the vendor of his lien, as to the *whole*, if anything remains to be done by the vendor to the part undelivered.[e] If sold for cash, and the money be not paid within a reasonable time, the vendor may treat the sale as null.[f]

The property does not pass absolutely unless the sale be completed; and it is not completed until the happening of any event expressly provided for, or so long as anything remains to be done to the thing sold, to put it into a condition for sale, or to identify it, or discriminate it from other things.[g] Nor is the sale completed while anything remains to be done to determine its quantity, if the price depends on this; unless this is to be done by the buyer alone.[h] But where the thing to be done by the vendor is but trifling, or is but a mathematical computation, this rule will not apply.[i] If the parties intended that the sale should be complete before the article sold is weighed or measured, the property will pass before this is done.[j] And even if earnest, or a part of the price be paid, the sale is not complete under these circumstances, and if it finally fail, the money paid may be recovered back.[k]

PARTIES.

As a general rule, all persons *sui juris*, may be either buyers or sellers. There is a class of persons who are incapable of purchasing, except *sub modo*, as infants; and another class, who, in consequence of their peculiar relation with regard to the owner of the thing sold, are totally incapable of becoming purchasers, while that relation exists; these are trustees, guardians, assignees of insolvents, and generally all persons who, by their connection with the owner, or by being employed concerning his affairs, have acquired a knowledge of his property, as attorneys, conveyancers, and the like.

PRICE. The price to be paid must be certain, or so referred to a definite standard that it may be made certain;[l] as, what another man has given; or what another man shall say should be the price. But if this third party refuse

t-4 Bing. 722; 4 Esp. 251; 5 S. & R. 19; 5 Johns. 395. u-1 Sand. 279; 4 Barb. 564. v-5 T. R. 215; 4 B. & C. 948; 6 East. 614; 1 H. Bl. 357; 3 T. R. 464. w-2 Kent Comm. 505; 5 Cowen, 516; 4 Wend. 380; 3 W. & S. 295. x-19 Me. 147; 20 Id. 325. y-20 Vt. 21. z-5 B. & C. 862; 2 Nev. & M. 202; Bell's Comm. 166; 7 East. 558; Com. Dig. Agreement, B. 3; 6 B. & C. 362; 9 Foster, 121; 2 Moody & R. 566; 1 Salk. 113. a-4 B. & C. 948; 8 Barb. 328; 13 Penn. St. 146; 5 B. & Ad. 313; 4 Camp. 237; 2 M. & Sel. 397; 1 Salk. 113; 1 Md. 37; 21 Penn. St. 359; 14 B. Mon. 413. b-Dan. & L. 193; 21 Cal. 178; Id. 227. c-32 Me. 191; 2 Swanst. 290; 2 Comst. 293; 11 Ill. 558; 15 Id. 347. d-6 B. & C. 362; 6 Dana, 48; 13 Pick. 183; 4 Law Rep. 276; 7 Dana, 61. e-5 B. & C. 857; 2 H. Bl. 504; 4 B. & P. 69; 6 East. 614; 7 Wend 404; 1 Camp. 427; 9 Barb. 511; 2 Gray, 196; 11 Law. Rep. 561; 1 B. & C 514; 4 Mass. 405; 21 Cal. 80. f-Dyer, 50, *a*; 1 Salk. 113; Contra 3 Camp. 426. g-43 N. H. 141; 7 E. & B. 885; 4 H. & N. 402; 20 N. Y. (6 Smith) 495. h-6 B. & C. 360; 2 Cromp. & M. 535; 2 Camp. 240; 13 East. 522; 2 M. & Sel. 397; 5 Taunt. 617; 6 B. & C. 388; 4 Bing. N. C. 676; 7 Gratt. 240; 7 Wend. 404; 15 Johns. 349; 3 Mason, 112; 6 Cowen, 250; 3 Wend. 112; 7 Cowen, 185; 10 Barb. 95; 1 Pick. 476; 13 Id. 175; 14 Me 400; 34 Id. 289; 35 Id. 385; 15 Penn. St. 528; 18 Id. 91; 25 Id. 208; 20 Pick. 280; 3 N. H. 382; 2 Foster, 172; 7 Dana, 61. i-2 Bing. N. C. 151; S. C. 2 Scott. 238; 20 Mo. 553. j-20 Pick. 280. k-15 Penn. St. 208; 4 Seld. 291. l-4 Pick. 189; 2 Sumner, 539; 20 Mo. 553; 22 Penn. St. 460.

o fix the price, the sale is void.[m] A sale may e made of an article for what it is worth, for hat can be ascertained by experts.[n] The thing old must be specific and capable of certain dentification. There must be an agreement of mind as to this; and if there be an honest error as to price, or as to the substantial and essential qualities of the thing sold, the sale may be treated as null.[o]

To constitute a sale there must be a *price* agreed upon; but upon the maxim *id certum est quod reddi certum potest*, a sale may be valid, although it is agreed that the price for the thing sold shall be determined by a third person.[p] The price must be an *actual* or *serious* price, with an intention on the part of the seller to require its payment. If, therefore, one should sell a thing to another, *and by the same agreement* he should release the buyer from the payment, this would not be a sale, but a gift, because in that case the buyer never agreed to pay any price, the same agreement by which the title to the thing is passed to him discharging him from all obligations to pay for it. As to the quantum of the price, that is altogether immaterial, unless there has been fraud in the transaction. The price must be *certain or determined*, but it is sufficiently certain, if, as before observed, it be left to the determination of a third person;[q] and an agreement to pay for goods what they are worth is sufficiently certain.[r]

The price must consist in a sum of money which the buyer agrees to pay to the seller; for, if paid in any other way, the contract would be an exchange or barter, and not a sale.

The consent of the contracting parties, which is of the essence of a sale, consists in the agreement of the will of the seller to sell a certain thing to the buyer for a certain price, and the will of the buyer to purchase the same thing for the same price. Care must be taken to distinguish between an agreement to enter into a future contract, and a present actual agreement to make a sale. The consent is certain when the parties expressly declare it. This in some cases it is requisite should be in writing.[s] This writing may be a letter.[t] When a party, by his acts, approves of what has been done, as knowingly using goods which have been left at his house by another, who intended to sell them, he will by that act confirm the sale.

In order to pass the property by a sale, there must be an express or implied agreement that the title shall pass. An agreement for the sale of goods is *prima facie* a bargain and sale of those goods; but this arises merely from the presumed intention of the parties, and if it appear that the parties have agreed, not that there shall be a mutual credit by which the property is to pass from the seller to the buyer, and the buyer is bound to pay the price to the seller, but that the exchange of the money for the goods shall be made on the spot, no property is transferred, for it is not the intention of the parties to transfer any.[u] But, on the contrary when the making of part payment, or naming a day for payment, clearly shows an intention in the parties that they should have some time to complete the sale by payment and delivery, and that they should in the meantime be trustees for each other, the one of the property in the chattel, and the other in the price.

As a general rule, when a bargain is made for the purchase of goods, and nothing is said about payment and delivery, the property passes immediately, so as to cast upon the purchaser all future risk, if nothing remains to be done to the goods, although he cannot take them away without paying the price.[v]

SUBJECT-MATTER OF SALE. There must be a thing which is the object of the sale; for if the thing sold at the time of the sale had ceased to exist, it is clear that there could be no sale; if, for example, you and I being in Philadelphia, I sell you my house or horse in Chicago, and at the time of the sale it be burned down or dead, it is manifest there was no sale, as there was not a thing to be sold.[w] It is evident, too, that no sale can be made of things not in commerce; as the air, the water of the sea, and the like. When there has been a mistake made as to the article sold, there is no sale; as, for example, where a broker who is the agent of both parties, sells an article, and delivers to the seller a sold note describing the article sold, as "St. Petersburg clean hemp," and bought note to the buyer as "Riza Rhine Hemp," there is no sale.[x]

There must be an agreement as to the specific goods which form the basis of the contract of sale; in other words, to make a perfect sale, the parties must have agreed, the one to part with the title *to a specific article*, and the other to acquire such title. An agreement to sell one hundred bushels of wheat, to be measured out of a heap, does not change the property until the wheat has been measured.[y]

TRANSITU, STOPPAGE IN.

WHAT THE RIGHT OF STOPPAGE IS, AND WHO HAS IT. Stoppage *in transitu* is the right which resides in the vendor of goods upon credit, to recall them, upon discovering the insolvency of the vendee, before the goods have reached him, or any third party has acquired *bona fide* rights in them.[z] This right

m-Story Sales, § 220. n-10 Bingh. 487, 382; 12 Ired. L. 79, 166. o-9 M. & W. 54; 1 M. & R. 293; 38 Penn. St. 491. p-4 Pick. 179; see 10 Bingh. 382, 387; 11 Ired. 166; 12 Id. 79. q-4 Pick. 179; Poth. Vente. *n* 24. r-Coxe, 261; Poth. Vente. *n*. 26; see 2 Summ. C. C. 539; 20 Mo. 553; 22 Penn. St. 460. s-See *ante*, FRAUDS. t-4 Bingh. 653; 3 Met. (Mass.) 207; 16 Me. 458. u-4 Wash. C. C. 79; see 20 Ohio, 304; 3 Sandf. 230; 1 C. B. 385. v-5 B. & C. 862; 6 Dana, 48; 7 Id. 61; 13 Pick. 183. w-See 1 Leon, 42; Hob. 132; 7 Exch. Ch. 208; 5 M. & S. 228; 2 Kent Comm. 640. x-5 Taunt. 786, 788; 5 B. & C. 437; 7 East. 569; 2 Campb. 337; 4 Q. B. 747; 9 M. & W. 805; 1 Moore & P. 778. y-3 Johns. 179; 15 Id. 349; 2 N. Y. 258; 5 Taunt. 176; 7 Ohio, 127; 3 N. H. 282; 6 Pick. 280; 6 Watts, 29; 2 El. & Bl. 885; and see 6 B. & C. 388; 7 Gratt. 240; 34 Me. 289; 25 Penn. St. 208; 22 N. H. 172; 24 Id. 337; 7 Dana, 61; 11 Humph. 206; 11 Ired. 609. z-See ante, BAILMENTS; 21 Ohio St. 281; Reasons for this rule, 3 Ohio, 88-98.

exists, strictly speaking, only when the vendor has parted with the goods. If they have never left his possession, he has a lien on them for the full payment of their price; but not this right of stoppage.[a] The mere insolvency or bankruptcy of the vendee will not, *per se*, amount to a stoppage *in transitu;* for there must be some act on the part of the consignor indicative of his intention to repossess himself of the goods.[b] Notice of the consignor's claim and purpose given to the carrier before delivery is sufficient.[c] Notice should be given to the carrier, middleman, or other person having at the time the actual custody of the goods; or given to such a person that it may reach the carrier before delivery;[d] and it should be given to the carrier having possession, and not to the vendee himself without giving notice to the carrier.[e] This notice and demand on behalf of the consignor need not be made by any person specially authorized for that purpose; it may be made by a general agent of the consignor; or even by a stranger, if it be ratified by the vendor before the delivery to the vendee.[f] But a ratification of a notice and demand by an unauthorized person, not made until after delivery to the vendee, will not suffice.[g]

WHEN AND HOW THE RIGHT MAY BE EXERCISED. Generally, this right exists as long as the goods are *in transitu*. They are *in transitu* not only while in motion, and not only while in possession of the carrier (although he was appointed and specified by the consignee), but also while they are deposited in any place not actually or constructively the place of the consignee, or so in his possession or under his control, that the putting them there implies the intention of delivery. Thus, if goods are lodged in a public warehouse for non-payment of duties, they are not in the possession of the vendee, and the vendor may stop them.[h] They are in transit until they pass into the possession of the vendee. But this possession may be actual or constructive. Thus, suffering the goods to be marked and resold, and marked again by the second purchaser, is a constructive delivery.[i] So, a delivery by the vendor, to the vendee, of the key of the vendor's warehouse, where the goods were stored, amounts to a delivery.[j] So, demanding and marking the goods by the vendee's agent at the inn where the goods arrived at their destination.[k] So, if the vendor agreed to let the goods lie in his warehouse, for a short time, although *free of rent*, and to accommodate the vendee.[l] So, if rent be paid.[m] So, delivering to the vendee a bill of parcels with an order on the storekeeper for the delivery of the goods.[n] So, giving an order by the vendor to the keeper of a warehouse, for the delivery of the goods.[o] Delivery to a mercantile house, merely for transmission to the vendee, by a forwarding house, does not take away the right of stoppage.[p] If the carrier by reason of an arrangement with the consignee, or for any cause, remains in possession, but holds the goods only as the agent of the consignee, and subject to his order, this is the possession of the consignee.[q] Yet, even in cases where an existing usage authorizes the carrier to retain the goods in his hands as security for his whole claim against the consignee, the consignor may still stop them as *in transitu*, and take them from the carrier, by paying him the amount due specifically for the carriage of those goods.[r]

As the goods may pass *constructively* into the possession of the consignee, so they may be transferred by him before they reach him, in such a way as to destroy the consignor's right of stoppage *in transitu*. This may be done by an indorsement and delivery of the bill of lading. This instrument is now by the custom of merchants, which is adopted by the courts, and made a rule of law, regarded as negotiable; its indorsement and delivery operating as a symbolic delivery of the goods mentioned in it.[s] And such transfer, if it is in good faith and for a valuable consideration, passes the property to the second vendee, who holds it free from the right of the original vendor to stop the goods *in transitu*.[t] But a second vendee, to whom the bill of lading is not transferred, or not so transferred as to carry good title, and who neglects to take actual or constructive possession, is in no better position than the first vendee, under whom he claims; and the goods may be taken from him by the first vendor, on the insolvency of the first vendee.

WARRANTY IN SALES.

IN GENERAL. The warranties which accompany a sale of chattels are of two kinds in respect to their subject-matter: a warranty of TITLE and a warranty of QUALITY. And also of two kinds in respect to their form, as they may be *express* or *implied*.

The seller of a chattel, if in possession, warrants by implication that it is his own, and is answerable to the purchaser if it be taken from him by one who has a better title than the seller, whether the seller knew of the defect of his title or not, and whether he did or did not make a distinct affirmation of his title. But if the seller is out of possession, and no affirmation of title is made, then the purchaser buys at

a-2 Pick. 212; 2 Ho. of L. Cas. 309; 8 M. & W. 321; 10 Barb. 193. b-2 Kent Comm. 543; but this right exists only in cases of *insolvency* of the vendee; 6 Rob. Adm. 321. c-7 Taunt. 169; 1 Esp. 240; 13 Me. 93. d-5 Denio, 629; 5 Whart. 189; 2 Esp. 613; 9 M. & W. 518. e-5 Denio, 629. f-9 M. & W. 518; 5 Whart. 189; 13 Me. 93. g-4 Exch. 786. h-2 Esp. 613; Id. 490; 5 Denio, 629. i-14 East. 308. j-3 T. R. 464. k-3 T. R. 464. l-3 Mason, 107 Contra; 4 A. & E. 58. m-1 Campb. 452. n-2 Campb. 243; 3 Caines, 182. o-2 Campb. 243; 2 Strob. L. 309. p-14 Penn. St. 48. q-2 Cr. & J. 218, S. C.; 2 Tyr. 217; 6 B. & C. 107, S. C.; 9 Dow. & R. 108; 3 B. & P. 469. r-3 B. & P. 42. s-9 Bingh. 574; 5 B. & Ad. 313; 7 Man. & G. 678; 14 M. & W. 402; 7 A. & E. 29; 5 Whart. 189, 205; 6 East. 41; 12 Barb. 310. t-2 T. R. 63; 6 East. 21, n; Abb't Shipping, 471; 4 Bingh. 516, S. C.; 1 Mo. & P. 394; 7 Man. & G. 678; 1 C. & P. 53; 11 Jur. 265; 2 Ho. of L. Cas. 309; 4 A. & E. 58; 3 Caines, 182; 1 Wash. C. C. 283; Id. 403; 25 E. L. & E. 128, S. C.; 3 E. & B. 622.

his peril. In any case where there was this warranty of title, a title subsequently acquired by the vendor would inure to the benefit of the vendee.[u] If the seller is in possession, but if the possession is of such a kind as not to denote or imply title in him, there will be no warranty of title. A *general* warranty does not cover defects plain and obvious to the purchaser, or of which he has had cognizance: thus, if a horse be warranted *perfect*, and want a tail or an ear.[v] This rule must not be misunderstood. A man *may* warrant against a defect which is patent and obvious as well as against any other. And a general warranty that a horse was *sound* would be broken, if one eye was so badly injured, or so malformed as to be entirely useless, although this defect might have been noticed at the time of sale.[w] And if a defect is obvious, yet if the purchaser be misled as to the character or extent, a warranty is implied.[x]

If there be no express warranty, the common law, in general, implies none. Its rule is, unquestionably, *caveat emptor*[y]—let the purchaser take care of his own interests. One important and universal exception is this: the rule never applies to cases of fraud, never proposes to protect a seller against his own fraud, nor to disarm a purchaser from a defence or remedy against a seller's fraud.[z] The common law does not oblige the seller to disclose all that he knows, which lessens the value of the property he would sell. He may be silent, leaving the purchaser to inquire and examine for himself, or to require a warranty. He may be silent, and be safe; but if he be more than silent, if by acts, and certainly if by words, he leads the buyer astray, inducing him to suppose that he buys with warranty, or otherwise preventing his examination or inquiry, this becomes a fraud, of which the law will take cognizance. The seller may let the buyer cheat himself *ad libitum*, but must not actively assist him in cheating himself.[a] As mere silence implies no warranty, neither do remarks which should be construed as simple praise or commendation;[b] but any distinct assertion or affirmation of quality made by the owner *during a negotiation*. It is essential that a warranty, to be binding, be made *during* the negotiation; if made after the sale is completed, it is without consideration and void.[c] If, however, the vendor, in a negotiation between the parties a few days before the sale, offer to warrant the article, the warranty will be binding[d] for the sale of a chattel, which it may be supposed was intended to cause the sale, and was operative in causing it, and will be regarded as implying or as constituting a warranty. If such affirmation were made in good faith it is still a warranty; and if made with a knowledge of its falsity, it is a warranty, and it is also a fraud. It is certain that the word warrant need not be used, nor any other of precisely the same meaning. It is enough if the words used import an undertaking on the part of the owner that the chattel is what it is represented to be, or an equivalent to such undertaking.[e] One exception to the rule of *caveat emptor* springs from the rule itself. For a requirement that the purchaser should "beware," or should take care to ascertain for himself the quality of the thing he buys, becomes utterly unreasonable under circumstances which make such care impossible. If, therefore, the seller alone possesses the requisite knowledge, or means of knowledge, and offers his goods for sale under circumstances which compel the purchaser to rely upon the judgment and honesty of the seller, without any examination on his own part as to the quality of the thing offered, the rule *caveat emptor* does not apply.[f]

If goods are sold by sample, there can be no examination of the goods, but there may be of the sample. There is, therefore, an implied warranty that the goods correspond to the sample.[g] If there be an express warranty, an examination of samples is no waiver of the warranty; nor is an inquiry or examination into the character or quality of the things sold; for a man has a right to protect himself by such inquiry, and also by a warranty.[g]

If a thing be ordered from a manufacturer for a special purpose, and it be supplied and sold for that purpose, there is an implied warranty that it is fit for that purpose.[h] If the thing is itself specifically selected and ordered, the purchaser takes upon himself the risk of its effecting its purpose. But where he orders a thing for a special purpose, or to do a specific

u-31 Vt. 162; 1 Head. 506. v-13 H. 4, 1 *b*, pl. 4; 11 Ed. 4, 6 *b*, pl. 10; 2 Rolle, 5; 2 Humph. 305; 2 Caines, 202; 5 Mo. & P. 606; 2 Eng. 166; 34 Barb. 367; 1 La. An. 389. w-See 8 Bing. 454, S. C.; 7 Bing. 603; 2 Bing. 183. x-3 Strobh. L. 64. y-1 Met. 559; 18 Pick. 59; 2 East. 321; Doug. 20; 3 Harr. & Johns. 89; 2 Caines, 48; 4 Johns. 421; 4 Conn. 428; 9 Port. (Ala.) 104; 1 Denio, 378; 10 Texas, 220. z-18 Me. 418; 10 S. & M. 476. a-2 Wheat. 178; 14 Barb. 66; 5 Penn. St. 467; 3 E. L. & E. 17; 1 Baldw. 331; 3 Wash. C. C. 165; 1 Yeates, 307; 12 Ired. L. 49; 1 Stark. 434; 2 E. L. & E. 318, S. C.; 10 C. B. 591; 2 Bro. Ch. 420; 8 Ired. L. 297; 22 Pick. 48; 1 Ves. Sen. 95; 14 Barb. 66; 3 Story, 700; 1 Id. 172; 1 Woodb. & M. 90; 3 Williams, 470. Whole subject examined in 2 Kent Comm. 482, *et seq.*; 3 Fairf. 262; 13 Ired. L. 350; 3 Strob. L. 64; 37 Penn. St. 147. b-Chitty Contr. 393, *n*; 4 N. & H. 412. c-3 Q. B. 234; 5 Vt. 28; 2 Scam. 22. d-11 Wend. 584; L. Raym. 1120; 26 E. L. & E. 254, S. C.; 15 C. B. 130. e-Cro. J. 4; 3 Bibb. 35; 5 Johns. 354; 8 Bing. 52; 2 Caines, 48; 4 Johns. 421; 20 Ill. 196; 15 Mass. 320; 3 Dana, 479; 4 Blackf. 293; 15 Ill. 345; 1 Bing. 344; Peake's Cas. 123; 4 A. & E. 473; 2 Esp. 572; 4 Foster, 271. f-2 Litt. 227; 4 Camp. 144; 17 C. B. 619; 5 G. & J. 110; 1 Md. Ch. 446; 2 Wood. & M. 217; 1 Barb. 471. g-13 Mass. 139; 4 Cowen, 440; 6 Id. 354; 9 Wend. 20; 12 Id. 413; Id. 566; 1 Denio, 386; 19 Barb. 574; 1 Seld. 95; Id. 73; 3 Rawle, 37; 2 Nott. & M'Cord, 538; 2 Sandf. 89; 18 Wend. 434; 19 Id. 159; 8 Pick. 250. g-4 H. & N. 412. h-24 Vt. 114; 5 Bingh. 533; 8 Blackf. 317; 11 Ohio St. 48; 8 Wis. 362; 12 Id. 276; 6 Taunt. 108; 2 Man. & G. 279; 3 Id. 868; Addison, 150; 5 Q. B. 288; 2 Ala. 195; 2 Watts, 367; 4 Gilman, 69; 1 S. & Marsh. 381; 23 Wend. 351; 17 Wend. 267; S. C. 18 Id. 449; 2 Chand. 28; 28 E. L. & E. 586 S. C.; 10 Exch. 342; 1 Wms. 227; 1 Ired L. 166.

work, there he puts this risk upon the person who is to supply the thing.[z]

No warranty can be implied from circumstances, if there be an express refusal to warrant.[i] And where the contract of sale is in writing, and contains no warranty, there parol evidence is not admissible to add a warranty.[j] And if there be a warranty in writing, it cannot be enlarged or varied by parol evidence.[k]

The rule as to unsoundness is, that if at the time of sale the animal has any disease which either actually does diminish the natural soundness of the animal, so as to make him less capable of work of any description, or which, in its ordinary progress, will diminish the usefulness of the animal; or if he has, either from disease or accident, undergone any alteration of structure that either actually does at the time, or in its ordinary effect will diminish his natural usefulness, such animal is unsound.[l] So, if a horse has at the time of sale the *seeds of disease*, which in its ordinary progress will diminish his natural usefulness, this is unsoundness.[m] But a temporary and curable injury, although it existed at the time of sale, *if it does not injure the animal for present service*, is not an unsoundness.[n] It seems to be immaterial whether the injury be permanant or temporary, curable or incurable, if it render the animal less fit for *present* usefulness and convenience.[o] The question of soundness or unsoundness is particularly for the jury; and the court will not set aside a verdict on account of a preponderance of the testimony the other way.[p]

Any property may be sold "with all faults." This is an emphatic exclusion of all warranty. But it gives the seller no right to commit a fraud, nor will it prevent the sale from being avoided on proof of fraud. And it is fraud if the seller conceal existing faults, and draws the attention of the buyer away so as to prevent his discovering them, or places the property in such circumstances that discovery is impossible, or made very difficult.[q]

In general, there is no implied warranty whatever arising from judicial sales.[r]

RIGHTS AND REMEDIES OF PARTY UPON BREACH OF WARRANTY. When warranty has been broken, the buyer may either bring his action at once, founding it upon the breach of warranty, without returning the goods; but his continued possession of the goods, and their actual value, will be considered in estimating the damages.[s] Or, he may return the goods forthwith; and if he does so without unreasonable delay, this will be a recission of the sale, and he may sue for the price if he has paid it, or defend against an action for the price, if one be brought by the seller. But if he has sold a part before his discovery of the breach, and therefore cannot return them, he may still rescind the sale, and will be liable for the market value of what he does not return.[t] And if the vendor refuse to receive the goods back, when tendered, the purchaser may sell them; and if he sells them for what they are reasonably worth, and within a reasonable time, he may recover of the vendor the loss upon the resale, with the expense of keeping the goods and selling them.[u]

BILL OF SALE FORMS.

Use ASSIGNMENT FORMS, ante.

Bill of Sale—General Form with Warranty.

Know all men by these presents, that in consideration of —— dollars, the receipt of which is hereby acknowledged, I do hereby grant, sell, transfer, and deliver unto C. D., his heirs, executors, administrators, and assigns, the following goods and chattels, viz. (*describing it*):

To have and to hold all and singular the said goods and chattels forever. And the said grantor hereby covenants with said grantee that he is the lawful owner of said goods and chattels; that they are free from all incumbrances; that he has good right to sell the same, as aforesaid; and that he will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said grantor has hereunto set his hand this —— day of ——.

Witness— A. B.

Bill of Sale—of a Horse—with Warranty.

Know all men by these presents, that in consideration of —— dollars (*or other consideration*), to me paid by C. D., the receipt of which is hereby acknowledged, I, A. B., by these presents do bargain, sell, and convey to the said C. D., his heirs, executors, administrators, and assigns, one bay horse (*giving the sex, size, color, age, marks, and brands*), known as the —— horse, to have and to hold the same unto the said C. D., his heirs, executors, administrators, and assigns forever.

And I, for myself, my heirs, executors, and administrators, will warrant and defend said horse unto him the said C. D., his heirs, executors, administrators, and assigns, against the lawful claims and demands of all and every person or persons whatsoever.

Witness my hand this —— day of ——.

[*Signed*] A. B.

Witnesses—

See CONVEYANCES; MORTGAGES, ante.

Sample. See SALES.
Sanity. See MEDICAL LAW.
Secret. See PATENTS.
Sedition. See CRIMINAL LAW.
Self-Defence. See CRIMINAL LAW.
Senility. See CONVEYANCES, "Wills."
Servants. See AGENCY.
Sheriff. See CRIMINAL LAW, "ARREST."
Ship's Husband. See AGENCY.
Shipping Articles. See CONTRACTS.
Signature. See AGENCY; CONTRACTS.

z-2 E. L. & E. 320, S. C.; 10 C. B. 591; 4 M. & W. 399; 1 C. B. (N. S.) 613; 1 Stark. 381; 4 B & C. 108; 11 Ired L. 166; 2 Cart. (Ind.) 372; 1 Denio, 378; 16 M. & W. 644; 12 Johns. 468; 10 Mass. 197; 17 Wend. 267, S. C.; 18 Id. 449, 8 Blackf. 516; 2 Campb. 391; 3 Id. 286. i-1 Spears, 314; 1 A. & E. 508; 18 Pick. 16. j-1 Wend. 424; 9 Vt. 285; 1 Johns. 414; Id. 503; 4 Conn. 432; 1 Curtis, 90. k-2 B. & C. 634; 4 Taunt. 779; 1 Dev. & B. 250; 1 Murphey, 426; 2 E. L. & E. 314, S. C.; 10 C. B. 602. l-9 M. & W. 668; 2 M. & Rob. 157; 1 Stark 127; 4 Campb. 281. m-9 M. & W. 668. n-1 Foster (N. H.) 116. o-4 Campb. 281; 1 Stark. 127; 10 Ala. 225; 2 Esp. 673. p-7 Taunt. 153. q-3 Campb. 154; Peake's Cas. 115; 4 Taunt. 785; 3 Campb. 508; 2 Stark. 561. r-9 Wheat. 644; 19 Law Rep. 18. s-1 H. Bl. 17; 3 A. & E. 103; 2 Harr. & Johns. 353; 14 Conn. 411; 18 Wend. 425; 8 Mo. 710; 3 Rawle. 23; 10 B. Mon. 250; 2 Strobh. L. 242; 11 Ala. 732; 8 S. & Marsh. 332; 8 Cow. 31; 1 Taunt. 566; 3 Stark. 32; Hill, 625; 2 Id. 288; 10 Barb. 211; 28 Conn. 343; 21 Ill. 180. t-4 Comst. 122. u-2 A. & E. 129; Ry. & M. 436; 4 Bingh. 722; 21 Vt. 580; 17 Penn. St. 310.

Silence. See CONTRACTS.
Slander. See TORTS.
Smart Money. See DAMAGES, "Exemplary Damages."
Sodomy. See CRIMINAL LAW.
Somnambulism. See MEDICAL LAW.
Specialty. See BONDS OR OBLIGATIONS; CONVEYANCES, ETC.
Spelling. See CONTRACTS.
Statute. See LAW.
Stealing. See CRIMINAL LAW.
Sterility. See MEDICAL LAW.
Stipulation. See CONTRACTS.
Stoppage in Transitu. See SALES.
Submission. See AGENCY; ARBITRATION.
Suicide. See MEDICAL LAW.
Sunday. See CONTRACTS.
Suretyship. See CONTRACTS; PAYMENT, ETC.
Surgeon. See MEDICAL LAW.
Swear. See EVIDENCE, "Affirmation," "Oath."
Tenant. See LANDLORD AND TENANT.
Testament. See CONVEYANCES, "Wills."

TIME.

Generally in computing time one day is included and one excluded;[a] excluding the day on which an act is done, when the computation is to be made from such an act.[b] Including it,[c] except where the exclusion will prevent forfeiture.[d] Time from and after a given day excludes that day.[e]

In pleading, time is a point in or space of duration at or during which some fact is alleged to be committed.

In criminal actions both the day and year of the commission of the offence must appear; but there need not be an express averment if they can be collected from the whole statement.[f] The prosecutor may give evidence of an offence committed on any day which is previous to the making of the complaint or finding of the information or indictment;[g] but a day subsequent to the trial cannot be alleged.[h]

In personal actions all traversable affirmative facts should be laid as occurring on some day,[i] but no day need be alleged for the occurrence of negative matter.[j] A failure in this respect is, in general, aided after verdict.[k] Where the cause of action is a trespass of a permanent nature or constantly repealed, it should be laid as continuing. The day need not, in general, be the actual day of commission of the fact.[l] The exact time may become material and must then be correctly stated,[m] as, the time of execution of an executory written document.[n] The defence must follow the time laid in the plaintiff's complaint if the time is not material,[o] but need not when it beoomes material,[p] or in pleading matter of discharge,[q] or a record.[r]

Generally he who has precedency in time has the advantage in right; not that time, considered in itself, can make such a difference, but because the whole power over a thing being secured to one person, bars all others from obtaining a title to it afterwards.[s]

DATE. Written instruments generally take effect from the day of their date, but the actual date of their execution may be shown, though different from that which the instrument bears. But it is said that the date is not of the essence of a contract, but is essential to the identity of the writing by which it is to be proved.[t] And if the written date is an impossible one, the time of delivery must be shown.[u] In general it is sufficient to insert the day, month, and year; though in process from courts the hour is sometimes required in addition.

See CONTRACTS; CONVEYANCES, ETC.

A DAY is generally, but not always, regarded in law as a part of time; and fractions will not be recognized.[v] By custom the word day may be understood to include working days only,[w] and in a similar manner only a certain number of hours, then the number during which the work actually continued each day;[x] as a business day, those hours during which business is transacted, and this varies in different localities. Also, a banking day, extending from 9 or 10 A. M., to 3 or 4 P. M. A solar day is that portion of time during which the sun is shining or which the features of a man can be reasonably discerned.[y] Generally, in legal signification, a day includes the time elapsing from one midnight to the succeeding one.[z]

LAPSE OF TIME often furnishes a presumption, stronger or weaker, according to the length of time which has passed, of the truth of certain facts, such as the legal title to rights, payment of or release from debts.

MONTH. See BILLS, BONDS AND NOTES; TIME OF, ETC., p. 166.

NIGHT is that space of time during which the sun is below the horizon of the earth, except that short space which precedes its rising and follows its setting, during which, by its light, the countenance of a man may be discovered.[a]

SUNDAY. The time within which an act is to be done must be computed by excluding the first day and including the last; if the last day be Sunday it must be excluded. Where the year expires on Sunday, such Sunday is not

a-2 P. A. Browne, 18; 4 Monr. 464; 26 Ala. (N. S.) 547; see 2 Harring 461; 5 Blackf. 319; 16 Ohio, 408; 10 Rich. 395. b-15 Ves. Ch. 248; 1 Ball. & B. Ch. 196; 16 Cow. 679; 11 Mass. 204; 1 Pick. 485; 1 Met. (Mass.) 127; Anthon. 179; 3 Denio, 12; 1 Mod. 8; 27 Ala. 311; 19 Mo. 60; see 18 Conn. 18. c-According to Dougl. 463; Hob. 139; 3 T. R. 623; 3 East. 417; 2 P. & Browne, 18; 15 Mass. 193; 4 Blackf. 320; 18 How. 151. d-Hob. 139; 2 Campb. 294; Cowp. 714; 4 Me. 298; see 2 Sharsw. Bl. Comm. 140, *n.* 3; 13 Vin. Abr. 52, 499; 15 Id. 554; 20 Id. 266; Com. Dig. *Temps.*; 1 Roper Leg. 518; Graham Pr. 185; 2 Poth. Ob. (Evans Ed.) 50. e-11 Pick. 485; 7 J. J. Marsh. 302; 1 Blackf. 392; 9 Cranch. 104; 4 N. H. 267; 3 Penn. 200; 1 Nott. & McC. 565; but see 9 Cranch. 104. f-Com. Dig. *Indictments* (G. 2); 5 S. & R. 315. g-Arch. Cr. Pl. 95; Phill. Ev. 203; 9 East. 157; 5 S. & R. 316. h-Addis. 36. i-Gould Pl. *c.* 3, § 63; Steph. Pl. 292; Yelv. 94. j-Com. Dig. *Pleader* (C. 19); Plowd. 24, *a*. k-13 East. 407. l-2 Saund. 5, *a*; Co. Litt. 283, *a*; 12 Johns. 287; 3 N. H. 299. m-Cowp. 671; 4 Esp. 152; 6 T. R. 463; 10 B. & C. 215; 1 Cr. & J. 391; 4 S. & R. 576; 7 Id. 405; 1 Story C. C. 528. n-Gould Pl. *c.* 3, § 67. o-1 Chitty Pl. 509; 1 Saund. 14, 82. p-2 Saund. 5, *a*, *b* (*n.* 3). q-2 Burr. 944; 2 Wils. 150; Plowd. 46; 2 Str. 944. r-Gould Pl. *c.* 3, § 83. s-1 Foubl. Eq. 320. t-2 Greenl. Ev. §§ 12, 13, 489, n.; 8 Mass. 159; 4 Cush 403; 1 Johns. Cas. 91; 3 Wend. 233; 31 Me. 243; 17 Eng. L. & Eq. 548; 2 Greenl. Cruise Dig. 618, n. u-Shepp. Touchst. 72; Cruise Dig. Ch. 2, § 61. v-15 Ves. Ch. 257; 4 Campb. 397; 11 Conn. 17. w-3 Esp. 121. x-5 Hill N. Y. 437. y-Co. 3d. Inst. 63. z-2 Bl. Comm. 141. a-1 Hale Pl. Cr. 550; 4 Bl. Comm. 224; Bac. Abr *Burgl.* (D); 2 Russ. Cr. 32; Roscoe Cr. Ev. 278.

excluded from the computation of the thirty days preceding the expiration of the year.[b]

THE WEEK commences immediately after twelve o'clock on the night between Saturday and Sunday, and er s at twelve o'clock seven day- f twenty-four hours each thereafter. The firs' y of the week is called Sunday; the sec . Monday, etc.[c]

YEAR. The civil year differs from the astr l, the latter being composed of three hundred and sixty-five days, five hours, forty-eight seconds and a fraction, while the former consists sometimes of three hundred and sixty-five days, and at others (leap years) of three hundred and sixty-six days.

The year is divided into half year, which consists[d] of one hundred and eighty-two days; and quarter of a year, which consists of ninety-one days.[e] It is further divided into twelve months.

The civil year commences immediately after twelve o'clock at night of the thirty-first day of December, that is, the first moment of the first day of January, and ends at midnight of the thirty-first day of December twelve months thereafter.[f]

Title. See CONVEYANCES.
Title Deeds. See CONVEYANCES.

TORTS OR WRONGS. See CONTRACTS.

A TORT is a private or civil wrong or injury. A wrong independent of contract.[a] The commission or omission of an act by one without right whereby another receives some injury, directly or indirectly, in person, property, or reputation.

DISTINGUISHED FROM AGREEMENTS OR CONTRACTS. As recognized by the law for the enforcement of rights and redress of injuries, torts may be distinguished from contracts or agreements by these qualities: That parties jointly committing torts are severably liable wi- ut right of contribution from each other; t! he death of either party destroys the right of action; that persons under personal disabilities to contract are liable for their torts; that attachment, arrest, and imprisonment are allowed on claims arising under contracts.[b] A tort, however, may grow out of, or make part of, or be coincident with, a contract, as in the familiar case of a fraudulent sale, or fraudulent recommendation of a third person; the wrong of fraud almost necessarily implies an accompanying contract. In these cases the law often allows the party injured an election of remedies; that is, he may proceed against the other party either as a debtor or contractor, or as a wrong-doer.[c] Where personal property has been tortuously taken and turned into money or money's worth, the party injured may proceed upon the supposition of a contract implied by law in his favor. In such cases he is said to waive the tort.[d]

DISTINGUISHED FROM CRIMES. The same act may constitute a public wrong (crime), and a private wrong (tort), and, either at the same time or at different times, be the subject of a criminal prosecution and a private action for damages.[e]

In reference to the nature of the act, manual taking, interference, or removal is not necessary to constitute a tort. Any act of a party who has come rightfully into the possession of property in excess of or contrary to his authority over it, and which negatives or is inconsistent with the rights of the owner, constitutes a tort.[f]

ACTIONS FOR.

The liability to make reparation for an injury rests upon an original moral duty.[g] And an action on the case lies, in general, where one may sustain an injury by the misconduct or negligence of another for which the law has provided no other adequate remedy.[h] But to justify an action there must be a loss as well as a wrong.[i] But in a variety of cases, a wrong being proved, consequent damage will be presumed.[x]

In order to maintain an action the relation of cause and effect must be shown between the act and the injury,[j] and the damage must not be remote or indirect,[k] although every person who does a wrong is responsible for all the mischievous consequences that may reasonably be expected under ordinary circumstances from such misconduct.[l] In general, courts can enforce only local obligations and redress injuries to local rights.[m] Hence the legality or illegality of any act may sometimes determine whether it is to be viewed as a tort. In general, if a party in the exercise of a legal right, more especially if conferred by express statute, does an injury to another's property, he is not liable for damages, unless caused by the want of ordinary care and skill.[n]

In general, no right of action can arise from an illegal transaction.[o] But the rule does not interfere with the right of property even in articles the sale of which is forbidden by law.[p] A party may be debarred from an action by a license, by estoppel, or by a waiver.[q]

In general, a party injured cannot maintain

b-7 Ohio St. 198. c-See 4 Pet. 361. d-Co. Litt. 135, *b*. e-Id. 2 Rolls. Abr. 521, l. 40. f-See Comm. Dig. *Annus;* 2 Chitty Bl. Comm. 140 *n.;* Chitty Pr. Index *Time.* a-1 Hilliard Torts, 1. b-Id. 3. c-10 Id. 28; 10 C. B. 83; 24 Conn. 592. d-1 Chitty Pl. 88; 10 Mass. 435; 1 Gray, 509; 2 Greenl. Ev. § 108. e-1 Bos. & P. 191; 3 Sharsw. Bl. Comm. 122. A private tort is not merged in a felony; 1 Gray, 83; 6 N. H. 454; 2 Root, 90; 1 Miles, 312; 1 Coxe, 113; 16 Miss. 77; 3 Bland, 114; 6 Rand, 223; Hawks. 251; 4 Ohio, 376; 15 Ga. 349; 6 Humph. 433; 6 B. Mon. 38; 22 Wend. 285, *n.;* 1 Hilliard Torts, 71, *et seq.;* see 22 Ala. (N. S.) 613; 1 Bishop Cr. L. 329. f-23 Wend. 422; 1 Ga. 381; 4 McLean C. C. 378; 2 Harring. 71; 8 Pick. 543; 15 M. & W. 448. g-3 Ohio St. 172. h-20 Vt. 151. i-*Damnum absque injuria* and *injuria absque damno* ("a loss without an injury," and *vice versa*) are alike regarded as beyond the reach of legal redress. x-1 Hilliard Torts, 82; 36 Me. 322; Broom Comm. 76; 16 Pick. 64; 1 Gray, 186; 2 Ld. Raym. 948. j-12 Barb. 657. k-11 Met. (Mass.) 290. l-5 Exch. 243; see 2 Greenl. Ev. § 224; 1 Chitty Pl. 115-120; 17 Ill. 580. m-12 La An. 255. n-24 Miss. 93; 2 Stock. 352; see 1 Str. 634. o-11 Cush. 322; 10 Met. (Mass.) 363; 12 Id. 24; 2 Conn. 13, 501; 9 J. B. Moore, 586. p-1 Gray, 1; 20 N. H. 181. q-8 Met. (Mass.) 34; 7 Bingh. 682; 10 Ad. & El. 90, 18 Barb 599; 7 Watts. 337; 19 Ala. (N. S.) 252.

an action for the injury if caused in any degree by his own neglect or wrong.[r] Various and nice distinctions, however, are made upon this general subject, involving the degree of neglect or wrong on the part of the plaintiff, which will debar him from maintaining an action, and its nature, as being proximate or only the remote cause of the injury.[s] But the whole question is in general for the jury.[t]

COMMISSION OF AND LIABILITY FOR TORTS.

A wrongful or malicious intent is an essential element in many torts, as, for example, assault, fraud, slander, and malicious prosecution. In general, a prominent distinction between torts and crimes is that in the former the party's intent is immaterial, while in a prosecution for the latter a criminal purpose must always be alleged and proved. On the other hand, an act which does not amount to a legal injury and violates no legal right, is not actionable because done with a bad intention.[u]

A tort may consist in the violation of a statute,[v] or the abuse of a privilege given by statute.[w] And, in general, though a party's original act or conduct may have been right and lawful, there may be such an abuse of the powers and privileges which the law confers upon him as will render him liable to an action —as for a trespass, in the first instance—or make him a trespasser *ab initio*.[x] Acts lawful and innocent in themselves may also become wrongful when done without just regard for the rights of others, and without suitable reference to the time, place, or manner of performing them.[y] But an action cannot be maintained for annoyance received from acts done on land adjoining the plaintiff's, which the proprietor might lawfully do in exercise of his dominion over his own.[z]

The most comprehensive and various class of torts consists of wrongs to property. In general, possession alone is sufficient to maintain an action for tort; while property alone is not sufficient without possession, or the right of possession.[a] Even a wrongful possessor may maintain an action against a third person in the title; and the title of a third person, unless the defendant claims under him, is no defence.[b] But where no one is in actual possession, the title is sufficient constructive possession to maintain an action; more especially possession of a part gives constructive possession of the whole.[c] And title is generally a good defence to an action founded upon mere possession.[d]

DEFENCE. With respect to the defence of one's self, wife, children, servants, etc., from torts, etc. See CRIMINAL LAW, "Self-defence." With respect to the defence or protection of one's personal property a man may repel force by force in its defence, and even justify homicide against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony, as robbery. With respect to the defence or protection of personal property, although it is justifiable to even kill a person in the act of attempting to commit a forcible felony, as burglary or arson; yet such justification can only take place when the party in possession is wholly without fault.[e] And when an illegal forcible attack is made upon a dwelling-house, with the intention merely of committing a trespass, and not with any felonious intent, it is generally lawful for the rightful occupant to oppose it with force.[f] See DETAINER, above, and TRESPASS, below.

HARBORING. See APPRENTICESHIP.

INJURIES arise in three ways: 1. By nonfeasance, or the not doing what was a legal obligation, or duty, or contract, to perform. 2. Misfeasance, or the performance in an improper manner of an act which it was either the party's duty or his contract to perform. 3. Malfeasance, or the unjust performance of some act which the party had no right, or which he had contracted not to do.

The remedies are different as the injury affects private individuals or the public. When the injuries affect a private right and a private individual, although often also affecting the public, there are three descriptions of remedies. 1. The preventive, such as defence, resistance, recaption, abatement of nuisance, surety of the peace, injunction, etc. 2. Remedies for compensation, which may be by arbitration, suit, action, or summary proceedings before a justice of the peace. 3. Proceedings for punishment, as by indictment, or complaint, and prosecution before a justice of the peace. When the injury is such as to affect the public it becomes a crime or misdemeanor, and the party may be punished by indictment or conviction for the public injury or offence, and by civil action, at the suit of the party, for the private wrong. But in cases of felony, the remedy by action for the private injury is generally suspended, until the party particularly injured has fulfilled his duty to the public by prosecuting the offender for the public crime; and in cases of felony the remedy is merged in the felony.[g]

There are many injuries for which the law affords no remedy. In general, it interferes only where there has been a visible physical injury inflicted, while it leaves almost wholly unprotected the whole class of the most malignant mental injuries and sufferings, unless in a few cases where by a fiction it supposes some

r-1 Hilliard Torts, c. 4; 6 Hill (N. Y.) 592; 9 Md. 160; 19 Conn. 507; 4 Zabr. 824; 35 Me. 422; 3 C. B. 1. s-16 Penn. St. 463; 5 Duer, 21; 12 C. B. 742; 16 Id. 179; 2 Taunt. 314; 11 Cush. 364; 3 M. & W. 248; 6 Ind. 82; 1 Denio, 91. t-19 Conn. 566; 28 Eng. L. & Eq. 48; 30 Id. 473; 3 Man. & G. 59; 12 Ad. & El. 439; 16 Ill. 277; 7 Met. (Mass.) 274. u-13 C. B. 285; 28 Vt. 49. v-2 Ld. Raym. 953. w-10 Ill. 425. x-2 Greenl. Ev. § 615; 8 Co. 145; 11 Barb. 390. y-4 Const. 110. z-5 Rich. 583. a-1 Dutch, 443; 22 N. H. 468; 15 Vt. 119; 15 Mo. 403; 6 Nev. & M. 422. b-22 N. H. 468; 39 Me. 451; 1 Str. 505; 11 Johns. 529; 16 Mass. 125; 8 Blackf. 175; 25 Me. 453; 9 Gill. 7. c-1 Hill (N. Y.) 312; 6 Dowl. & R. 572; 5 Md. 540; 14 Wend. 239. d-8 Humph. 412; 18 Ga. 539; 5 Met. (Mass.) 599; 3 Zabr. 155. e-1 Hale Pl. Cr. 440, 444; 1 East. Pl. Cr. 259, 277. f-7 Bingh. 305; 20 Eng. C. L. 139; see Chitty Pr. 589; Gratius Lib. 2, Ch. 1; Rutherford Inst. B. 2 Ch. 16. g-1 Chitty Pr. 10; Ayliffe Pand. 592.

pecuniary loss, and sometimes affords compensation to wounded feelings. A parent, for example, cannot sue in that character for an injury inflicted on his child, and when his own domestic happiness has been destroyed, unless the fact will sustain the allegation that the daughter was the servant of her father, and that by reason of such seduction he has lost the benefit of her services. Again, a party cannot recover damages for verbal slander in many cases, as, where the facts published are true; for the defendant would justify their utterance by their truth, and the party injured must fail, nor will the law punish criminally the author of a verbal slander, imputing even the most infamous crimes, unless done with the intent to extort a chattel, money, or valuable thing. The law presumes that a man is incapable of being alarmed or affected by such injuries to his feelings.[h] The true and sufficient reasons for these rules are, the uncertain character of the injury inflicted, the impossibility and the danger supposing a pecuniary compensation to be attempted, that injustice would be done under the excitement of the case, hence the sound principle of the law, confirmed by experience, to inflict a punishment for crime; but not sell, through the agency of its courts, those wounded feelings which would constitute the grounds of such actions. See LIBEL; SLANDER, below.

LIBEL is any matter, written or printed, and published, and calculated to injure the character of another by bringing him into ridicule, hatred, or contempt.[i] Everything written or printed, which reflects upon the character of another, and is published without lawful justification or excuse, is a libel, whatever the intention may have been.[j] A malicious defamation, expressed either in printing or writing, tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule, is libel.[k] A censorious or ridiculous writing, picture, or sign made with a malicious or mischievous intent towards government, magistrates, or individuals, is libel.[l] There is a great and well-settled distinction between verbal and written slander; and this not only in reference to the consequences, as subjecting the party to an indictment, but also as to the character of the accusations or imputations essential to sustain a civil action to recover damages. To write and publish maliciously anything of another which either makes him ridiculous, or holds him out as a dishonest man, is held to be actionable, or punishable criminally, when speaking the same words would not be so.[x] The reduction of the slanderous matter to writing or printing is the most usual mode or conveying it. The exhibition of a picture intimating that which in print would be libellous is equally criminal.[m] Fixing a gallows at a man's door, burning him in effigy, or exhibiting him in any ignominious manner, is a libel.[n] The above is a general description of libel, a branch of the law which is one of the most difficult to compress into a small compass.

Any publication which has a tendency to disturb the public peace, or good order of society, is indictable as a libel. This crime is committed by the publication of writings blaspheming the Supreme Being, or turning the doctrines of the Christian religion into contempt and ridicule; or tending, by their immodesty, to corrupt the mind, and to destroy the tone of decency, morality, and good order; or wantonly to defame or indecorously to calumniate the economy, order, and constitution of things which make up the general system of the law and government of the country; to degrade the administration of government, or of justice; or to cause animosities between our own and any foreign government, by personal abuse of its sovereign, its ambassadors, and other public ministers; and by malicious defamation, expressed in printing or writing, or by signs or pictures, tending either to blacken the memory of one who is dead, or the reputation of one who is living, and thereby to expose him to public hatred, contempt, and ridicule. This descriptive catalogue embraces all the several species of this offence which are indictable at common law; all of which are indictable either at common law or by virtue of particular statutes.[o] Libels against the memory of the dead, which have a tendency to create a breach of the peace, by inciting the friends and relatives of the deceased to avenge the insult of the family, render their authors liable to indictment. The malicious intention of the defendant to injure the family of the deceased must be expressly avowed and clearly proved.[p] If the matter is understood as scandalous, and is calculated to excite ridicule or abhorrence against the party intended, it is libellous, however it may be expressed.[q] The publisher of a libel is liable to be punished criminally by indictment,[r] or is subject to a civil action for damages by the party aggrieved. Both remedies may be pursued at the same time.[s]

MALICE. See SLANDER, below.

NUISANCE. See that title, ante.

PIRACY. See COPYRIGHTS; PATENTS.

SLANDER is any words, spoken or written, which are injurious to the character of another. The ground of all liability to an action for words spoken or written consists in the injury

h-See 1 Chitty Med. Jur. 320. i-Parke J. 15 M. & W. 344. j-15 M. & W. 437. k-1 Hawk. Pl. Cr. B. 1 Ch. 73, § 1; 4 Mass. 168; 2 Pick. 115; 9 Johns. 214; 1 Denio, 347; 24 Wend. 434; 9 B. & C. 172; 4 M. & R. 127; 2 Kent Comm. 13. l-3 Johns. Cas. 354; 9 Johns. 215; 5 Binn. 340. x-1 Saund. (6 Ed.) 247 *a*; 4 Taunt. 355; 5 Binn. 219; Hurd. Lib. & S. § 74; 6 Cush. 75.

m-2 Campb. 512; 5 Co. 125; 2 S. & R. 91. n-Hawk. Pl. Cr. B. 1 Ch. 73, § 2; 11 East. 227. o-3 Greenl. Ev. § 164; see 4 Mass. 163; 9 Johns. 214; 4 M'Cord, 317; 9 N. H. 34. p-5 Co. 125; 4 T. R. 126, 129, *n.*; 5 Binn. 281; Heard. Lib. & S. 72, 383. q-5 East. 463; 1 Price Exch. 11-17; Hob. 215; Chitty Cr. L. 868; 2 Campb. 512. r-2 Chitty Cr. L. 875. s-See 2 Bishop Cr. L.; Heard. Lib. & S.

to character; and an action may be maintained in the following cases: To be actionable in themselves, the words when only spoken (not written) must be such as in their plain and popular sense convey to the minds of the hearers a charge of some offence for which the plaintiff is amenable to the law, or of having some disease which will exclude him from society. Words which are not actionable in themselves become so when they are spoken of a person in his profession, office, or trade, and necessarily or naturally tend to injure him therein. And any words defamatory or injurious in their nature, spoken of another, without legal justification, are actionable, if productive of special damage flowing naturally from slander. The term "libel" is applied to written or printed slander.[s]

In verbal slander. Actionable words are of two descriptions: first, those actionable in themselves, without proof of special damages; and, secondly, those actionable only in respect of some actual consequential damages.

Words of the first description must impute:

1. The guilt of some offence for which the party, if guilty, might be indicted and punished by the criminal courts: as, to call a person a "traitor," "thief," "highwayman," or to say that he is guilty of "perjury," "forgery," "murder," and the like. And although the imputation of guilt be general, without stating the particulars of the pretended crime, it is actionable.[u] An action will lie for all words spoken of another which impute to him the commission of a crime involving moral turpitude and which is punishable by law.[v]

2. That the party has a disease or distemper which renders him unfit for society.[w] An action can, therefore, be sustained for calling a man a leper.[x] Imputations of having at the present time the venereal disease or the gonorrhœa are actionable in themselves.[y] But charging another with *having had* a contagious disease is not actionable, as he will not on that account be excluded from society.[z]

3. Unfitness in an officer, who holds an office to which profit or emolument is attached, either in respect of morals or inability to discharge the duties of the office: in such a case an action lies.[a]

4. The want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade, or business, in which the party is engaged, is actionable;[b] as, to accuse an attorney or artist of inability, inattention, or want of integrity,[c] or a clergyman of being a drunkard,[d] is actionable. It is one of the general rules governing the action for words spoken, that words are actionable, when spoken of one in an office of profit, which have a natural tendency to occasion the loss of his office, or when spoken of persons touching their respective professions, trades, and business, and which have a natural tendency to their damage. The ground of action in these cases is that the party is disgraced or injured in his profession or trade, or exposed to the hazard of losing his office, in consequence of the slanderous words; not that his general reputation and standing in the community are affected by them. It will be recollected that the words spoken, in this class of cases, are not actionable of themselves, but that they become so in consequence of the special character of the party of whom they were spoken. The fact of his maintaining that special character, therefore, lies at the very foundation of the action.[e]

Of the second class are words which are actionable only in respect of special damages sustained by the party slandered. Though the law will not permit in these cases the inference of damage, yet when the damage has actually been sustained, the party aggrieved may support an action for the publication of an untruth;[f] unless the assertion be made for the assertion of a supposed claim;[g] but it lies if maliciously spoken. In this case special damage is the gist of the action, and must be particularly specified in the declaration. For it is an established rule that no evidence shall be received of any loss or injury which the plaintiff has sustained by the speaking of the words, unless it be specially stated in the declaration. And this rule applies equally where the special damage is the gist of the action and where the words are in themselves actionable.[h]

The charge must be false.[i] The falsity of the accusation is to be implied till the contrary is shown.[j] The instance of a master making an unfavorable representation of his servant, upon an application for his character, seems to be an exception, in that case there being a presumption, from the occasion of the speaking, that the words were true.[k]

The slander must, of course, be published, —that is, communicated to a third person,— and, if verbal, then in a language which he understands; otherwise the plaintiff's reputation is not impaired.[l] A letter addressed to the party, containing libellous matter, is not sufficient to maintain a civil action, though it may subject the libeller to an indictment, as tending to a breach of the peace.[m] The slander

s-Heard. Libel & Slander, 8. u-Croke Jac. 114, 142; 6 Term. 674; 3 Wils. 186; 2 Ventr. 266; 5 Bos. & P. 335. v-Heard, Libel & S. § 24; see 3 Serg. & R. Penn. 255; 7 Id. 451; 10 Id. 44; 8 Mass. 248; 13 Johns. N. Y. 124, 275; Starkie, Slander, 13-42. w-Bacon Abr. *Slander* (B 2). x-Croke Jac. 144; Starkie Slander, 67. y-8 C. B. N. S. 9; 7 Gray, Mass. 181; 22 Barb. N. Y. 396; 2 Ind. 82; 2 Ga. 57. z-2 Term. 473, 474; 2 Strange, 1189; Bacon Abr. *Slander* (B 2). a-1 Salk. 695, 698; Rolle Abr. 65; 2 Esp. 500; 4 Coke, 16 *a*.; 5 Id. 125; 1 Strange, 617; 2 Ld. Raym. 1369; Buller, Nisi P. 4; Starkie Slander, 100. b-1 Mal. Entr. 234.

c-3 Wils. 187; 2 W. Blackst. 750. d-1 Binn. Penn. 178. e-Heard Libel & S. §§ 41, 45. f-1 Lev. 53; 1 Sid. 79, 80; 3 Wood, 210; 2 Leon. 111. g-Comyns Dig. *Action upon the Case for Defamation* (D 30); Bacon Abr. *Slander* (B). h-Heard Libel & S. § 51; see 1 Rolle Abr. 36; 1 Saund. 243; Bacon Abr. *Slander* (C); 8 Term. 130; 8 East. 1; Starkie Slander, 157. i-5 Coke, 125, 126; Hob. 253. j-2 East. 436; 1 Saund. 242. k-1 Term. 111; 3 Bos. & P. 587; Starkie Sland. 44, 175, 223. l-1 Rolle Abr. 74; Croke Eliz. 857; 1 Saund. 242, n. 3; Bacon Abr. *Slander* (D 3). m-2 Blackst. Comm. 1038; 1 Term. 110; 1 Saund. 132, n. 2; 2 Esp. 623; 4 Id. 117; 2 East. 361.

must be published respecting the plaintiff. A mother cannot maintain an action for calling her daughter a bastard.[o] In an action for slander, whether oral or written, it will afford no justification that the defamatory matter has been previously published by a third person, that the defendant at the time of *his* publication disclosed the name of that third person and believed all the statements to be true.[p] And a repetition of oral slander already in circulation, without expressing any disbelief of it, or any purpose of inquiring as to its truth, though without any design to extend its circulation or credit, or to cause the person to whom it is addressed to believe or suspect it to be true, is actionable.[q]

The words must be uttered without legal occasion, to render them actionable. On some occasions it is justifiable to utter slander of another; in others it is excusable, provided it be uttered without express malice.[r] It is justifiable for an attorney to use scandalous expressions in support of his client's cause and pertinent thereto.[s] Members of Congress and other legislative assemblies cannot be called to account for anything said in debate.

Malice is essential to the support of an action for slanderous words. But malice is, in general, to be presumed until the contrary be proved,[t] except in those cases where the occasion *prima facie* excuses the publication.[u]

SLANDER OF TITLE, or statements tending to cut down the extent of title, if malicious, injurious, and false, is actionable. The malice need not be in its worse sense, but with intent to injure the plaintiff. If the statement be true, if there is really the infirmity in the title that is suggested, no action will lie, no matter however malicious the defendant's intention may have been.[v]

TRESPASS is any misfeasance or act of one person whereby another is injuriously treated or damnified.[w] Any unlawful act committed with violence, actual or implied, to the person, property, or rights of another. Any unauthorized entry upon the realty of another to the damage thereof.

UPON PERSONAL PROPERTY.

An action lies for injuries to personal property, which may be committed by the several acts of unlawfully striking, chasing if alive, and carrying away to the damage of the plaintiff,[x] or by defacing, corrupting, or otherwise injuring, either by direct or remote means, a personal chattel, of which another is the owner, and in possession,[y] and for the removal or injury of inanimate personal property,[z] of which another has the possession, actual or constructive,[a] without the owner's assent. A naked possession or right to immediate possession is sufficient to support an action.[b]

UPON REAL PROPERTY.

An action lies for injuries to realty consequent upon entering without right upon another man's land. The enclosure may be purely imaginary,[c] but reaches to the sky and to the centre of the earth.[d] The plaintiff must be in possession with some title,[e] though mere title is sufficient where no one is in possession,[f] as in the case of an owner to the centre of a highway,[g] and mere possession is sufficient against a wrong-doer,[h] and the possession may be by an agent[i] but not by a tenant[j] other than a tenant at will.[k]

An action will not lie unless some damage is committed; but slight damage only is required. Some damage must have been done to sustain the action,[m] though it may have been very slight; as breaking glass.[n] An action will not lie where the defendant has a justification sufficient to excuse the act committed, though he acted without authority from the owner or the person affected,[o] and accident may in some cases excuse a trespass.[p]

The *gist* of an action for trespass is the injury done to the plaintiff's *possession*. To constitute trespass there must be a disturbance of the plaintiff's possession.[q] Where no one is in possession (the land being vacant and uncultivated) the party having the title or right of possession may maintain trespass.[r] It is settled that the owner of wild and uncultivated land is to be deemed in possession so as to maintain trespass, until an adverse possession is clearly made out.[s] Therefore, the plaintiff must allege and prove:

1. That the property was in his possession at the time of the injury, and this rightfully as against the defendant; and,

2. That the injury was committed by the defendant with force. The law always couples the idea of force with that of intrusion upon the property of another.[t]

o-11 Serg. & R. Penn. 343. p-Heard Libel & S. §§ 148, 149. q-5 Gray, Mass. 3. r-Bacon Abr. *Slander* (D 4); Rolle Abr. 87; 1 Viner Abr. 540 s-1 Maule & S. 280; 1 Holt, 531; 1 Barnew. & Ald. 232; see 2 Serg. & R. Penn. 469; 1 Binn. Penn. 178; 11 Vt. 536; Starkie Slander, 182. t-4 Barnew. & C. 247; 1 Saund. 242, n. 2; 1 Term. 111, 544; 1 East. 563; 2 Id. 436; 5 Bos. & P. 335; Buller, Nisi P. 8. u-4 Barnew. & C. 247; see 14 Serg. & R. Penn. 359; Starkie Sland. 201. v-Heard Lib. & S. §§ 10, 59, *et seq*. w-3 Bl. Comm. 208; 7 Conn. 125. x-1 Wms. Saund 84, *nn* 23; Fitzherbert Nat. Brev. 86; Brooke Abr. Trespass. pl. 407; Cro. Jac. 362. y-2 Root. 209; 5 Vt. 97. z-1 Me. 117; 12 Id. 122; 13 Pick. 139; 5 Johns. 348. a-11 Pick. 382; 21 Id. 369; 13 Johns. 141; 1 N. H. 110; 4 J. J. Marsh. 18; 2 Bail. 466; 4 Munf. 444; 6 Blackf. 136; 4 Ill. 9; 6 W. & S. 323. b-1 T. R. 480; 7 Johns. 535; 8 Id. 432; 11 Id. 377; 5 Vt. 274; 1 Penn. St. 238; 17 S. & R. 251; 11 Mass. 70; 11 Vt. 521; 1 Ired. 163; 10 Vt. 165. c-3 Bl. Comm. 209; 1 Dev. & B. 371. d-19 Johns. 381. e-5 East. 485; 9 Johns. 61; 11 Id. 140, 385; 12 Id. 183; 1 Nott. & M'C. 356; 2 Id. 68; 10 Conn. 225; 11 Id. 60; 6 Rand. 8, 556; 4 Watts. 377; 4 Pick. 305; 15 Id. 32; 4 Bibb. 218; 2 Hill (S. C.) 466; 1 Harr. & J. 295; 31 Penn. St. 304; 5 Harring 320; 11 Ired. 417. f-2 Ala. 229; 1 Wend. 466; 1 Vt. 485; 8 Pick. 333; 1 Dev. & B. 68. g-4 N. H. 36; 1 Penn. St. 336; see 17 Pick. 357. h-9 Ala. 82; 1 Rice, 368; 23 Ga. 590; see 22 Pick. 295. i-3 M'Cord, 422. j-8 Pick. 235; 1 Hill (S. C.) 260; see 13 Ind. 64. k-15 Pick. 102. l-2 Johns. 357; 9 Id. 113, 377; 2 Mass. 127; 4 Id. 266. m-2 Bay, 421. n-4 Mass. 170. o-8 Law Rep. 77. p-7 Vt. 62; 4 M'Cord, 61; 12 Me. 67. q-3 Gray, 329, 330; 7 Cush. 355; 3 Id. 306. r-1 Stew. 229; 1 Wend. 466; 1 Vt. 485. s-3 S. & R. 513; 2 Gilman, 652; 3 English, 470; 8 Cranch, 249. t-3 Bl. Comm. 211.

Plaintiff's Possession. The *possession* of the plaintiff may be actual or constructive. And it is *constructive* when the property is either in the actual custody and occupation of no one, but rightfully belongs to the plaintiff. A tenant at will and one entitled to the mere profits of the soil, with the right of culture, may also sue and recover for an injury to the emblements to which he is entitled.[u] A general owner has also a constructive possession as against his tenant, who having a special property, has violated his trust by injuring or destroying that which was confided to him. Thus, if a tenant at will cuts down trees, the interest of the wrong-doer is thereby determined, and the possession, by legal intendment, immediately reverts to the owner or co-tenant, and proof of the wrongful act will maintain the allegation that the thing injured was in his possession.[v] So, if one enters upon land, and cuts timber upon a parol agreement for the purchase of the land, which he afterwards repudiates as void under the statute of frauds, his right of possession also is avoided *ab initio*, and is held to have remained in the owner, who may maintain trespass for cutting the trees.[w] And generally, where a right of entry, or other right of possession, is given by law, and it is afterwards abused by any act of unlawful force, the party is a trespasser *ab initio*.[x]

But where the general owner has conveyed to another the exclusive right of present possession and enjoyment, retaining to himself only a reversionary interest, the possession is that of the lessee, who alone can maintain an action of trespass for a forcible injury to the property. Thus, a tenant for years may have an action of trespass for cutting down trees.[y] And a tenant at will, for throwing down fences erected by himself, and destroying the grass.[z] The lessor or general owner never being permitted to maintain this action for an injury done to the property while it is in the possession of a lessee entitled to its exclusive enjoyment.[a]

Where the subject of the action is a *partition fence* between the lands of two adjoining proprietors, it is presumed to be the common property of both, unless the contrary is shown.[b] If it is proved to have been originally built upon the land of one of them, it is his; but if it were built equally upon the land of both, though at their joint expense, each is the owner in severalty of the part standing on his own land;[c] if the boundary is a *hedge* and *one ditch*, it is presumed to belong to him on whose side the hedge is; it being presumed that he who dug the ditch threw the earth upon his own land, which alone was lawful for him to do, and that the hedge was planted as is usual on the top of the bank thus raised,[d] but if there is a *ditch on each side* of the hedge, or no ditch at all, the hedge is presumed to be the common property of both proprietors.[e] If a *tree* grows so near the boundary line, that the roots extend into the soil of each proprietor, yet the property in the tree belongs to the owner of the land in which the tree was originally sown or planted.[f] But if the tree stands directly upon the line between adjoining owners, so that the line passes through it, it is the common property of both, whether it be marked as a boundary or not; and trespass will lie if one cuts it down without the consent of the other.[g]

Proof of an actual and exclusive *possession* by the plaintiff, even though it be by wrong, is sufficient to support an action against a mere stranger or wrong-doer, who has neither title to the possession in himself, nor authority from the legal owner.[h]

——*Injury to.* The plaintiff must, in the next place, prove that the injury was committed by the *defendant*, with force. And the defendant will be chargeable, if it appear that the act was done by his direction or command, or by his *servant* in the course of his master's business, or while executing his orders with ordinary care; or if it be done by his domestic or reclaimed animals.[i] The law of this State as to enclosures makes the party having a fence insufficient in law, guilty of negligence, and he cannot recover for injuries done his crops by stock running at large and roaming upon his land through such insufficient fence, nor can such a party recover even if the owner of the stock was himself chargeable with negligence, unless it amounts to a wilful, wanton or malicious want of care.[j] The object of the law regulating fences is not to protect a wanton trespass, nor a trespass with intent to injure.[k] It will not be necessary for the plaintiff to prove that the act was done with any *wrongful intent;* it being sufficient if it was done without a justifiable cause or purpose, though it were done accidentally, or by mistake.[l] And though the original entry or act of possession were by authority of law, yet if a subsequent act of force be unlawfully committed, such as would have made the party a trespasser if no authority or right existed, he is a trespasser *ab initio*.[m] Nor is it necessary, in order to enable a party to recover for injuries done to his property, caused by the negligence of others, that he should be entirely free from all negligence himself; but if his negligence is slight, and

u-Co. Litt. 4 *b;* 3 Burr. 1824; 6 East. 602; 7 Id. 200; 9 Johns. 108; 5 Bing. 285; 9 Cowen, 39; 7 Cush. 467; 11 Id. 181; 10 Id. 99, 103; 2 Id. 237; 8 Met. 1; 11 Cush. 147, 150; 37 Me. 14; Id. 52; Id. 239; 5 Kas. 433. v-Co. Litt. 57 *a;* Cro. E. 777, 784; 5 Co. 13, S. C.; 11 Jur. 104; 1 Pick. 43; 17 Mass. 282. w-9 Johns. 35. x-8 Co. 145; 12 Johns. 408; 12 Met. 279; 3 Cush. 438. y-2 Campb. 491; 2 M. & S. 499. z-3 Greenl. 6. a-1 Johns. 511; 3 Id. 468. b-8 B. & C. 259, and note *a;* Id. 257. c-5 Taunt. 20. d-3 Taunt. 138, per Lawrence, J. e-Archibold's N. P. 328. f-1 Moody & Malkin, 112; 2 Roll. Rep. 141; Dig. lib. 47, tit. 7, 1, 6, § 2; Coop. Just. p. 80. g-12 N. H. 454. h-1 East. 244; 3 Burr. 1556, 1563; 4 Taunt. 547; 2 Watts. 180; 3 Met. 239; 14 Pick. 297; 12 Shep. 453; Id. 411; 39 Me. 451; 5 Md. 540; 10 Texas, 462; 8 Gray, 415. i-9 B. & C. 591; 8 Wend. 474; 6 Com. Dig. 392; Trespass C. 1; 10 Wend. 110; 4 D. & R. 202. j-5 Kas. 433. k-Id. l-Chitty Pl. 192; 1 Camp. 497; 2 Id. 575; 3 Lev. 37; 5 Mass. 341; 11 Id. 500; Id. 507; 20 Miss. 322; 1 Williams (Vt.) 657; 15 Ill. 53. m-8 Co. 145; 5 B. & C. 485; 3 Wils. 20.

that of the other party is gross, or if his is remote, and that of the other is the proximate cause of the injury, he may recover.[n] It is a question of fact for the jury to determine, whether there has been negligence, and its nature and degree; but it is a question of law, for the court to determine, what degree of care and diligence on the one side, and of negligence on the other, will entitle the plaintiff to recover.[o] The allegation of the *time* when the trespass was committed is not ordinarily material to be proved; the plaintiff being at liberty to prove a trespass at any time before the commencement of the action, whether before or after the day laid in the complaint.

Defences. In the defence of this action, the general issue is *not guilty;* under which the defendant may give evidence of any facts tending to disprove either of the propositions which, as we have seen, the plaintiff is obliged to make out in order to maintain his action. And any matters which go to show that he never did the acts complained of may be given in evidence under the general issue. He may show under this issue that the freehold and immediate right of possession is, in himself, or in one under whom he claims title; thus disproving the plaintiff's allegation that the right of possession is in him.[p] But if he acted by license even from the plaintiff, without claiming title in himself;[q] or if he would justify under a custom to enter,[r] or under a right of way;[s] or if the injury was occasioned by the plaintiff's own negligence, or was done by the defendant from any other cause, short of any of such extraneous force as deprived him of all agency in the act, it cannot be shown under this issue, but must be specially pleaded.[t] So, also, matters in *discharge* of the action; but matters in *mitigation* of the wrong and damages which cannot be so pleaded, may be given in evidence under the general issue.[u] The general rule is, that all matters which confess and avoid, whether alleged by the plaintiff or defendant, must be specially pleaded, otherwise the proof of them is not admissible.[v]

In some cases trespass is justifiable, or, in other words, entry on another's land or house is not accounted trespass; as if a man comes to demand or pay money there payable, or to execute in a legal manner the process of the law. So, entering into an inn or public house without first asking the owner's leave, because when a man professes to keep an inn or public house, he thereby gives a general license to any person to enter his doors.[w] In like manner the law warrants the hunting of ravenous beasts of prey, because the destroying of such creatures is said to be profitable to the public.[x] But he cannot justify breaking the soil and digging him out of the earth; for though the law warrants the hunting of such noxious animals for the public good, yet it must be done in the ordinary and usual manner.[y] But in cases where a man misdemeans himself and makes ill use of the authority with which the law intrusts him, he is a trespasser *ab initio*.[z] If a defendant justifies the destruction of the plaintiff's property, by the *defence of his own*, he must aver and prove that he could not otherwise preserve his own property.[a] If, however, the plaintiff's dog were killed in the act of pursuing the defendant's deer in his park, or rabbits in his warren, or poultry within his own grounds, or worrying or injuring sheep, this will justify the killing without any higher necessity.[b] If the issue is upon a right to *dig and take gravel* or other material for necessary repairs, the defendant must allege and prove that the repairs were necessary, and that the materials were used or in the process of being used for that purpose.[c]

If the defendant succeeds in establishing a title to that part of the premises on which the trespass was committed, he is entitled to recover, though he does not prove a title to the whole premises.[d]

VEXATIOUS SUITS, which are instituted maliciously, without probable cause, whereby damage has resulted to the defendant whether they are criminal prosecutions before a magistrate or civil actions, are another class of torts or wrongs. Such a suit need not be altogether without foundation; if the part which is groundless has subjected the party to an inconvenience to which he would not have been exposed had the valid cause of complaint alone have been insisted on, it is injurious.[e] To make it vexatious the suit must have been instituted maliciously, as malice in any case of injurious conduct necessarily to be inferred from the total absence of probable cause for exciting it, and in the present instance the law will not allow it to be so inferred from that circumstance, for fear of being mistaken; it casts upon the suffering party the burden of proving express malice.[f] It is necessary that the prosecution should have been carried on without probable cause; the law presumes that probable cause existed until the party aggrieved can show the contrary, hence he is bound to show the total absence of probable cause;[g] he is also under the same obligation when the original proceeding was a civil action.[h] The damage which the party injured sustains from a vexatious suit for a crime, as either to his person, his reputation, his estate, or his relative rights: 1. Whenever imprisonment is occasioned by a malicious, unfounded criminal prosecution, the injury is complete, although the detention may

n-5 Kas. 167; Id. 191. o-Id. p-1 Chitty Pl. 437; 7 T. R. 354; 1 Mass. 159; 4 Blackf. 348; 4 Pick. 127; 12 Met. 183. q-2 Campb. 378; 1 Peake, 67; 24 Pick. 187; 26 Vt. 178. r-4 Pick. 145. s-7 Mass. 385. t-1 Chitty Pl. 437, 438; 2 Camp. 500. u-1 Chitty Pl. 441, 442; 31 Vt. 433; Id. 624; 2 H. & N. 276; 6 Ad. & El. 174, N. S. v-2 Stark. Ev. 825; 5 Dutcher, 571. w-3 B. Comm. 212. x-Id. 213. y-Id. 214. z-Id. 213. a-1 Sand. 84; 11 East. 568; 1 Camp. 41. b-3 Lev. 28; Cro. Jac. 45; 1 Camp. 41; 11 East. 568, 569. c-6 T. R. 748. d-8 M. & W. 381; 2 B. & C. 918. e-4 Taunt. 616; 4 Co. 14; 1 Pet. C. C. 210; 4 S. & R. 19, 23. f-2 Wils. 307; 2 B. & P. 129; Carth. 417; see 5 Taunt 583; 1 Pet. C. C. 210; 2 Browne Apx. 42, 49; Addis, 270. g-5 Taunt. 580; 1 Campb. 199. h-2 Wils, 307.

have been momentary, and the party released on bail.[i] 2. When the bill of indictment contains scandalous aspersions likely to impair the reputation of the accused, the damage is complete.[j] 3. Notwithstanding his person is left at liberty, and his character is unstained by the proceedings (as when the indictment is for trespass);[k] yet if he necessarily incurs expense in defending himself against the charge, he has a right to have his losses made good.[l] If a master loses the services and assistance of his domestics in consequence of a vexatious suit, he may claim a compensation.[m]

Concerning the damage resulting from a civil action, when prosecuted in a court of competent jurisdiction, the only detriment a party can sustain is the imprisonment of his person, or the seizure of his property; as to any expense he may be put to, the law contemplates that the costs adjudged fully compensate him.[n] It would be otherwise if the suit were brought in an improper court, and imprisonment of the person or seizure of one's property is made.[o]

Total Loss. See INSURANCE.
Trade-marks. See PATENTS.
Transfer. See ACTS.
Translations. See COPYRIGHTS; EVIDENCE.
Transportation. See BAILMENTS, "Common Carriers," etc.
Treason. See CRIMINAL LAW.
Trespass. See TORTS.
Ultra Vires. See CORPORATIONS.
Umpires. See AGENCY; ARBITRATORS.
Underlease. See CONVEYANCES, "Leases."
Uniptelligible. See CONTRACTS; CONVEYANCES.
Unsound Mind. See MEDICAL LAW, "Insanity."

USAGE. See CONTRACTS, "Custom," "Usage."

Usage of trade does not require to be immemorial to become established; if it be known, certain, uniform, reasonable, and not contrary to law, it is sufficient. But evidence that a thing has been done in few instances does not establish usage.[p] The usages of trade afford ground upon which a proper construction may be given to contracts. By their aid the indeterminate intention of the parties, and the nature and extent of their contracts arising from mere implications or presumptions, and acts of an equivocal character, may be ascertained, and the meaning of words and doubtful expressions may become known.[q] Courts will not readily adopt these usages, because they are not unfrequently founded in mistake.[r]

Usury. See INTEREST.
Vagrancy. See CRIMINAL LAW.
Venue. See AFFIDAVIT.
Vice. See ANIMALS, "Horses."
Vis Major. See ACCIDENT.
Voire Dire. See EVIDENCE, "Witnesses."
Voluntary. See CONVEYANCES.
Vouchers. See ACCOUNTS.
Warehousemen. See BAILMENTS.

Warrant of Attorney. See AGENCY, "Attorneys at Law."
Warranty. See INSURANCE, "Sales."
Weight of Evidence. See EVIDENCE.

WEIGHTS AND MEASURES.

A MEASURE is a means or standard for computing amount. A certain quantity of some thing taken for a unit, and which expresses a relation with other quantities of the same thing.

WEIGHT is a quality in natural bodies by which they tend towards the centre of the earth. The weights now generally used in the United States are the same as those of England.

The Constitution of the United States gives power to Congress to "fix the standard of weights and measures."[s] This power has never been exercised. By a resolution of Congress of the 14th of June, 1836, the secretary of the treasury is directed to cause a complete set of all weights and measures adopted as standards, and now either made or in the progress of manufacture, for the use of the several custom houses, and for other purposes, to be delivered to the governor of each State in the Union, or to such person as he may appoint, for the use of the States respectively, to the end that a uniform standard of weights and measures may be established throughout the United States.[t] The States possess the power to legislate on this subject, or at least the existing standards at the adoption of the constitution remain in full force.[u]

METRIC SYSTEM OF WEIGHTS AND MEASURES.

In the year 1866 the Congress of the United States passed a bill authorizing the use of a new system of weights and measures. In this system the principal denomination is the *metre*, from which all the other denominations in all the tables are derived. Hence, this system is called the *metric system*.

The principal denomination for the measure of surface is the *are*; for the measure of capacity, the *litre*; and for weight, the *gram*.

The lower denominations in each table are tenths, hundredths, or thousandths of these; and their names are formed by prefixing *deci*, *centi*, or *milli* to the name of the principal denomination.

The higher denominations are 10, 100, 1,000, or 10,000 times the principal denomination of any table; and their names are formed by prefixing *deka*, *hecto*, *kilo*, or *myria* to the name of that principal denomination.

The weights and measures of this system are in general use in France, Belgium, Spain, and Portugal; and their use has been legalized by Great Britain, Italy, Norway, Sweden, Greece, Mexico, and most of the South American governments.

i-Carth. 416. j-See 12 Mod. 210; 2 B & Ald. 494; 3 Dowl. & R. 669. k-Carth. 416. l-10 Mod. 148, 214; Gelf, 186. m-Hammond N. P. 275. n-4 Taunt. 7; 1 Mod. 4; 2 Id. 306. o-See 1 Wils. 316; Carth. 189. p-3 Watts. 178; 3 Wash. C. C. 150; 1 Gall. C. C. 443; 5 Binn. 287; 9 Pick. 426; 4 B. & Ald. 210; 7 Pet. 1; 2 Wash. C. C. 7. q-2 Met. (Mass.) 65; 13 Pick. 182; 2 Sumn. C. C. 569; 2 Gill. & J. 136; Story Ag. § 77; 2 Kent Comm. 662 (3d Ed.); 5 Wheat 326; 2 C. & P. 525; 3 B. & Ald. 728; Park. Ins. 30; 1 Marsh. Ins. 186, n. 120; 1 Caines, 45; Gilp. 356, 486; 1 Edw. Ch. 146; 1 Nott. & M'Cord, 519; 15 Mass. 433; 1 Hill (S. C.) 270; Wright, 573; Pet. C. C. 230; 5 Ohio, 436; 1 Pet. 25, 89; 2 Id. 148; 6 Id. 715; 15 Ala. 123; 1 Hall, 612; 9 Mass. 155; 9 Wheat. 582; 11 Id. 430. r-2 Sumn. C. C. 377. s-Art. 1, § 8, Subdiv. 5. t-Laws 1861, S. & S. Ch. 103, § 2. u-3 Story Const. 21; Rawle Const. 102.

METRIC SYSTEM OF WEIGHTS AND MEASURES.

Table of Denominations and their Relative Values.

Names of Principal Denominations.

Metre.
Are.
Litre.
Gram.

Prefixes for Higher Denominations.

Deka 10.
Hecto 100.
Kilo 1,000.
Myria 10,000.

Prefixes for Lower Denominations.

Milli .001 of
Centi .01 of
Deci .1 of

Measures of Capacity

10 millilitres = 1 centilitre.
10 centilitres = 1 decilitre.
10 decilitres = 1 litre.
10 litres = 1 dekalitre.
10 dekalitres = 1 hectolitre.
10 hectolitres = 1 kilolitre, or stere.
1 millilitre = .001 litre.
1 centilitre = .01 litre.
1 decilitre = .1 litre.
1 litre = 1 cubic decimetre, or .908 dry quart, or 1.0567 liquid quart.
1 dekalitre = 10 litres.
1 hectolitre = 100 litres.
1 kilolitre or stere = 1000 litres.

Measures of Length.

10 millimetres = 1 centimetre.
10 centimetres = 1 decimetre.
10 decimetres = 1 metre.
10 metres = 1 dekametre.
10 dekametres = 1 hectometre.
10 hectometres = 1 kilometre.
10 kilometres = 1 myriametre.
1 millimetre = .001 metre.
1 centimetre = .01 metre.
1 decimetre = .1 metre.
1 metre = 39.37 inches.
1 dekametre = 10 metres.
1 hectometre = 100 metres.
1 kilometre = 1,000 metres.
1 myriametre = 10,000 metres.

Measures of Surface.

100 centares = 1 are.
100 ares = 1 hectare.
1 centare = .01 are.
1 are = 100 square metres, or 119.6 square yards.
1 hectare = 100 ares.

Weight.

10 milligrams = 1 centigram.
10 centigrams = 1 decigram.
10 decigrams = 1 gram.
10 grams = 1 dekagram.
10 dekagrams = 1 hectogram.
10 hectograms = 1 kilogram.
10 kilograms or kilos = 1 myriagram.
10 myriagrams = 1 quintal.
10 quintals = 1 millier, or tonneau.
1 milligram = .001 gram.
1 centigram = .01 gram.
1 decigram = .1 gram.
1 gram = 15.432 grains.
1 dekagram = 10 grams.
1 hectogram = 100 grams.
1 kilogram or 1 kilo = 1000 grams, or 2.2046 pounds.
1 myriagram = 10 kilos.
1 quintal = 100 kilos.
1 millier = 1,000 kilos.

ORDINARY SYSTEM OF WEIGHTS AND MEASURES.

Angular Measure or Division of a Circle.

60 seconds = 1 minute.
60 minutes = 1 degree.
30 degrees = 1 sign.
90 degrees = 1 quadrat.
360 degrees or 12 signs = 1 circumference.

Apothecaries' or Pharmaceutists' Measures, etc.

60 minims (M) = 1 fluid-drachm, f ℥
8 f ℥ = 1 fluid-ounce, f ℥
16 f ℥ = 1 pint, O
8 O = 1 gallon, C

When Roman numerals are used after the signs to which they relate: thus ℥ $\overline{\text{I}}$ = 1 drachm; ℥ $\overline{\text{IV}}$ = 4 drachms, they indicate troy weight.

ss = one-half; thus ℥ ss = one-half drachm.

When Arabic numerals are used before the signs to which they relate: thus $\overline{\text{j}}$℥ = 1 drachm; $\overline{\text{iv}}$℥ = 4 drachms, they indicate avoirdupois weight.

a a = of each.

Measures of Fineness of Powders.

80 meshes to an inch = very fine.
60 meshes to an inch = fine.
50 meshes to an inch = moderately fine.
40 meshes to an inch = moderately coarse.
20 meshes to an inch = coarse.

Astronomers' and Geographers' Measures.

60″ (seconds) = 1′ (minute), or 1 geographical mile.
60′ = 1° (degree).
30° = 1 sign of the zodiac (S).
12 S = 1 great circle of the heavens.
60° = 1 sextant.
360° or 6 sextants = 1 C. circumference.
1 geographic mile = 1.15 statute mile.
3 geographic miles = 1 league (L).
60 geographic miles, or 69.16 statute miles = degree (Deg.) of latitude or of longitude on the equator.

69.16 miles is the average degree of latitude as used by the United States Coast Survey.

Measure of Books.

1 sheet folded in—
2 leaves = a folio.
4 leaves = a quarto (4to.)
8 leaves = an octavo (8vo.)
12 leaves = a duodecimo (12mo.)
16 leaves = a 16mo.
18 leaves = a 18mo.
24 leaves = a 24mo.
32 leaves = a 32mo.
64 leaves = a 64mo.

Civil Engineers' Measures.

1 link (l) = 1 foot (ft.)
100 l (or ft.) = 1 chain.
5280 ft. (1760 yds.) = 1 mile (mi.)

Measures of Copying.

72 words = 1 folio, common law.
90 words = 1 folio, chancery.
100 words = 1 folio, statute law.
2 figures = 1 word, statute law.

For Measuring Goods Sold by the Yard.

2¼ inches = 1 sixteenth.
2 sixteenths or 4½ inches = 1 eighth.
2 eighths or 9 inches = 1 quarter (qr) or fourth.
4 qrs = 1 yard.
1 yard U. S. Standard = 3 feet or 36 inches.

Mariners' Measures.

6 feet = 1 fathom (depth at sea).
120 fathoms = 1 cable's length.
1 nautical mile or knot = 1.15 statute miles.
3 nautical miles or knots = 1 league.

Measures of Length.

Generally.

12 inches = 1 foot.
3 feet = 1 yard.
5½ yards = 1 rod or pole.
40 poles = 1 furlong.
8 furlongs = 1 mile.

69 1-15 miles = 1 degree of a great circle of the earth.

Measures of Cloth.

1 nail = 2¼ inches.
4 inches = 1 quarter.
4 quarters = 1 yard.
5 quarters = 1 ell.

Measures of Depth.

6 feet = 1 fathom.

Measure of Height of Horses.

In measuring horses 4 inches = 1 hand, the measure being taken directly over the foreshoulder.

Measure of Land.

7 92-100 inches = 1 link.
100 links = 1 chain.
10 square chains = 1 acre.
640 acres = 1 square mile or section.
36 square miles = 1 township.

Measures of Paper.

24 sheets = 1 quire.
20 quires = 1 ream.
2 reams = 1 bundle.
5 bundles = 1 bale.

Measures of Solidity and Capacity.

Measures of Capacity for Commodities Sold by Heaped Measure.

2 gallons = 1 peck.
8 gallons = 1 bushel.
1 bushel U. S. Standard = 2150.42 cubic inches.
3 bushels = 1 sack.
12 sacks = 1 chaldron.

Measures of Capacity of Liquids, etc.

For liquids several denominations have heretofore been adopted: for beer the firkin of 9 gallons, the kilderkin of 18, the barrel of 36, the hogshead of 54, and the butt of 108 gallons. For wine or spirits there are the anker, runlet, tierce, hogshead, puncheon, pipe, butt, and tun; these are, however, rather the names of the casks in which the commodities are imported than as expressing any definite number of gallons. It is the practice to gauge all such vessels and to charge them according to their actual contents.

4 gills = 1 pint.
2 pints = 1 quart.
4 quarts = 1 gallon.
1 gallon U. S. Standard = 231 cubic inches.
2 gallons = 1 peck.
8 gallons = 1 bushel.
8 bushels = 1 quarter.
5 quarters = 1 load.

The last four denominations are used only for goods, not liquids.

Measures of Solidity.

1728 cubic inches = 1 cubic foot.
27 cubic feet = 1 cubic yard.
1 cord stove wood = 128 cubic feet.

Measures of Surface.

144 inches = 1 square foot.
9 square feet 1 square yard.
30¼ square yards = 1 perch or rod.
40 perches = 1 rood.
4 roods or 160 perches = 1 acre.
640 acres = 1 square mile.

Surveyors' Measures.

7.92 inches = 1 link (l).
100 l = 1 chain (ch).
80 ch = 1 mile (mi).
See MEASURES OF LENGTH, above.

Measures of Things.

12 = 1 dozen.
12 dozen = 1 gross.
12 gross = 1 great gross.

Measures of Time.

60 seconds = 1 minute.
60 minutes = 1 hour.
24 hours = 1 day.
7 days = 1 week.
28 days or 4 weeks = 1 lunar month.
28, 29, 30, or 31 days = 1 calendar month.
12 calendar months = 1 year.
365 days = 1 year.
366 days = 1 leap year.

The second of time is subdivided like that of angular measure.

Measures by Weight.

The following articles are generally sold by the bushel, hundredweight, or ton, and are generally regulated by statute:

Apples, dried; barley; beans, white; beans, castor; bluegrass seed; bran; buckwheat; clover seed; coal (anthracite, bituminous, cannel, stone, and all other mined coals); corn, Indian, in the ear; corn, Indian, shelled; corn meal; flax seed: hair (for plastering); hay; hemp seed; hominy; Hungarian grass seed; lime (unslaked); malt; millet seed; oats, shelled; onions; peaches, dried; peas, ground; potatoes, Irish; potatoes, sweet; rye; salt; salt, fine; timothy seed; turnips; wheat, etc., etc.

Weights are of two kinds, avoirdupois and troy.

Apothecaries' or Pharmaceutists' Weights.

Used in Prescribing and Mixing Dry Medicines.

(Dry medicines are sold by avoirdupois weight, and prescribed and mixed by troy weight.)

20 grains (gr.) = 1 scruple (Sc. or) ℈
3 ℈ = 1 drachm (Dr. or) ʒ
8 ʒ = 1 ounce (oz. or) ℥
12 ℥ = 1 pound troy (lb).

See MEASURES, above.

Avoirdupois Weight.

For Butter and Cheese.

3 pounds = 1 clove.
56 pounds = 1 firkin.

In most Commercial Transactions and Common Dealings among Individuals.

27½ grains = 1 drachm.
16 drachms = 1 ounce (oz).
16 ounces = 1 pound (lb.)
1 pound = 7000 troy grains, U. S. Standard.
25 pounds and 28 pounds = 1 quarter (qr.)
4 quarters = 1 hundredweight (cwt.)
20 hundredweight = 1 ton.

For Fish and Meat.

8 pounds = 1 stone.

For the Wool Trade.

7 pounds = 1 clove.
14 pounds = 1 stone.
2 stones = 1 tod.
6½ tods = 1 wey.
2 weys = 1 sack.
12 sacks = 1 last.

Troy Weight.

These are the denominations of troy weight when used for weighing gold, silver, and precious stones, except diamonds. Troy weight is also used by apothecaries in compounding medicines; and by them the ounce is divided into eight drachms, and the drachm into three scruples, so that the latter is equal to twenty grains. For scientific purposes the grain only is used, and sets of weights are used constructed in decimal progression from 10,000 grains downward to one-hundreth of a grain. The carat used for weighing diamonds is three and one-sixth grains.

24 grains = 1 pennyweight.
20 pennyweights = 1 ounce.
1 ounce = 480 grains, U. S. Standard.
12 ounces = 1 pound.
1 pound = 5,760 grains, U. S. Standard.

Wharfinger. See BAILMENTS.
Wife. See ACTS; MARRIAGE.
Wild. See ANIMALS.
Will. See CONVEYANCES, "Wills."
Witness. See EVIDENCE.
Wounds. See MEDICAL LAW.
Writings. See AGENCY; BILLS, BONDS, AND NOTES; BONDS OR OBLIGATIONS; CONTRACTS; CONVEYANCES, ETC., ETC.
Wrongs. See TORTS.
Young. See ANIMALS.

PART II.

COLLECTION

OF

CLAIMS, DEBTS AND DEMANDS.

WHEN a claim, debt or demand is due or overdue; when payment is unreasonably deferred or refused; when satisfaction can only be had by aggressive action on the part of the creditor, it becomes necessary for him to inquire into the various methods of collecting or securing such claim, etc.

1. Amicable adjustment of Claims, Debts and Demands by parties. As between parties a claim may be satisfied, paid or adjusted in any manner, as by part payment, services, goods, etc., etc. It may also be secured in various ways, by note of hand; by note of hand with a sufficient indorser; by an order on and accepted by a third responsible party; by a mortgage, pledge, etc., etc.

2. Arbitration by third persons when a Claim, Debt or Demand is disputed. When parties are unable to adjust claims, debts or demands between themselves, and wish to avoid the expense and incident of a suit at law, they may agree upon a person or persons before whom to submit the points of controversy, and abide his or their decision.

See INDEX. **Arbitration.**

3. Action or suit to recover or defeat a Claim, Debt or Demand. Whether the demand, debt or claim be disputed or not, it is often necessary to commence an action or suit for its recovery, to which suit a legal defence, set-off or counter-claim must be interposed, or judgment will be obtained so far as far as the demand, etc., is proved, often for the amount (sometimes unjustly) claimed. Where the parties are in the same neighborhood, or at a convenient distance, the matter may be attended to personally or by agent or attorney. Where they reside or do business at a distance from each other, this must be done through agents or attorneys. In the latter case, the following forms of correspondence may be observed by the creditor:

Letter of Inquiry.

Place ——, Date ——, 18—.

A. Y., Esq., Attorney-at-law, at ——, in ——, in —— county, State of ——.

Dear Sir:—I herewith enclose you a copy of an account *or* note, *or other evidence of debt* (*naming it*), in my favor and against D. R., of ——, engaged in (*state business*) at ——, in your city (or county). Be kind enough to state your terms and prospect of collection, and oblige yours, etc., C. R.

Order to Collect.

Place ——, Date ——, 18—.

A. Y., Esq., Attorney-at-law, at ——, in ——, in —— county, State of ——

Dear Sir:—Please collect the enclosed (account *or* note, etc.) in my favor and against D. R., and remit the same, less your fees, as per terms stated in your note of ——, inst.: *Providing*, That if the same is found to be worthless, that it be returned to me without charge,

Yours, etc., C. R.

(*When security for costs is required add:*)

Enclosed find $—, as per your request, to pay cost in advance (*or* to secure the costs of this suit).

WHAT COURTS TO SUE IN.

Justices' Courts afford a simple and speedy means of collecting small claims and demands without delay, and their judgments are, when filed in the office of the clerk of the proper court, as efficient a lien of the debtor's real estate, as the judgment of a court of record. This is a simple and inexpensive mode of obtaining a judgment and lien. **The proceedings of courts of general jurisdiction** are more direct, and must be resorted to for the collection of large claims and enforcing general remedies.

When an Action or Suit May be Commenced.

Limitation. By the common law, a party who had any legal ground of complaint against another, might compel him to answer in a court at such time as suited his convenience. This privilege was not only productive of inconvenience, but often of great injustice. Parties might, and often did, wait till witnesses were dead, or papers destroyed, etc., and then proceed to enforce claims which at an earlier date might have been honestly defeated. To prevent these evils, insecurity in title, uncertainty of tenure of property, and fruitful subjects of litigation, statutes were passed, limiting the time within which a party having a cause of action should appeal to courts for redress. These statutes are called Statutes of Limitation.

When Costs are Required in Advance.

Costs. The object of requiring security for costs in any case is, that the defendant may have some responsible party within the jurisdiction of the court to whom he can look for the payment thereof in the event he succeeds in the action or suit (15 Wis. 54). When security

for costs is required, a fee should accompany the claim, so that the costs may be secured by resident surety or paid at the commencement of the action or suit.

Process in an Action or Suit.

In a Suit or Action a Summons notifies the defendant to appear at a certain time and place to answer whether he owes the debt or not, and if he has a set-off or defence, to then present it.

An Order of Arrest or Capias compels him not only to answer the debt, but also the acts of fraud in contracting or afterwards trying fraudulently to cheat his creditor out of his dues, and may also commit him to prison.

An Order of Attachment effects the seizure of such goods and property as can be found.

Garnishee or Trustee Process effects a discovery of goods, debts, effects, etc., etc., in the hands of outside or third parties, and compels their delivery of the same to satisfy such judgment as may be obtained.

Judgment, Execution, etc., are noticed above and below.

Arrest and Imprisonment for Debt.

Arrest and Imprisonment for Debt are proceedings of so summary a character that few persons of responsibility will risk either without the strongest evidence to support the one, or as a last means of obtaining satisfaction of a judgment through the other. **Arrest** is allowed in many of the States, but only in cases of fraud; fraud in obtaining goods, moneys, etc., or fraudulently secreting, selling, removing his property to avoid the payment of just debts, etc., etc. **Imprisonment** for debt is, with a few exceptions, generally abolished.

The proceedings are generally as follows: An affidavit is made by the creditor, his agent, or attorney, charging the debtor with the acts of fraud, etc. A bond is given by the creditor to indemnify the debtor if his arrest should be wrongful, etc. A writ is then issued for the apprehension of the debtor. When arrested, the debtor is brought before court to answer the charges of fraud, which, if proved, justify his imprisonment until he gives up the goods, property, etc., or is lawfully discharged from confinement.

Attachment, Garnishment, Trustee Process.

Attachment, Garnishment, Trustee Process, etc. (*i. e.*, seizing goods or property of the debtor either before, during, or after the suit), is common to every State.

Attachment Proper is seizing either goods or property of the debtor for the debt, where he is charged with fraudulently concealing, selling or removing, etc., of them. **Garnishment, Trustee Process, etc.,** is as follows: D owes C a debt, D has no property of his own, in *his own hands* or possession, *but some one else has*, or is indebted to him. C discovers this, and as an attachment proper could only take property of D, in D's own hands, or some place where it could be come at directly, C must resort to some other process. This is called a *Garnishee or Trustee Process*—that is, a writ which compels this outside party to come into court and tell what he has, holds, controls, or owes to D, and to deliver it over to the officer holding the garnishee or trustee writ, that it may be used to satisfy the creditor's claim or demand.

The Trial of an Action or Suit and its Incidents. See below.

The Nature and Effect of a Judgment

Judgments, once obtained, are evidence to the whole world of the facts they contain—they cannot be impeached or *disputed*. The only way to affect them is to pay or satisfy them. They may be transferred from one county to another, from State to State, from country to country, and from court to court; they always face the debtor, and are always ready for any excess over and above the exemptions allowed by law. They gradually increase by the addition of interest.

COURTS AND PARTIES APPEARING THEREIN, etc.

Judges and Officers of Courts.

A judge or justice cannot sit or act in cases where he is a party, or is interested, or where he is related to either party by consanguinity or affinity.

A judge or justice cannot practice in his own court.

A judge or justice will not have a partner practice in his own court.

A judge or justice will not take part in a trial when his partner is attorney or counsel therein.

A judge or justice will not have a voice in decisions where he has been attorney or counsel.

Partners of clerks of judges or Court officers do not practice before their judges.

Clerks of Courts and other ministerial officers do not practice as attorneys in their own courts.

Courts are always open to the public.

Legal Proceedings.

Legal Proceedings must be in the English language, without abbreviation; numbers may be expressed in figures.

A party may always appear in person or by attorney. Any person of full age and sound mind, may prosecute or defend any action or suit of his own, or any defense against an action or suit brought against him by another, in any court or tribunal.

Any person of good moral character, although not an attorney, may manage, prosecute, or defend the suit of another person, if he is specially authorized to do so by the party for whom he appears. This authority may be by request when in court, or by written authority when the party suing, or sued, is absent.

Costs of suit generally fall upon the losing party; whatever costs have been prepaid are included in the bill of costs.

WHERE TO COMMENCE AN ACTION OR SUIT.

An action or suit must be brought before a court or judge or justice, who has a right to and can legally hear and determine it, otherwise his judgment would be like that of any other person without authority.

For example:

1. A justice of the peace has the right and authority to hear and determine actions or suits upon accounts, bills, bonds, contracts, judgments, notes, etc., etc., as well as for damages in some instances, and many other things, up to a certain sum or amount, beyond which he cannot lawfully go, even though the parties to the suit agree that he may; for the law has said what he shall do, and this is his only authority. On the other hand justices of the peace cannot sit to try the title to land, suits for slander, libel, breach of marriage contract, etc., for they have no authority by law to do so, and, besides, they are specially prohibited by law from trying suits of this character.

2. The justice having the right and authority to try the matter, in order to exercise it upon application of a party suing, must bring the party required to answer before him; this is done by a summons, and in suits before justices it is often absolutely necessary to sue a person in *the same town or township in which he resides*, though generally he may be sued anywhere in the county.

Parties may, however, appear before any justice or court, and in any county, township or place they choose, and there submit their controversy.

How to Commence an Action or Suit.

An action or suit may be commenced by voluntary appearance and agreement of parties, or by legal processes issued at the instance and request of the party complaining.

1. *If by agreement* the parties appear before the court or justice, and submit their controversy, with such evidence as they may require or present, and the court or justice decides such controversy, and so enters his judgment upon his docket or record, and judgment stands and execution issues, in the same manner as in an ordinary action or suit.

2. *When by legal process.* Upon application (and filing one's account, bill, bond, claim, demand, note or other "cause of action," which is called a "complaint," "statement of demand," "bill of particulars," etc., etc., according to the custom of the court), a summons is issued and directed to the constable or other officer, who serves it upon the party complained of, who is called the defendant. This summons commands the defendant to appear before the court or justice at a certain place and time, to answer the plaintiff's demand (describing it), and to set up whatever defense he may have to it. In addition to the *summons* (which is merely a notice to appear and answer), there are cases in which the defendant may be *arrested*, and also cases where his goods and effects may be *attached*, and also the money and property due him from persons indebted to him or having such property, may be taken or retained.

These forms of process are described under ARREST and ATTACHMENT above.

Witnesses may be compelled to attend and give their evidence. The party desiring their evidence should give their names to the court or justice and request him to subpœna them for the trial; and if they fail to attend, he should request the court to compel their attendance, which is done by attaching them and bringing them forcibly into court, there to answer for their contempt or excuse it, and give their evidence in the case as well.

Every person offered as a witness must be affirmed or sworn before giving any testimony.

NOTE.—The plaintiff's demand or cause of action should be given to the court or justice to be filed, when he obtains his summons. The defendant's set-off or defence should be given to the court or justice when he appears on the day of trial or by his evidence.

How to Try an Action or Suit.

On the day of trial the party may conduct his own suit or defense, or have an attorney or other competent person do so for him.

If a party is under twenty-one years of age, he must sue or defend by guardian or next friend. (The court will attend to this upon the suggestion of any person.)

All parties should be in prompt attendance at the time fixed for trial (and in no event later than *within* one hour thereafter, though in some cases this will be too late)

Trial by Jury.

If a jury is desired by either party, such party should request it of the court or justice, who issues a summons or venire for the number of jurors required by law or agreed on by the parties.

When it is time for the jurors to appear their names are called out by the officer, and they are seated together and sworn for the purpose of ascertaining their competency to sit in the case.

If there are persons upon the jury that a party would rather dispense with, he can request the court or justice to excuse them from serving. The number of objections are limited, and therefore a party should discreetly choose the most objectionable persons first.

The jury will then be sworn by the court or justice, and hear the proofs and allegations of parties, and after the court's remarks or charge, if there be any, they retire and agree upon their verdict, and return it to the court, and the court thereupon gives judgment accordingly.

Trial by the Court.

If a jury is not desired by either party, the parties, if present, submit their proofs by witnesses or other testimony, and make whatever argument they wish to, and thereupon the court or justice finds for the party having, in his opinion, the preponderance or greater weight of evidence to support his side of the case, and renders and enters judgment accordingly.

The Law and Evidence.

For points in the various subjects concerning ACCOUNTS, BILLS, BONDS, NOTES, EVIDENCE, CONTRACTS, etc., etc.

See INDEX TO LAW, *post.*

Incidents to the Trial by the Court or a Jury.

If the defendant, being served with a summons, neglects to appear, the court or justice will proceed to hear the proofs of the plaintiff, and give judgment thereon.

The plaintiff's account, bill, bond, claim, demand, note, or other cause of action, and defendant's matters of defense, when required by the law, the court or justice or plaintiff, being filed and their substance or copy entered by the justice on his docket or record, the plaintiff proceeds and proves his account, demand, etc., by such proofs as is necessary, and the defendant, on the close of the plaintiff's evidence, produces his proofs, in case he has any, to defeat, lessen, or modify the plaintiff's demands or charges against him.

When a defendant establishes a set-off equal or exceeding the plaintiff's claim, judgment will be rendered in his favor, and also for the costs of this suit. But if it be for less than the plaintiff's claim, the plaintiff will have judgment for the residue and also for costs.

When the defendant's defense defeats the plaintiff's claim only, judgment will be in the defendant's favor for costs.

If the plaintiff fails to appear on the day of trial, the case may be dismissed with costs; and if the defendant have a set-off, this may be proven and judgment obtained.

If the defendant fails to appear on the day of trial, the plaintiff will take judgment for so much of his claim as he proves, for the full amount often, although it really exceed his just dues.

Adjournments.

A trial may be adjourned for a reasonable time by consent of parties, or on the application and oath of a party, on sufficient cause, as, the absence of a material witness or testimony, etc., but the application should be made before proceeding to trial.

Judgment.

Judgment may be rendered upon the admission or confession in person by the defendant, or upon being established by competent witnesses.

Judgment may also be rendered by dismissing the case without affecting its merits in any way; this occurs where a plaintiff fails to appear at trial, or at the time to which the case is adjourned, also when the plaintiff discontinues or withdraws his action. In such case the judgment is for costs only.

Execution, etc.

Execution follows upon judgment, in favor of the successful party in the action. It may issue at once, in a few days, weeks, or months, at the option of the party succeeding in the suit. After a time (generally defined by law) from the date of serving the last execution, the judgment, in general, must be revived before an execution can issue.

EXECUTION is of four kinds:

1. Against the goods and chattels of the debtor.

2. Against the lands and tenements of the debtor.

3. Against the body of the debtor.

4. Against all or either goods, chattels, lands, tenements, and the body of the debtor.

THE FIRST MAY BE EFFECTUAL by an immediate issue and levy upon what goods may be found, and may be further assisted by the attachment, garnishee, or trustee process.

It may be defeated by the exemption law, assignment or insolvency law, or the corrupting of the officer who serves it.

THE SECOND IS MADE UNNECESSARY by having a transcript of the judgment filed in the office of every clerk of a court of record of every county wherein the judgment debtor has lands, in the State where this judgment was rendered. (Executions must then be issued, within say —— years—different times in different States—or the judgment will cease to be *a lien* upon the real estate.)

If judgment is rendered in another State, then, in order to have it effectual in this State, suit must be brought on it, and then upon judgment on such judgment, a filing of transcripts in the offices of clerks of courts of record in each county where the debtor has lands, effects a lien as above stated, wherever filed.

THE THIRD IS ALLOWED IN CASES OF FRAUD.

FOURTH. Execution also issues against goods, chattels, lands, tenements and effects of the debtor. It also issues against goods, chattels, lands, tenements (and the body of the debtor, whenever fraud is shown).

See ARREST above.

SUMMARY OF COLLECTION LAWS
IN THE UNITED STATES.

Against Estates of Deceased Persons. See title "Limitations," *post*.
Assignment and Insolvency.—See that title, *post*.
Exemption Laws.—See that title, *post*.
Interest upon Money.—See that title, *post*.
Limitation of Actions or Suits. See that title, *post*.

ALABAMA.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court, except for torts, when jurisdiction is limited to $50, appeals may be taken to Circuit Court.

Arrest or Imprisonment for debt is not allowed.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit are generally recovered by party gaining same. Non-resident creditors must give security for costs.

It is at least 20 Days between the service of summons on the Debtor and obtaining of judgment in the Circuit Court, and 3 Days in Justices' Courts.

Execution may issue in the Circuit Court immediately after adjournment of court, and in Justice's Court in 5 Days, unless such execution is stayed. Such stay is allowed in Justices' Courts.

The judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only after levying of an execution.

ARIZONA.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court when title to real estate is not involved. When over $300 in the District Court.

Arrest and Imprisonment for debt is not allowed, except in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit are recovered by successful party, unless otherwise ordered. Plaintiff in any civil suit may be ruled to give security for costs within 10 days.

Defendant must answer court summons within 10, 20 or 30 Days, according to locality; and a Justice's summons within 5, 10, 15 or 20 Days.

Executions within five years are executed by the sheriff, and returnable in not less than 10 nor more than 90 Days, unless stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon the levy of an execution.

ARKANSAS.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $100 in the Circuit Court.

Arrest and Imprisonment for debt is not allowed, except in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured by non-residents in advance, or the suit will be dismissed.

It is at least 10 Days between the service of summons on the Debtor and obtaining of judgment in the Circuit Court, and 5 Days in Justices' Courts where the amount does not exceed $50.

Execution can be stayed for 6 months, and cannot be issued until 10 Days after judgment, except for cause shown by plaintiff.

The judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

CALIFORNIA.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court, and when over $300 in the Superior Court.

Arrest and Imprisonment for debt is not allowed, except in cases of fraud or intended removal from State.

Attachment is allowed against Non Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance and are allowed to the party recovering judgment. Non-residents may be required to give security for costs.

It is at least 10 to 30 Days between the service of summons on the Debtor and obtaining of judgment in the Superior Court, and 5 to 20 Days in Justices' Courts, according to locality.

Execution may issue from the Superior Court at any time within 5 years after judgment.

The Judgment of a Justice of the Peace, when an abstract thereof is filed and recorded in the office of the Recorder of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only on levying of an execution.

COLORADO.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When less than $2,000 in the County Court. When over $300 in the District Court.

Arrest or Imprisonment for debt is not allowed, except in cases of fraud.

Attachment is allowed against Non-Residents, Foreign Corporations, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be provided for by bond in the case of non-resident plaintiffs.

It is at least 10 to 40 Days between the service of summons on the Debtor and obtaining of **judgment** in the District or County Court, and 5 to 15 Days in Justices' Courts.

Execution may issue in Justices', County and District Courts after entering of judgment.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Recorder of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

CONNECTICUT.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. From $100 to $500 in Court of Common Pleas of Hartford, New Haven, Fairfield and New London counties. City Courts also vary in jurisdiction. The Superior Court has jurisdiction in law and equity where the amount involved exceeds the sum of $500.

Arrest and Imprisonment for debt is allowed in cases of fraud and torts.

Attachment is allowed.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

Defendant must answer, in the Superior Court and Court of Common Pleas, within 30 Days from return Day, and afterwards pleadings must advance one step in every 20 Days.

Execution may issue in any Court after entering of judgment. The judgment is a lien upon personal property only upon levy, and upon real estate upon filing certificate of record. The latter may be foreclosed as a mortgage.

DAKOTA, NORTH.

In general.—District Courts have unlimited jurisdiction; Justices' Courts where amt. is not over $200, and no realty in dispute.

Arrest and Imprisonment for debt is not allowed, except in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance if demanded, or the suit will be dismissed.

It is at least 30 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 3 Days in Justices' Courts.

Execution may issue in District and Justices' Courts after entering of judgment.

The Judgment of a Court of Record or Justice's Court is a lien on real estate, except homestead, from the time of the docketing of judgment in the county where it is rendered.

DELAWARE.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. When over $200 in the Superior Court.

Arrest for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties interested in the suit, or non-residents, are competent witnesses.

Costs of suit may be required of non-residents, and security for same in certain Superior Court cases.

Judgment of Court of Record, if no defence entered, is had at first term after suit brought. In Justice's Court in 4 Days after summons served.

Execution may issue after entering of judgment.

The judgment recovered in a Superior Court, from the time of entry is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon the levy of an execution.

DISTRICT OF COLUMBIA.

In general.—The limit for suits or claims before Justices of the Peace is $300. They have exclusive jurisdiction in claims of not over $50; also jurisdiction in replevin up to $300.

Arrest or Imprisonment for debt is not allowed.

Attachment is allowed against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance in Justices' Courts, or the suit will be dismissed, and so on demand in Circuit Court.

It is at least 20 Days between the service of summons on the Debtor and obtaining of **judgment** in the Supreme Court, and 5 Days in Justices' Courts, or some brief period.

Execution may issue in the Supreme Court after entering of judgment, and in Justices' Court in 4 Days, unless such execution is stayed. Such stay is allowed in Justices' Courts only, except on motion to vacate or appeal.

Judgment of the Supreme Court is a lien on realty from date of rendition, on personalty from issue of execution. Such judgment must be enforced within 12 years, and may be revived for a like term. Judgments in Justices' Courts are liens from date of filing with Clerk of Supreme Court.

FLORIDA.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. The Circuit Court is unlimited.

Arrest for debt is not allowed.

Attachment is allowed against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

It is at least 10 Days before time, exclusive of rule day afterward, between the service of summons on the Debtor and obtaining of **judgment** in the Circuit Court, and 10 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the Clerk's office of the County where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

GEORGIA.

In general.—Less than $100 may be collected in a Justice's Court. Not less than $50 nor over $300 in a County Court. The Superior Court has general jurisdiction.

Arrest for debt is not allowed.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance only when demanded.

It is at least 15 Days between the service of summons on the Debtor and obtaining of **judgment** in the Superior Court, in Savannah City Court 10 Days, Atlanta City Court 15 Days, and 10 Days in Justices' Courts.

Execution may issue in any Court after entry of judgment, unless stayed. Judgment is general property of Defendant, except choses in action, and on these from date of levy. All judgments bind personalty and realty from date, except as otherwise provided.

IDAHO.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When $500 or less in the Probate Court. When over $1,000 in the District Court.

Arrest and Imprisonment for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, and against Residents in case of unsecured contract debts.

Parties to the suit, or interested therein, are competent Witnesses.

Costs. Non-residents may be required to give security for costs of suit.

It is at least 10 to 30 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 3 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment.

The Judgment of a Justice of the Peace, when an abstract thereof is filed and recorded in the office of the Clerk of District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution or attachment.

ILLINOIS.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. When less than $1,000 in County Court. The Circuit Courts are unlimited

Arrest and Imprisonment for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit follow judgment, and can be collected on execution.

It is at least 10 Days between the service of summons on the Debtor and obtaining of **judgment** in a Court of Record, and 3 Days in Justices' Courts.

Execution may issue from Courts of record any time after entering of judgment, and in Justice's Court after 20 Days, except in special emergencies.

The judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

INDIANA.

In general.—A claim, debt, or demand for less than $200 may be collected in a Justice's Court. The Circuit Courts are unlimited.

Arrest for debt is not allowed except in cases of actual fraud.

Attachment is allowed against Non-Residents, and Debtors concealing themselves so that service cannot be had on them when the debt is due.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or suit dismissed, in Circuit Court if plaintiff is a Non-Resident of State, or in Justice's Court if plaintiff is Non-Resident of the county. Costs not required to be secured in other Courts.

At least 10 Days in Circuit and 3 in Justice's Court must intervene between summons and judgment. In Justices' Courts execution may issue, unless stayed, in 4 to 10 Days after judgment.

A transcript of a Justice of the Peace judgment, filed in Circuit Court of any county, is a lien on Debtor's real estate in said county.

A judgment is a lien on personalty only from the time execution comes into the hands of the officer.

IOWA.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court; by consent, $300. The District Courts have unlimited jurisdiction.

Arrest and Imprisonment for debt is not allowed, except in cases of fraud, and in proceedings supplemental to execution.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit, when plaintiff is a Non-Resident may be secured in advance, in Courts of general jurisdiction, when required, or the suit will be dismissed—not in Justices' Courts.

It is at least 10 to 20 Days between the service of summons on the Debtor and obtaining of judgment in the District Courts, and 5 to 15 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, of the U. S. District and of the U. S. Circuit Court, when a transcript thereof is filed in the office of the Clerk of the State District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

KANSAS.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. The District Court is unlimited.

Arrest for debt is not allowed except in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

Personal service of process may be made any time before return day. In service by publication 40 Days must elapse from date of first notice before judgment rendered.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when an abstract or transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

KENTUCKY.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court in any county in the State. In Quarterly Courts when less than $200. The Circuit Courts are unlimited (except where jurisdiction is given exclusively to another Court).

Arrest and Imprisonment for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, Foreign Corporations, etc., and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, if the party plaintiff be a non-resident.

It is at least 10 to 60 Days between the service of summons on the Debtor and obtaining of judgment in the Circuit Court, and 5 Days in Justices' Courts.

Execution may issue in 10 Days after entering of judgment, unless such execution is stayed.

Judgments are not liens except from date execution is placed in hands of proper officer. Executions from Justices of Peace are against personalty only.

LOUISIANA.

In general.—Justices' Courts and in New Orleans city Courts have jurisdiction where claim is not over $100. District and Justices' Courts concurrent in claims over $50 and less than $100, in New Orleans, and in State the District Court has exclusive jurisdiction in claims over $100.

Arrest for debt is allowed only to secure the person of the Debtor to answer the suit.

Attachment is allowed against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

It is at least 10 Days between the service of summons on the Debtor and obtaining of judgment in the District Court, and 3 Days in Justices' and City Courts.

Execution may issue in the District Court 10 Days after entering of judgment, and in Justice's Court in 3 Days, unless such execution is stayed.

The Judgment of a Justice of the Peace when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

MAINE.

In general.—A claim, debt or demand for less than $20 may be collected in a Justice's Court. When in Cumberland and Kennebec counties for $20 to $500 in the Superior Court. When over $500 in the Supreme Judicial Court.

Arrest and Imprisonment for debt is not allowed on debts contracted since April 18, 1887, unless the debtor is about to leave the State.

Attachment may be made as of course where debt exceeds $20, one mesne process.

Parties to the suit, or interested therein, are competent Witnesses.

In Justices' and Municipal Courts 7 Days must intervene between service of summons and judgment; in the other Courts, 14 Days. Corporations must have 30 Days' notice in all Courts, either as trustees or principal defendants.

Execution may issue in any Court in 24 hours after judgment, unless stayed by appeal. Judgment is a lien on personalty only upon levy.

MARYLAND.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. In Baltimore City when the debt or damage claimed does not exceed $200. When over $50 in the Justice of the Peace and Circuit Courts of counties having concurrent jurisdiction.

Arrest or Imprisonment for debt is not allowed.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance where plaintiff is a Non-Resident, or the suit will be dismissed.

It is about 7 to 15 Days between the service of summons on the Debtor and obtaining of **judgment** in various Courts, and 6 to 14 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only after writ of execution is in officer's hands.

MASSACHUSETTS.

In general.—Superior Court has jurisdiction over $100; Trial Justices up to $300; Police and District Courts up to $1,000; Boston Municipal Court up to $2,000; other Municipal Courts up to $1,000.

Arrest or Imprisonment for debt allowed if Debtor is known to have property which he will not apply in payment.

The poor debtor's oath when taken (voluntarily or by permission of the court), exempts the debtor from imprisonment, or releases him if in custody.

Attachment is allowed in all cases on commencement of suit; any creditor may attach first and prove his debts, etc., afterwards.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suits must be secured in advance by Non-Residents, or the suit will be dismissed.

It is at least 14 Days between the service of summons on the Debtor and obtaining of **judgment** in the Supreme, Judicial or Superior Court (10 Days is given to appear and 30 Days to file an answer), and 7 to 60 Days in Justices' Courts.

Execution may issue 24 hours after judgment, and is returnable in 60 Days from its date. Original execution must be issued within one year. Stay may be had by order of Court.

The judgment is a lien upon personal property only when writ is in sheriff's hands.

MICHIGAN.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $100 in the Circuit Court.

Arrest and Imprisonment for debt is allowed in cases of fraud and breach of trust.

Attachment is allowed against Non-Residents and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit in Circuit Courts must be secured in advance where plaintiff is a Non-Resident, or the suit will be dismissed.

It is at least 10 to 20 Days between the service of summons on the Debtor and obtaining of **judgment** in the Circuit Courts, and 2 to 6 Days in Justices' Courts.

No stay of execution allowed on a judgment from a Court of Record. Five Days allowed for appeal in Justice's Court.

A transcript of a Justice's Judgment with security for stay of execution may be filed in the Circuit or District Court Clerk's office, and will then have the same effect as a judgment of such Circuit or District Court.

The judgment is a lien upon property only upon levy of an execution.

MINNESOTA.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. The District Court is unlimited.

Arrest and Imprisonment for debt is not allowed.

Attachment is allowed against Non-Residents, Foreign Corporations, etc., and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance by non-resident plaintiffs.

It is at least 20 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 10 Days in Municipal and Justices' Courts.

Execution may issue in the District Court at once after entering of judgment, and in Justice's Court in 10 Days, unless such execution is stayed.

The Judgments of United States Courts, Circuit Courts of other counties, and Justices of the Peace, when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

MISSISSIPPI.

In general.—A claim, debt or demand for less than $200 principal may be collected in a Justices' Court. When over $200 in the Circuit Court.

Arrest or Imprisonment for debt is not allowed.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

It is at least 5 Days between the service of summons on the Debtor and obtaining of **judgment** in the Circuit Court, and 5 Days in Justices' Courts. **Non-Residents may be** summoned by 3 weeks' publication.

Execution in Chancery and Circuit Courts issues within 20 Days after Court adjourns, and in Justices' Courts not before 5 Days after judgment. Stay allowed only in Justices' Courts.

Judgments, **whether rendered in Justice of** the Peace or Circuit Courts, when properly enrolled, are a lien in order of enrollment, and from the date thereof, on all of debtor's property, not otherwise exempt. Code 1892, Secs. 757 and 2413.

MISSOURI.

In general.—Justices' Courts have jurisdiction in civil contracts up to $250; in cities or counties over 50,000 population, up to $300; in replevin, $350; in cities over 300,000 population, up to $500. Circuit Court has unlimited jurisdiction in cases exceeding $50. In some counties Common Pleas Courts concur with District Court.

Arrest or Imprisonment for debt is not allowed.

Attachment is allowed against Non-Residents, Foreign Corporations, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

It is at least 15 Days between the service of summons on the Debtor and obtaining of **judgment** in the Circuit Court, and 10 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment of the Circuit Court is a lien upon personal property only upon levy of an execution of a Justice's Court when delivered to the constable.

MONTANA.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $50 in the District Court.

Arrest for debt is allowed in cases of fraud.

Attachment is allowed where debt is due, and where defendent is about to leave State or dispose of his property to defraud creditors.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance of Non-Residents and Foreign Corporations, or the suit will be dismissed.

It is at least 20 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court and 4 to 10 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

NEBRASKA.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. When over $100 and less than $1,000 then in the County Court. When over $50 in the District Court.

Arrest for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, if plaintiff be a non-resident or company.

It is at least 10 to 30 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 3 to 12 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

NEVADA.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $300 in the District Court.

Arrest for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, or where money is not secured by lien or pledge.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

It is at least 10 to 40 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 1 to 10 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed. Such stay is allowed by order of the Court.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Recorder of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

NEW HAMPSHIRE.

In general.—A claim, debt or demand for less than $13.33 may be collected in a Justice's Court, and if less than $100 in a Police Court. When over $100 in the Supreme Judicial Court.

Arrest allowed in torts and attempt to defraud, if the plaintiff be a non-resident.

Attachment is allowed.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance if the plaintiff be a non-resident.

It is at least 14 to 28 Days between the service of summons on the Debtor and obtaining of **judgment** in the Supreme Judicial Court, and 14 Days in Justices' Courts.

Execution may issue in any Court immediately after 24 hours' entering of judgment.

The Judgment is a lien upon personal property only upon levy of an execution or attachment.

NEW JERSEY.

In general.—A claim, debt or demand, for less than $200 may be collected in a Justice's Court; $300 in District Courts in cities; over $100 in the Court of Common Pleas or Circuit Court; over $200 in the Supreme Court.

Arrest (except females) for debt is only allowed in cases of fraud, or on the Debtor's removal, transfer or concealment of property to prevent its being realized by his creditors.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not. Other creditors may apply under the writ and receive *pro rata*.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, if required by the defendant, the plaintiff being a Non-Resident, or the suit will be dismissed.

It is at least 10 to 30 Days between the service of summons on the Debtor and obtaining of **judgment** in the Common Pleas, Circuit or Supreme Court, and 5 Days in Justice's Court, or City District Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Common Pleas Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

NEW MEXICO.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. When over $100 in the District Court.

Arrest for debt is allowed in certain cases.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit, if demanded, must be secured in advance, or the suit will be dismissed.

It is at least 5 to 30 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 5 Days in Justices' Courts.

In the District Court execution may issue 1 Day after judgment; 10 Days in Justice's Court.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Probate Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

NEW YORK.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. When less than $250 in the New York City District Courts. When less than $2,000 in a County Court. When less than $2,000 in the New York City Marine Court. The Supreme Court has unlimited jurisdiction.

Arrest and Imprisonment for debt is not allowable except for fraud and tort damages.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, if required by the defendant, or the suit will be dismissed.

It is at least 6 to 20 Days between the service of summons on the Debtor and obtaining of **judgment**.

Execution may issue in any Court, after entering of judgment.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the County Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

NORTH CAROLINA.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. When over $200 in the Superior Court.

Arrest allowed only in frauds, tort damages, etc.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed.

It is at least 10 Days between the service of summons on the Debtor and obtaining of **judgment** in the Superior Court, and 2 Days in Justices' Courts.

Execution may issue in any Court, after entering of judgment, unless such execution is

stayed. Such stay is allowed in Justices' Courts only.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Superior Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

OHIO.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $100 in the Common Pleas and Superior Courts.

Arrest for debt is allowed in cases of fraud.

Attachment is allowed against Non-Residents, Foreign Corporations and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit need not be secured in advance, except as to Non-Residents and Corporations.

It is at least 29 Days between the service of summons on the Debtor and obtaining of judgment in the Common Pleas or Superior Court, and 3 Days in Justices' Courts.

Execution may issue in the Common Pleas or Superior Court after entering of judgment, and in Justices' Court in 10 Days, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Common Pleas Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

OREGON.

In general.—A claim, debt or demand for less than $250 may be collected in a Justice's Court. When less than $500 in the County Court. The Circuit Court has unlimited jurisdiction.

Arrest for debt is allowed, in case of fraud.

Attachment is allowed upon an unsecured contract for the direct payment of money.

Parties to the suit, or interested therein, are competent Witnesses.

Costs in actions in Justices' Courts may, in the discretion of the Justice, be secured in advance when demanded by the defendant, or the action will be dismissed.

It is at least 10 Days between the service of summons on the Debtor and obtaining of judgment in the Circuit Court, and not less than 6 nor more than 20 Days in Justices' Courts.

Execution may issue in any Court immediately after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the County Court and docketed in the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

PENNSYLVANIA.

In general.—A claim, debt or demand for less than $300 may be collected at an Alderman's, Justice's or Magistrate's Court. In Philadelphia, less than $100, Magistrate's Court. When over $100 in the Common Pleas Court.

Arrest for debt is allowed in cases of fraud.

Attachment is allowed against Debtors in cases of fraud, and against Non-Residents.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, when required by the defendant, if plaintiff is a Non-Resident, or the suit will be dismissed.

It is at least 15 to 30 Days between the service of summons on the Debtor and obtaining of judgment in the Common Pleas Court, and 5 to 8 Days in Justice's Court.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Common Pleas Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

RHODE ISLAND.

In general.—District Courts have exclusive jurisdiction except as otherwise provided, in civil cases up to $300. Common Pleas Courts have original jurisdiction of claims of $300 and upwards, and are concurrent with Supreme Court.

Arrest for debt allowed, except as provided. Females not arrestable on original writ on contracts.

Attachment allowed against Non-Residents, and against Debtors in cases of concealment, fraud or absconding.

Interested parties are competent Witnesses.

Costs must be secured in advance, or suit dismissed, when plaintiff is a non-resident.

District Court writs are returnable in not less than 6, or more than 20 Days before return day.

Judgment may be entered on second day of term, where no defence offers. Judgment is not a lien on real estate till after levy.

Execution may issue in 24 hours after judgment, unless otherwise ordered. Court may stay for cause.

SOUTH CAROLINA.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. The Common Pleas Court has unlimited jurisdiction.

Arrest for debt in certain cases.

Attachment is allowed against Non-Residents, Foreign Corporations and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

For Oklahoma and South Dakota see page 659.

It is at least 20 Days between the service of summons on the Debtor and obtaining of **judgment** in the Common Pleas Court, and 20 Days in Justice's Court, where more than 25 dollars are demanded, and 5 Days where less than that amount is demanded.

A certified transcript of a judgment docketed in the Circuit Court Clerk's office of the county where rendered, is a lien upon the real property of the judgment debtor therein.

Execution may issue 5 Days after adjournment of Court, unless otherwise ordered.

TENNESSEE.

In general.—A claim, debt or demand for less than as follows: Accounts, Bills of Exchange against acceptor, $500, Promissory notes against makers and indorsers, where demand and notes are expressly waived, $1,000 (against other indorsers, $500), may be collected in a Justice's Court. When over $50 in the Circuit Court.

Arrest for debt is not allowed.

Attachment is allowed against Non-Residents, and against Debtors in case of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit may be secured in advance, or the suit will be dismissed.

It is at least 5 Days between the service of summons on the Debtor and obtaining of **judgment** in the Circuit Court; in Justices' Courts the date of return is fixed by the officer and judgment had on day of trial.

Execution 30 Days after adjournment; in J. P. Court 2 Days after judgment.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Register's office of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

TEXAS.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. When over $200 and under $1,000, in the County Court. When over $500 in the District Court.

Arrest for debt is not allowed.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent witnesses.

Costs of suit may be secured in advance, or the suit will be dismissed.

Citations shall be served at least ten days before return day of Courts, to compel defendant to plead at return day. Citations issued too late, or which cannot be served in time, must seek service to next term of Court.

Execution may issue in the County and District Courts after 20 Days from final judgment; in Justices' Courts on eleventh Day after final judgment.

UTAH.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $300, in the District Court.

Arrest for debt is allowed only in case of an absconding debtor, and then an order must first be obtained, on affidavit of plaintiff, from the trial Court.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, or the suit will be dismissed if plaintiff is a Non-Resident.

It is at least 10 to 20 Days between the service of summons on the Debtor and obtaining of **judgment** in the District Court, and 2 to 10 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment in that Court.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

VERMONT.

In general.—A claim, debt or demand not above $200 may be collected in a Justice's Court. When over $200 in the County Court.

Arrest for debt only in special cases is allowed. Females are not subject to arrest for debt.

Attachment is allowed of defendant's property on mesne process and held to respond to final judgment if taken on execution.

Trustee Process is allowed in all actions founded upon contract, express or implied, where the claim sought to be enforced and the credits in the hands of the trustee exceed $10.

Parties to the suit, or itnerested therein, are competent Witnesses.

Costs of suit may be secured in advance.

Every writ and process must be served within 21 Days from date, and defendant must appear within 42 Days. In Justices' Courts not less than 6 nor more than 60 Days before trial Day.

Execution is issuable the day after adjournment of Court, returnable in 60 Days.

VIRGINIA.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court, but if over $20, defendant may remove to County Court. The Circuit Court has general jurisdiction where the amount is over $20.

Arrest for debt not allowed, except of absconding debtors.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit may be secured in advance when plaintiff is a non-resident.

It is at least 2 rule Days between the service of summons on the Debtor and obtaining of judgment in the Circuit Court, and 60 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless stayed by forthcoming bond.

The judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the County Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

WASHINGTON.

In general.—A claim, debt or demand for less than $100 may be collected in a Justice's Court. The Superior Court has general jurisdiction where the amount is over $100.

Imprisonment for debt not allowed except in case of absconding debtors. (Con. of State.)

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit, if brought by a Non-Resident of the State, must be secured in advance, if demanded by the defendant, or the suit will be dismissed.

It is at least 20 to 60 Days between the service of summons on the Debtor and obtaining of judgment in the Superior Court, and 6 to 20 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the County Clerk's office of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

WEST VIRGINIA.

In general.—A claim, debt or demand for less than $300 may be collected in a Justice's Court. When over $50, in the Circuit Court.

Arrest for debt is allowed in case of fraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit may be secured in advance, where plaintiff is a Non-Resident.

It is at least 2 rule Days between the service of summons on the Debtor and obtaining of judgment in the County Courts. Summons before a justice may be made returnable in 5 Days.

Execution may issue in any Court after entering of judgment, unless such execution is stayed. Such stay is allowed in Justices' Courts.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the County Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

WISCONSIN.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. The Circuit Court has general jurisdiction.

Arrest allowed in tort actions only.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, if demanded, and plaintiff be a Non-Resident.

It is at least 20 Days between the service of summons on the Debtor and obtaining of judgment in the Circuit Court, and 6 Days in Justices' Courts.

Execution may issue in any Court immediately after entering of judgment, unless such execution is stayed. Such stay is allowed in Justices' Courts only.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the Circuit Court of the county where rendered, is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only when levied upon under an execution.

WYOMING.

In general.—A claim, debt or demand for less than $200 may be collected in a Justice's Court. The District Court has general jurisdiction.

Arrest for debt is allowed where debtor attempts to defraud.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit may be secured in advance, when the plaintiff is a Non-Resident.

It is at least 30 to 35 Days between the service of summons on the Debtor and obtaining of judgment in the District Court and 3 Days in Justices' Courts.

Execution may issue in any Court after entering of judgment, unless such execution is stayed. Such stay is allowed in Justices' Courts and in District Courts.

The Judgment of a Justice of the Peace, when a transcript thereof is filed in the office of the Clerk of the District Court of the county where rendered is a lien upon the Debtor's real estate in such county. The judgment is a lien upon personal property only upon levy of an execution.

OKLAHOMA.

In general.—Justices' Courts have jurisdiction in civil cases where the amount does not exceed $100. Probate Courts have concurrent jurisdiction with District Courts up to $1,000.

Arrest not allowed in civil action except in aid of execution.

Attachment allowed against non-residents, and where debtor attempts to defraud.

Parties interested are competent witness in civil suits, except as to husband and wife in certain cases.

Costs of suit may be secured in advance, and, as a rule, *must* be, if plaintiff is a non-resident.

Summons in Justice's Court is returnable in not less than 3 nor more than 12 Days; in District Court in 10 Days, and defendant must answer in 20 Days from return day. Plaintiff has 10 days to reply.

Judgments of Courts of Record are liens on realty from first day of term, except when rendered by confession or at same term cases began, when the lien dates even with the judgment. Judgments of Justices become liens when certified and filed in District Court.

Execution may issue directly returnable in 60 Days in Court of Record, and 30 Days in Justice's Court. Execution is a lien on personalty only from time of levy.

SOUTH DAKOTA.

In general.—Circuit Courts have unlimited jurisdiction. County Courts have original probate jurisdiction and concurrent jurisdiction with Circuit Courts in counties whose population is over 20,000, to amount of $1,000; in other counties to $500. Justices' Courts have jurisdiction where claim does not exceed $100 and title to real estate is not involved.

Arrest allowed in cases not arising out of contract, where defendant is Non-Resident or about to remove, for penalties, damages for breach of promise, embezzlement, concealment of property, fraud.

Attachment issues against Non-Residents, and against Debtors for concealment of property, removal, or fraud.

Interested parties may be witnesses.

In Circuit or County Courts defendant has 30 Days, exclusive of day of service, in which to answer before judgment can be had for default. In Justices' Courts summons returnable in not less than 3 nor more than 12 Days, and judgment may be entered on day of return. Service may be had by 6 weeks' publication in newspapers, where defendant cannot be found.

Money judgments in Circuit or County Courts are a lien on all real property except homestead, in any county where judgment or transcript of same is entered. Execution may issue any time in 5 years, returnable to Circuit and County Courts in 60, and to Justices' Courts in 30 Days.

SUMMARY OF COLLECTION LAWS
IN THE DOMINION OF CANADA.

Against Estates of Deceased Persons. See title "Limitations," *post.*

Assignment and Insolvency.—See that title, *post.*

Exemption Laws.—See that title, *post.*

Interest upon Money.—See that title, *post.*

Limitation of Actions or Suits.—See that title, *post.*

PROVINCE OF NEW BRUNSWICK.

Jurisdiction of Courts.—Magistrates $20, in tort $8; Parish Courts, $80 in debt, $32 in tort; County Courts, $20 to $400 in debt, $200 in tort; Supreme Court, $400 and upwards.

Arrest.—On affidavit setting forth cause of action, amount due, and that arrest is not made for the purpose of vexing or harrassing debtor. Discharge upon showing no property.

Garnishment allowed in Supreme and County Courts where judgment is not less than $80, $40 of which must be for debt.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, when required by the defendant, or the suit will be dismissed.

It is at least 30 Days between the service of summons on the Debtor and obtaining of judgment in the County Court, and 60 Days in the Supreme Court.

Execution may issue in any Court after entering of judgment.

PROVINCE OF NOVA SCOTIA.

In general.—A claim, debt or demand for less than $80 may be collected in a Justice's Court. When less than $20 and not over $400 in the County Court. When over $80 in the Supreme Court.

Arrest for debt allowed in certain cases.

Attachment is allowed against Non-Residents, and against Debtors in cases of fraud, whether the debt is due or not.

Parties to the suit, or interested therein, are competent Witnesses.

Costs of suit must be secured in advance, if required, or the suit will be dismissed.

Execution may issue in any Court after entering of judgment.

PROVINCE OF ONTARIO.

In general.—Claims for $100 or less on open accounts, and $200 or less on defendant's signature, collectible in Division Court, but personal actions limited to $60. Claims and personal actions not above $200, collectible in County Court, and up to $600 where claim is ascertained by defendant's signature or act of parties. High Court of Justice has jurisdiction of all other cases.

Arrest and Imprisonment for debt is restricted to $100 and over and to cases of absconding or fraudulent creditors. Also every one is liable to imprisonment who mutilates books and papers in defraud of creditors or of employers, or conceals deeds or registers false titles to lands.

Attachment for Debt is allowed against property of and debts due absconding debtors.[c]

Parties to a Suit, or persons in whose behalf any suit, action or other proceeding is brought, instituted, or opposed, or defended, are, with some exceptions, competent and compellable to give evidence *viva voce* or by deposition, etc.[d]

Costs of Suits by non-residents should be secured in advance, or the suit may be dismissed.

Judgments of Division Courts are obtained in from 12 to 16 Days and execution had against lands after return of N. B. where amount is over $40.

Execution writs issue from the offices where judgment is entered; in the Superior Courts of Law after transmission of judgment roll to the principal office. Such writs may issue at once into any county, etc.[f]

PROVINCE OF QUEBEC.

In general.—A party having a claim, debt, or demand against another, enjoying the free exercise of his rights, may sue therefor in the proper court.

Action before the Superior Court is instituted by summons, issued, sealed and signed by the prothonotary upon written requisition of the plaintiff, either in the French or English language.

Jurisdiction of Courts.—Circuit Court up to $200; up to $100 in Montreal and Quebec; Superior Court all above these sums.

Parties may appear in person or by attorney. Parties cannot avail themselves of their own testimony except in commercial matters. Relationship or interest does not render a witness incompetent; it merely affects his credibility.

Arrest and Imprisonment for debt and damages is allowed, on certain conditions, where amount exceeds $40.

Simple Attachment for debt is allowed, also **Attachment by Garnishment, Attachment in revendication and Attachment for rent.**

Judgments may generally be enforced by **execution** 15 Days after their date and 8 Days after they are rendered in summary matters, as bills, notes, accounts, etc.

b–C. S. U. C. c. 24. c–C. S. U. C. c. 24; Id. c. 19; s. 199. d–33 V. c. 13, s. 4; 36 V. c. 10, s. 1. f–C. S. U. C. c. 22, s. 246-7. Id. c. 19, s. 135. Id. c. 15, s. 22.

NATIONAL BANKRUPTCY LAW.

The Act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, while it does not render State insolvency or bankruptcy laws void, yet makes them inoperative in so far as they conflict with those of Congress, and so long as the national act remains unrepealed.

TO WHOM THE ACT APPLIES.

Any person who owes debts, except a corporation, shall be entitled to the benefits of the act as a *voluntary* bankrupt and become discharged from his debts as hereinafter stated, and may file his own petition for that purpose.

Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an *involuntary* bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

A partnership may be adjudged a bankrupt; its property will be applied primarily to paying partnership debts, and that of an individual bankrupt partner will be applied primarily to the payment of his individual debts. Should any surplus of the partnership assets remain after paying his individual debts, it will be applied to payment of the partnership debts, and if any surplus remains of the partnership assets, after payment of the partnership debts, such portion of it as the individual partner is entitled to will be applied to paying his individual debts. Where one partner is a bankrupt and another not, he who is not can prevent the partnership property being administered in bankruptcy by himself settling the partnership business as expeditiously as its nature will admit, and accounting for the interest of the bankrupt partner.

WHAT ARE ACTS OF BANKRUPTCY.

Acts of bankruptcy by a person (and this includes corporations, partnerships, and women) shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property, with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground. In case of a contest the burden of proof as to his solvency is upon the alleged bankrupt.

A person is deemed insolvent within the meaning of the act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts.

Proceedings may be instituted against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after the date of the recording or registering of the transfer or assignment, when the act consists in having made a transfer or assignment of any of his property with intent to hinder, delay or defraud his creditors, or for the purpose or giving a preference as above mentioned, of when it consists of a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or if it is not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property, unless the petitioning creditors have received actual notice of such transfer or assignment.

If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

If pending a decision as to whether a person has committed an act of bankruptcy, the applicant desires the alleged bankrupt property to be taken charge of, he must give bond to indemnify the respondent against costs, expenses, and damages, by reason of such seizure; and if the petition for a decree of bankruptcy be dismissed by the court or withdrawn by the petition, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure or detention. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court and paid by the obligors in such bond.

COURTS OF BANKRUPTCY.

The District Courts of the United States, the Supreme Court of the District of Columbia, the District Courts of the several Territories, and United States courts in the Indian Territory and of Alaska are courts of bankruptcy.

United States Circuit Courts have concur-

rent jurisdiction with the courts of bankruptcy within their respective territorial limits of offenses against the bankruptcy act. Appeals may be taken to the higher United States courts under circumstances and upon compliance with the conditions imposed by law.

DUTIES OF BANKRUPTS.

A bankrupt must obey all lawful orders of the court, examine the correctness of all proofs of claims filed against his estate, and generally furnish such information as shall facilitate the settlement of his estate to the end that equity and justice may be done. If he be an insolvent bankrupt he must prepare, make oath to and file within 10 days after he is declared a bankrupt by the court, unless specially allowed a longer time, a complete itemized schedule of his property, with the value thereof and a list of his creditors, with the particulars of his debt to each.

If it appear that a bankrupt is about to leave to avoid being examined as to his affairs, and that his departure will defeat the proceedings in bankruptcy, the court or a judge may order the marshal to keep him in custody, but not imprison him, temporarily, or until he give bond to appear for such examination.

COMPOSITIONS.

A bankrupt may make a composition with his creditors with the consent of a majority of them in numbers, representing a majority in amount of claims, if the money necessary to pay them the amount agreed upon and to pay preferred claims and the costs of proceeding be actually deposited subject to the order of the judge, said bankrupt having been first examined as to his assets and liabilities in open court or at a meeting of his creditors, and having filed in court a schedule of his property and a list of his creditors above referred to, provided the judge be satisfied that the composition is for the best interests of his creditors, and that the bankrupt has done his duty and acted in good faith in the premises. A composition may be set aside within six months after comfirmation of the same by the court, if it appear that fraud was practiced in procuring the same.

A certified copy of an order confirming a composition shall constitute evidence of revesting of title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt, if recorded, would impart.

DISCHARGE OF DEBTS.

When Granted.—Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

The judge shall hear an application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

When Revoked.—The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

Co-debtors of Bankrupts.—The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

Debts not Affected by a Discharge.—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

CREDITORS.

Meetings.—The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If

such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

At the first meeting of creditors the judge or referee, shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

Voters at Meetings of Creditors.—Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as by law otherwise provided.

Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

Proof and Allowance of Claims.—Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so, what, securities are held therefor, and whether any, and, if so, what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

Ordinarily, claims cannot be proved after the expiration of one year from the date when the party is adjudged a bankrupt.

Notice to Creditors.—Creditors are entitled to ten day's notice by mail of nearly all important steps in the proceedings after presentation of the petition. Notice of the first meeting of creditors shall be published, the last publication to be at least one week prior

to the date fixed for the meeting. All notices shall be given by the referees unless otherwise ordered by the judge.

Who may File Petitions in Involuntary Bankruptcy.—Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged an involuntary bankrupt.

Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

TRIALS AND PROCEDURE.

A person against whom an involuntary petition has been filed is entitled to have a trial by jury in respect to the question of his insolvency, except as in the act otherwise provided, and in respect to any act of bankruptcy alleged to have been committed, but he must promptly avail himself of the right, or it will be deemed waived.

The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen; or if they fail to agree in five days after their appointment, the court shall appoint the third arbitrator. A written finding of the arbitrators, or a majority of them, shall be filed in court and shall have like force and effect as the verdict of a jury.

A court of bankruptcy may require any designated person (including the bankrupt), who is a competent witness under the laws of the State in which the proceedings are pending, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration.

After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it generally to a referee or, specially, with only limited authority to act in the premises, or to consider a report in specific issued.

A case may be transferred from one referee to another.

Courts of bankruptcy may designate a newspaper, or in particular cases two newspapers, in which necessary notices and orders shall be published.

OFFENSES AND PUNISHMENT THEREOF.

A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property, or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reason-

able opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

REFEREES.

Courts of bankruptcy must appoint referees, each for a term of two years. There must be at least one in each county.

Referees must not fill any office of profit or emolument under the laws of the United States or any State other than commissioner of deeds, justice of the peace, master in chancery, or notary public; must not be related, unless very distantly, to any of the judges of the courts of bankruptcy or Circuit Courts of the United States, or any of the justices or judges of the Appellate Courts of the districts wherein they may be appointed; and they must be residents of, or have their offices in, the territorial districts for which they are appointed.

Subject to review by the judge, they shall consider all petitions referred to them by the clerks, and make adjudications or dismiss the petitions, administer oaths, examine witnesses, employ stenographers, and require the production of documents and proceedings before them; and generally exercise many of the powers of the judge in order to lighten the labors of the court itself.

Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors-at-law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

Compensation of Referees.—Referees shall receive as full compensation for their services, payable after they are rendered, a fee of ten dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

Contempts before Referees.—A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpœnaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

TRUSTEES.

The creditors of a bankrupt estate shall at their first meeing after adjudication (that is, after the finding by the court that the party is a bankrupt), or after a vacancy has occurred in the office of a trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, appoint one trustee or three trustees for each estate.

If the creditors do not appoint a trustee or trustees, the court shall do so.

Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office within the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity, and having an office in such judicial district.

Duties.—Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estates; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (3) deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

Compensation.—Trustees usually receive $5, paid at the time the original petition is filed, and in addition are entitled, from estates which they have administered, to such commissions as the court shall allow, not exceeding three per centum on the first $5,000, two per centum on the second $5,000, and one per centum on sums in excess of $10,000.

BONDS OF REFEREES AND TRUSTEES.

Both referees and trustees must give bond conditioned for the faithful performance of their duties, with at least two sureties to be approved by the court, the former in an amount not exceeding $5,000, to be fixed by the court, and the latter in such sum as the creditors shall determine.

CLERKS AND MARSHALS.

Clerks and United States marshals usually receive from the estate $10 at the commencement of the proceedings, and in addition such fees as are allowed by law for whatever services they perform in each case.

APPRAISEMENT AND SALE.

All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court, it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

DEBTS WHICH HAVE PRIORITY.

United States, State, county, district, and municipal taxes are payable under order of court in advance of payments of dividends to creditors.

Other debts having priority, and to be paid in full out of the bankrupt estate, and the order of payments are, (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including fees and mileage due witnesses, and one reasonable attorney's fee; (4) wages due to workmen, clerks, or servants earned within three months before the date of commencement of proceedings, not to exceed $300 to each claimant; (5) debts owing to any person who by the laws of the States, or the United States, is entitled to priority.

In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed, or the adjudication was made, shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

Expenses.—Expenses incurred in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

DIVIDENDS.

A dividend of at least five per centum shall be paid within 30 days from the time the party is adjudged a bankrupt if the funds on hand will permit it; other dividends of ten per centum or more shall be subsequently paid as promptly as possible, but the court may order smaller dividends if deemed desirable.

Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court,

and if remaining unclaimed for one year shall, under the direction of the court, be distributed to the other creditors, but minors may have one year after arriving at majority to claim such dividends.

LIENS.

A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person, shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of the bankruptcy act.

All conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt, and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or district in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

All levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, and other lien shall be deemed wholly discharged and released from the same and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid, and the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, that nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

MISCELLANEOUS PROVISIONS.

Set-off.—A set-off or counter-claim shall not be allowed in favor of any debtor of the bankrupt which was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy.

Exemptions.—The bankrupt law does not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force, at the time of the filing of the petition to have said person adjudged a bankrupt, in the State wherein they had their domicile for six months or the greater portion immediately preceding the filing of the petition.

Widows.—In case of the death of the bankrupt, the widow and children shall be entitled to all rights of dower and allowances fixed by the laws of the State of the bankrupt's residence.

Depositories.—Courts of bankruptcy shall designate banking institutions as depositories for the money of bankrupt estates as convenient as may be to the residences of trustees and require bonds from them.

Patents, etc.—Interests in patents, patent-rights, copyrights, and trade-marks are included amongst the assets of a bankrupt's estate.

Life Insurance.—A bankrupt having an insurance policy with a cash surrender value, payable to himself, his estate or personal representatives, may, within 30 days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to own, hold, and carry such policy free from the claims of creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets.

Right to Damage.—Rights of action arising upon contracts or from the unlawful taking or detention of or injury to a bankrupt's property are included in the assets of the estate.

ASSIGNMENT AND INSOLVENCY
In the United States, Territories, Etc.

The United States bankruptcy act of July 1st, 1898, has rendered the several State laws, relating to assignment and insolvency, inoperative in so far as it may conflict with them, but no further. The authority of Congress, under the Constitution of the United States, is paramount in the matter of enactment of uniform bankruptcy laws for the whole country. It should be particularly observed that the bankruptcy law does not apply in all cases or under all circumstances.—For information on this subject see title "The Bankruptcy Law," in this book.

ALABAMA.

No insolvent law.

Assignments.—If debtor seeks by confessing judgment, or through an attachment, to give unlawful preference, this operates as a general assignment. So also preference cannot be given in the assignment itself. Creditor can require trustee to give bond.

ARIZONA.

In assignments, claims must be presented within six months from publication of notices. No preferences permitted.

ARKANSAS.

Insolvent law.—Debtor may ask to be declared insolvent and turn over property to receiver, excepting what is exempted. Receiver may contest any attachment issued ten days before debtor files his application. After settlement debtor released of his debts. Wages and salaries for three months preferred. No other preferences among creditors.

Assignments may be made with preferences. Must be contested, if at all, within six months. If set aside it becomes an assignment for all creditors pro rata. Assignee gives bond. Insolvent corporations cannot prefer.

CALIFORNIA.

A resident owing more than $300 may petition the Superior Court with schedule. The court orders the sheriff into possession until creditors appoint an assignee, not less than thirty days after published date of order. Preferences not allowed. Dividends declared from time to time on all proven claims. Assignee gives bond with two sureties. Involuntary insolvency is by petition of not less than five creditors with claims aggregating not less than $500, and verified by at least three petitioners showing fraudulent intentions or acts, or (unsatisfied) legal process for four days, or suspension of payments for forty days. If petition is granted, proceedings same as involuntary insolvency. Discharge, except in case of corporations, may be obtained after three months from time of adjudication. Any creditor may oppose discharge, and have issue tried by jury. Fraud punished by imprisonment.

COLORADO.

No insolvent law.

Assignments.—No preferences. Claims filed within three months have preference over those filed after, unless creditor had no notice to present his claim. Estate must be closed up within one year unless court extend the time. Wages earned within six months before assignment, not exceeding $50, and taxes have priority. Assignor may obtain discharge from debts.

CONNECTICUT.

Any creditor having a claim for $100 or over, founded on a contract, may cause a writ of attachment to issue. The officer returns he can find no property to attach, and then the creditor brings a petition to the Court of Probate asking for the appointment of a trustee to take charge of the debtor's estate. The trustee sells the property and pays the creditors pro rata. The debtor obtains no discharge unless he pays 70 per cent. The debtor can also make a voluntary assignment, and the trustee acts the same as in an involuntary case. No preferences.

DELAWARE.

Assignments must be for all creditors alike. Debtor is not discharged from his obligations except as far as paid. Debtor before assignment may prefer creditors by confessed judgment or otherwise, but the debt must be bona fide.

Insolvent laws.—Practically obsolete.

DISTRICT OF COLUMBIA.

Assignments.—All debts must be paid pro rata. List of debts, also of assets, must be attached to assignment. Assignee must reside in district.

No insolvent law applies in the district except the national bankruptcy act. See title "The Bankruptcy Law," in this book.

FLORIDA.

Assignment.—Distribution must be proportional to amount of claims. Exempt property reserved to assignor. No insolvent law.

GEORGIA.

Assignments may prefer creditors, but a corporation may prefer only creditors entitled to priority under the general laws of the State. A levy made under attachment, before assignment, will stand. Assignor and assignee must make complete list of property, and assignor must make affidavit of its completeness. If one who is insolvent purchases goods, without intending to pay for them, the vendor may annul the sale and recover the goods, if no innocent third party has acquired rights therein. An insolvent corporation, or trader, not paying a debt at maturity is liable to have his property placed in the hands of a receiver on petition of creditors representing one-third or more of unsecured debt. By trader is meant one who does business, buys and sells realty or personalty of any kind, a banker, broker,

or commission merchant, or one manufacturing $5,000 worth of goods or more per annum. No preferences allowed after application for receiver. Court may discharge debtor from his debts, but this is not usually done.

IDAHO.

Insolvent debtor may apply to court, surrender all he owns to the sheriff till appointment of an assignee to take charge (reserving for himself what is exempt from execution). The creditors elect the assignee. The debtor may be discharged from debts of residents of the State; also of non-residents who present their claims.

ILLINOIS.

Assignments.—Assignee must send notice to each creditor to present his claim under oath within three months. If not so presented the claim is deferred to those of creditors who comply. Assignee must render final account within a year, but dividend may be ordered meantime by the court. List of claims proven must be filed by assignee at the end of three months, and claims may be contested within thirty days after list is filed. Preferences whether made in assignment or in contemplation of assignment are void. Wages are preferred; otherwise distribution is pro rata to creditors.

INDIANA.

No preference in assignments, but preference may be effected by prior confession of judgment or mortgage. Assignor is not discharged from debts, unless they are paid in full. Claims filed must be under oath. The trustee or a creditor may cause the arrest of assignor or person to whom a fraudulent transfer of property has been made, and subject him to examination in court. Dividend may be compelled when assets on hand sufficient to pay ten per cent. Creditors representing half of the liabilities may cause removal of trustee. To be effective deed of assignment must be recorded.

INDIAN TERRITORY.

Assignee must sell property at public sale within 120 days after giving bond.

Insolvent law applies only to releasing persons imprisoned for certain causes.

IOWA.

Assignments must be for the benefit of all the creditors. No preferences permitted in assignment. Property exempt from execution may be reserved. Assignee must notify all creditors known to him to present claims under oath within three months, at the end of which time he must file list of creditors so presenting claims, and within three months thereafter interested parties may file objections to any claim. Assignment does not effect a discharge from debts. Taxes and wages not exceeding one hundred dollars to any employee for work done within ninety days preceding the assignment are preferred.

KANSAS.

All creditors participate in proportion to amounts of claims. They are entitled to notice by advertisement and also by letter, so far as their addresses are known, of time and place of adjusting and allowing demands. The enactment of the bankruptcy law practically avoids the State assignment law. No insolvent law in this State; only a discharge of claims after United States bankrupt proceedings.

KENTUCKY.

Assignments are for the benefit of all creditors. Exempt property does not pass by the deed. Preferences made within six months before assignment are void, and assignee is authorized to recover property transferred in fraud of creditors.

Creditors living out of the county are entitled to notice by mail. Claims must be probated, and if not properly presented are deemed waived unless the court order otherwise.

LOUISIANA.

A debtor may ask his creditors for a respite, and a majority may grant such, not exceeding three years.

Should this be refused, surrender follows; but preference to any creditor is void.

The debtor obtains a discharge from his debts upon surrender of his property, and all creditors proving their debts, and accepting a dividend, are barred from further proceedings for the balance, but the debtor is debarred from this right if he has given an unjust preference within three months before surrender.

A creditor who has issued execution and found no property thereon may force a surrender.

MAINE.

A debtor owing over $300 may apply for benefit of insolvent act by paying $25 into Insolvent Court with his petition.

When one or more creditors make oath as to their belief in the insolvency of a debtor, and that they believe their aggregate debts amount to more than one-fourth part of the debts provable against a debtor, the judge shall declare him insolvent, if such allegations are proved.

An assignee is chosen at the first meeting of creditors, such choice being made by a majority in number and value of the unsecured creditors present in person or by attorney. If no choice made the court appoints; and in the interval between the declaration of insolvency of debtor and choice of assignee by creditors the court messenger shall hold the estate of debtor.

An assignee may recover any money paid a creditor on writ, judgment or execution, when such payment is made within four months prior to commencement of insolvency proceedings, when such money is received as a preference, and known at the time that debtor is insolvent.

A discharge shall not be granted if debtor has sworn falsely, concealed assets, or otherwise fraudulently acted.

A discharge may be granted any time after

four months from the time of issuing the warrant of insolvency.

Should debtor at first meeting produce an agreement, signed by a majority of the creditors, representing three-fourths of his indebtedness, agreeing to accept a certain percentage, the judge shall grant a discharge when debtor has paid or secured such percentage.

Creditors out of the State, who have not proved their claims, are not affected.

MARYLAND.

Deeds of trust for the benefit of creditors may be made if not to burden, delay, or defraud creditors. No preferences allowed.

MASSACHUSETTS.

Debtor may assign all his property, reserving what is exempt, and if a majority (in number and amount of claims) of the creditors who are unsecured and not privileged under the law assent in writing, the assignment will be valid. Those assenting will share to the exclusion of those not assenting, unless the instrument expressly makes the assignment for the benefit of all creditors. The assignment may be superseded any time within six months, however, by the institution of insolvency proceedings under the State laws. Known creditors are entitled to notice by mail.

A State insolvency law is in force so far as not superseded by the United States bankruptcy act of 1898. It enables a debtor, making an honest surrender of his property, to obtain a discharge from his debts, or to effect a compromise with all creditors with the consent of three-fourths of them in number and amount of claims.

MICHIGAN.

Assignments for creditors must contain no preferences. Property exempt from execution is allowed the debtor. Claims must be proved by affidavit, showing the consideration for the debt, when contracted, when due, all payments on account, and what collateral is held therefor.

MINNESOTA.

Exempt property excluded from the assignment. Attachment or levy becomes dissolved by an assignment made within ten days thereafter. Complete schedule of debts must be filed by assignor. Known creditors must have notice by mail. Claims must be itemized, verified, and filed within time fixed by court. If debtor does not assign in such manner and at such time as to prevent parties from obtaining preferences, creditors may have receiver appointed. All payments and transfers made within ninety days before assignment or receivership to those having reason to believe debtor insolvent may be set aside. Taxes and $50 wages owing any person earned within ninety days preceding assignment, or receivership, are preferred by law.

Debtor may be discharged only from claims proven or participating in the distribution. Secured creditors must exhaust security before participating in general assets.

MISSISSIPPI.

Assignment act of 1892 compels assignee to file petition and bond in twenty-four hours. He then becomes an officer of the court for the purpose of the assignment. Preferences are allowed, and creditors may attack by cross-petition.

MISSOURI.

No insolvent law.

Assignments.—No preferences allowed. Not more than one month after allowance of claims a dividend must be paid and thereafter as often as funds on hand warrant a dividend of five per cent. State taxes and wages accrued within six months, not exceeding $100 to each employee, have priority. Debts are not discharged unless paid in full.

MONTANA.

No insolvent law.

Insolvent debtors may make assignments and prefer creditors, but the preference must be absolute and without power of revocation. Wages for sixty days preceding assignment, not exceeding $200, have priority to all other claims.

The debt is not discharged; creditors to be bound must be notified. Fraudulent proceedings subject the debtor to imprisonment till he makes full surrender.

NEBRASKA.

Sheriff takes charge of assigned estates in the first place. Subsequently creditors meet and choose an assignee, and notice of meeting must be given creditors. Claims must be filed by a day fixed, or be barred. Debtor must file statement giving particulars as to assets and liabilities. Only property exempt from execution can be reserved. Within three months after date of inventory court orders distribution of funds on hand. No preferences allowed unless it be for $100 or less for wages. Transfers made in contemplation of insolvency within thirty days before making the assignment to a person having cause to believe the assignor insolvent are void. So also are preferences to creditors with like intent within the thirty days.

NEVADA.

Insolvent debtor, owing $500 or more, residing one year in any county, may make assignment. Creditors choose assignee, or on their failure, the court appoints the sheriff. To secure a discharged debtor's property surrender must equal fifty per cent. of debts unless three-fourths in number and one-half in amount of creditors consent. No discharge granted where fraud proven. Partners and corporations may be driven into involuntary insolvency on petition of five creditors, residents of the State, whose claims reach $500.

NEW HAMPSHIRE.

No preferences allowed, and assignment must include the whole estate of assignor. A composition will be allowed, three-fourths of the creditors in number and amount of claims consenting (claims to exceed $50 each), and the judge of probate also consenting, thus

effecting a discharge from debts. A creditor may dissent, take no benefit under the assignment, and still hold his claim.

NEW JERSEY.

Assignment must be of all the debtor's estate without preference. Judgment confessed to give a preference will not be preferred. The assignee gives public notice to creditors to file and prove claims within three months. Those not filed within three months after the assignment, may become barred of a dividend. Goods and chattels to the value of $200 and wearing apparel shall be reserved from estate of one having a family. Wages not exceeding $300 to one person have priority. Rent for one year is preferred out of proceeds of personalty on property leased. Claims presented will be discharged; others will not.

NEW MEXICO.

Debtor may make a voluntary assignment of all his property, resulting in a distribution pro rata among the creditors, or the court will, on application of adverse parties, appoint an assignee if application thereof is made within six months after any sale, mortgage or transfer made by the debtor or judgment suffered or act done by him in contemplation of insolvency with design to prefer one or more creditors. No preferences are allowed in any case, but the debtor is allowed property exempt from execution. He is not discharged from debts not fully paid upon distribution of the assets.

NEW YORK.

Wages and salaries earned within a year prior to assignment are preferred, and preferences to creditors may be given with respect to one-third of the balance of the estate, but assigning partnerships and corporations can make no preferences. After one year from date of assignment a creditor may compel assignee to account. Assignor is not discharged from unpaid portions of his debts.

NORTH CAROLINA.

Insolvent debtors, in order to obtain a discharge, must file a petition and full schedule of property and debts, when a trustee will be appointed to hold the property for the benefit of creditors. The debtor is then entitled to a personal discharge.

Assignments.—Debtors may make preferences, but within five days after making assignment assignor must file statement containing list of preferred creditors, amount due each, when contracted, and consideration therefor, otherwise the deed is invalid. Assignee must file account every three months, and his final account within twelve months, unless good cause be shown to the contrary. Claims must be probated and filed.

NORTH DAKOTA.

An assignment in good faith may be made in trust for creditors.

An insolvent cannot give a preference to one or more of his creditors.

An insolvent debtor owing $500 or more may take the benefit of the insolvent law and become discharged from his debts, if he has acted fairly and honestly, upon surrendering all but his exempt property. The court directs notice to be given all creditors.

Any person owing $500 or more acting fraudulently, seeking to escape creditors, or committing acts designed to prefer creditors contrary to the insolvent law of the State, or, while insolvent, suffering an execution of $500 or more to be returned unsatisfied, or, if a merchant, suspending payment for thirty days or more of commercial paper, may be driven into involuntary insolvency by creditors having claims amounting to $400 or more. Notice is given to creditors and they choose an assignee. All levies under any process made within sixty days before proceedings are commenced are dissolved, and any transfers to defraud creditors made within thirty days are void, and no judgment will be a lien if suit was commenced within six months and entered within thirty days before proceedings are commenced. Debtor may be discharged from debts if he has practiced no frauds. Life insurance is not included in the insolvent estate.

OHIO.

Assignor retains property exempt from execution, unless waived in the assignment. Court may order business to be carried on on application of three-fourths of the creditors. Claims must be probated and filed within six months after assignment. Taxes on personal property, wages earned within twelve months prior to assignment not exceeding $300, are preferred, but not to the prejudice of a lien. Debtor is not discharged from his debts so far as unpaid. A debtor may, in good faith, prefer a creditor before assignment.

OKLAHOMA.

Must be no preferences in assignments, though bona fide creditors may be preferred before assignment.

OREGON.

An assignment by one insolvent is not good if it contains preferences. The assignment dissolves all attachments on which judgment has not been obtained. The creditors may select the assignee. Debtor may be discharged from his debts if his estate has paid fifty per cent.

PENNSYLVANIA.

Assignment without preferences may be made of all or part of one's estate, but it will not work a discharge from unpaid portions of debts. Bona fide creditors may be preferred before assignment. Debtor may reserve $300 worth of his property, or waive his right to it. Certain taxes are preferred, as are also wages earned within six months not amounting to over $200 in any one case. Distribution of personalty proceeds is then to all creditors pro rata; likewise as to realty proceeds after lien creditors are satisfied. Levies and attachments of personalty before the assignment

hold good. Assignee may be required to file an account after one year, or show cause why he should not. Distribution is by an auditor appointed by court after the account is confirmed, and claims must be presented to the auditor.

RHODE ISLAND.

Insolvent laws still appear in the statutes of the State, but are practically null and void since the passage of the National Bankrupt Act. A debtor has a right to make a common law assignment or trust deed, but on doing so it is an act of bankruptcy, and he can be put into bankruptcy at once. Under the old law the creditors chose the assignee. Claims had to be probated and filed. The court could order a composition with creditors under certain circumstances, and discharge debtor. Taxes and wages not over $100 and earned within six months were preferred. The insolvent had to owe $300 or over, and had to petition the court for relief and discharge from debts, or creditors representing one-fourth of his debts could institute insolvency proceedings, if he had assigned for the benefit of his creditors, or taken steps to defraud.

SOUTH CAROLINA.

Assignments giving preferences are void, and all conveyances, mortgages, etc., within ninety days before assignment, are void unless made for present consideration. Creditors proving their claims before the assignee, and executing releases in full of their claims, are entitled to entire assets, if required to pay them in full. If anything remains, other creditors take it pro rata.

SOUTH DAKOTA.

Insolvent debtor may assign, reserving property exempt. Preferences are forbidden.

TENNESSEE.

In a general assignment no preferences are allowed. A conveyance or a judgment confessed within three months before assignment and in contemplation thereof is void. Debtor must file, under oath, schedule of assets. Attachment or execution levied on property before recording assignment is good.

By a special assignment, as by deed of trust, a debtor may secure one or more of his creditors.

A foreign general assignment, without registration in the State, will not avail against a subsequent attachment.

TEXAS.

Insolvent debtors may transfer all their property, reserving that exempted by law, but this will not discharge them from unpaid portions of their debts.

Also, an assignment may be made to benefit only such creditors as release the assignor from further liability, provided the assignee pays at least one-third of their claims. Accepting creditors must give notice of willingness to release within four months unless they did not know of assignment, and must file probated claims. When funds permit it, dividends of 10 per cent. must be paid.

UTAH.

Any creditor or creditors may be preferred. Joint, or joint and several, debtors can prefer joint creditors only from joint property, and can prefer individual creditors only out of separate property. The deed must reserve no benefits to the assignor, but exempt property and life insurance will not be transferred by it unless the contrary intention be expressed. Creditors are entitled to notice by mail. Claims must be probated and filed.

VERMONT.

An inhabitant contracting and owing debts over $300 may petition court stating his inability to pay and his desire to assign. The creditors elect the assignee or the judge appoints. Known creditors are entitled to notice by mail to prove claims and elect assignee. Claims not filed within six months after debtor is adjudged insolvent are barred.

Creditors having claims of $250 or more may force the debtor into involuntary bankruptcy. Preferences within four months before filing petition are set aside. Debts and taxes due the United States and the State, not exceeding $50, for services performed within six months before adjudication of insolvency, have priority. Discharges from debts are granted only where the estate pays 30 per cent. or more, unless a majority in number and amount of creditors assent. Corporations are not discharged.

VIRGINIA.

Assignments may contain preferences without limit.

WASHINGTON.

Where the assignment is honest, the debtor may be discharged from all prior indebtedness. Property exempt from levy by execution or attachment may be retained by the assignor.

WEST VIRGINIA.

An insolvent debtor may not make preferences, yet creditors must take steps to resist them in order to prevent them becoming operative.

WISCONSIN.

Preferences in assignments are void, as also are preferences sought to be effected within sixty days prior to assignment and in contemplation thereof. Claims must be filed within three months from time notice is given. Assignee must mail notice to creditors.

If insolvent debtor's property is attached or levied upon, he may within ten days assign all his property not exempt for all creditors, whereupon such levies, etc., will be dissolved. An insolvent debtor seeking to prefer creditors may be driven into bankruptcy by other creditors, a receiver taking charge of all except exempt property.

WYOMING.

Any person may assign all his property for his creditors. Any attachment or execution, payment or transfer within twenty days of assignment is void if the party to be benefited had reasonable cause to believe the party insolvent. Wages for three months before assignment have priority.

EXEMPTION OF PROPERTY FROM SALE, ETC.,
In the United States, Territories, Etc.

Exemption is the right of a Debtor to retain a certain amount of property without its being liable to attachment, distress or execution, or any other process at the suit of a Creditor.

A judgment creates no lien upon property exempt from execution, etc., and execution creates no power over it. (21 Illinois, p. 105; 14 Ben. Monroe, p. 475.) It is placed beyond the reach of the law, in the absolute control of its Owner. The law will take cognizance of it only for the purpose of protecting the Owner in its enjoyment. (40 Mississippi, p. 49.)

Property exempt before the death of a Debtor continues exempt afterward in favor of his Widow and Children. (47 Barbour, 7, 479.)

ALABAMA.

House and lot in city, town, etc., or in country, 160 acres not exceeding in value $2,000; also personalty, $1,000; wages, $25 per month.

ALASKA.

No homestead; but specified articles in value from $750 to $1,000; also earnings for thirty days next preceding judgment.

ARIZONA.

Homestead not exceeding $2,500 in value; household furniture, etc., $500; no exemption to persons without family or dependents; earnings, thirty days preceding levy.

ARKANSAS.

Personalty—unmarried man, $200; married, $500; homestead—not exceeding $2,500. In cities and towns, one acre; in country, 160 acres; but if homestead be no more than eighty acres in country, or one-quarter acre in town, its value is unlimited; wages for sixty Days are exempt.

CALIFORNIA.

A homestead of $5,000, if declaration of homestead is properly filed; also a large number of specified articles of personalty; personal property with homestead not to exceed $1,000.

COLORADO.

Homestead not to exceed $2,000; claims must be recorded; large number of specified articles of personalty, in favor of heads of families; library and implements of professional men exempt; wages not to exceed $60.

CONNECTICUT.

Homestead, $1,000; claim must be recorded; necessary household furniture; implements of Debtor's trade; library; live-stock; wages, $50.

DELAWARE.

No h[illegible]estead; besides specified articles $75 to $20[illegible]ditional in New Castle County; $50 to $15. Kent; no additional in Sussex.

DISTRICT OF COLUMBIA.

Furniture, $300; tools, $200; stock, $200; professional library, $300; family library, $400; earnings not above $100 per month to actual residents who support a family, for two months preceding the issuing of any writ.

FLORIDA.

Homestead, 160 acres of land; one-half acre in city; $1,000 personalty to "heads of families;" all wages.

GEORGIA.

Constitutional, real and personal property to value of $1,600; *statutory*, certain specified articles, and land not above $500 in value if in town or city, or five acres and five additional for every child under sixteen years of age if in the country. Both kinds of exemption cannot be claimed. Exemption may be waived in writing excepting as to apparel, etc.

IDAHO.

Homestead, $5,000. Furniture, etc., farming utensils, tools of trade, mining implements, professional library, instruments, wardrobe, cartman's team, etc.; wages for thirty days.

ILLINOIS.

$1,000 homestead, and $400 personalty, to head of family; to others, $100 only; all wages above $15 per week liable to garnishment.

INDIANA.

$600 to householder. No property can be sold for less than two-thirds its appraised value, unless Debtor waive the relief; no exemption of labor, purchase-money or taxes.

IOWA.

Homestead, in town, half-acre; country, forty acres; also certain articles of personalty, and household and kitchen furniture, not to exceed $200; wearing apparel; wages for ninety days.

KANSAS.

In country, 160 acres; one acre in city. Stock in trade, $500; furniture, farming tools, live-stock, professional library, etc.; wages for three months under certain conditions.

KENTUCKY.

Land and dwelling house not exceeding $1,000, specified articles of personal property of limited value, professional library to the value of $500; wages, $50.

LOUISIANA.

One hundred and sixty acres of land not exceeding $2,000 in value. Claim must be registered. Certain enumerated articles of personalty; all wages of laborers.

MAINE.

Homestead, if duly claimed, $500. A large number of enumerated articles of personalty; limited wages.

MARYLAND.

One hundred dollars of property, except for breach of promise or seduction.

MASSACHUSETTS.

Homestead valued at $800, if properly recorded as homestead property; also certain articles of personalty; wages, $20, under conditions.

MICHIGAN.

$1,500 homestead; furniture, $250; stock, $250; books, $150; live-stock; wages, $25.

MINNESOTA.

Eighty acres homestead, or lot and house in platted city or village of over 5,000 population,

or one-half acre if population is less than 5,000; sundry articles of personalty; life insurance to survivors, $10,000; wages, $25.

MISSISSIPPI.

Homestead not over 160 acres, or $2,000 in value. May be increased to $3,000 by proper proceedings; wages to head of family, $100 per month; other persons, $20; sundry other articles of personalty.

MISSOURI.

Homestead, $1,500, and $300 personalty to heads of families. In cities of 40,000 inhabitants, homestead may be $3,000 in value; wages for thirty days.

MONTANA.

Homestead, country, used for agricultural purposes, 160 acres, with buildings, etc.; in town, one-fourth acre; value, $2,500, and the usual amount of personalty exempt in such cases; wages for thirty days.

NEBRASKA.

Homestead, $2,000, or in lieu thereof $500 as personalty; also specified articles of personalty to heads of families; wages for sixty days.

NEVADA.

Books, etc., $100; furniture, live-stock, seeds, etc., $400; tools and professional instruments; miner's cabin and tools, $500 each; wages, $50; homestead, $5,000 to heads of families.

NEW HAMPSHIRE.

Homestead, $500; furniture, tools, certain live-stock; wages, $20, not good as against necessaries.

NEW JERSEY.

Homestead, $1,000, if advertised and recorded, $200 selected by the debtor from the goods levied on and appraised, and all wearing apparel of head of a family.

NEW MEXICO.

Homestead, $1,000; specified articles and $500 when not owning a homestead; wages for three months under certain circumstances.

NEW YORK.

Certain specified articles, and $250 worth in addition, except for purchase price; also $1,000 homestead, when recorded as such and occupied by debtor; wages for sixty days.

NORTH CAROLINA.

One thousand dollars real estate and $500 of personal property; wages for sixty days under certain conditions.

NORTH DAKOTA.

Homestead to the value of $5,000. If a town plot, not over two acres; if country, 160 acres; also personalty, $1,500; partnership firms, $1,500.

OHIO.

Certain specific articles of household furniture, etc. Homestead, $1,000, or to head of family in lieu of homestead, $500 personalty; wages under certain conditions.

OKLAHOMA.

To head of family 160 acres, outside of city; inside of city one acre; furniture, live-stock; ninety days' wages; to single person only apparel, books, wages, etc.

OREGON.

Household furniture, etc., $300. Tools, etc., $400; other personalty, about $225; family homestead, $1,500; wages for thirty days under certain conditions.

PENNSYLVANIA.

Personal or real estate to the amount of $300. It may be waived in writing; all wages.

RHODE ISLAND.

Household furniture and family stores not exceeding $300; wearing apparel and tools to value of $200; debts secured by note; limited wages under certain conditions.

SOUTH CAROLINA.

A homestead exemption of one thousand, and $500 in personalty are allowed; wages for sixty days, if family depends on them (to married or single men).

SOUTH DAKOTA.

Homestead, 160 acres in country, or one acre in town or city, to the value of $5,000; also exempt $750 personalty on all debts created since March 7, 1890, to heads of families, and $300 to single persons, not heads of families; otherwise $1,500 to all persons; all life insurance money received by widow or children; no exemption against purchase price; wages for sixty days if necessary to support of family.

TENNESSEE.

Homestead, $1,000; a large number of specified articles of personal property; wages, $30, for laborers and mechanics.

TEXAS.

Specified articles of personalty; homestead in country 200 acres, in city, land $5,000 in value at time of designation, without reference to value of improvements; all wages.

UTAH.

Homestead of value equal to $1,500 for judgment Debtor, $500 for wife, and $250 for each child; also books, $200; furniture, $300; utensils, $300; tools, $500; earnings within 60 Days; insurance.

VERMONT.

Homestead, $500; specified articles of personalty.

VIRGINIA.

Two thousand dollar homestead, except when waived. Specified articles of personal property which could seldom exceed $500 in value.

WASHINGTON.

Homestead, $2,000, homestead declaration being necessary; to householder, $1,000, in addition of personal property specified articles; current wages to amount of $100, if family is dependent thereon.

WEST VIRGINIA.

To head of family, $200 personalty; $1,000 homestead, if recorded as such.

WISCONSIN.

Homestead, in country, forty acres; in city or village, one-quarter of acre; furniture, $200; also certain specified articles; wages for three months, not exceeding $60 a month.

WYOMING.

Homestead, $1,500. Tools, library, etc., $300. Household property, $500. Wearing apparel, $150, etc., etc.; wages not exceeding $150.

STATUTES OF LIMITATION.

THE TIME WITHIN WHICH AN ACTION OR SUIT may be Commenced on a Claim, Debt or Demand after the Right of Action Accrues (arises, commences), and before the same is Barred (outlawed).

* Under seal, 10 years. † If made in State; if outside, 2 years. ‡ No law and no decision regarding judgments. ‖ Under seal, 20 years. ¶ Under seal, 12 years. ** Real estate, 20 years. ‡‡ Becomes dormant, but may be revived. §§ Under seal, 14 years. (*a*) Action on Merchants' accounts must be commenced in 2 years. (*c*) Ten years in New Castle County, twenty years in Kent and Sussex Counties, Del. (*e*) Negotiable notes 6 years, non-negotiable 17 years. (*f*) Ten years in new law, 20 years in old law.

(*h*) These are Instruments of Writing under seal, as Bonds, Contracts, Conveyances, Deeds, Mortgages, and the like. They are not merely written, but *signed, sealed and delivered* by the party bound by them. Witnesses and seals are often required by these instruments. (*i*) If discounted in banks, 5 years. (*j*) When acknowledged in writing, 6 years.

THE UNITED STATES AND TERRITORIES.	Claims Against Estates of Deceased Persons.		Injuries and Wages. Years.	Accounts and Book Debts. Years.	Notes and Bills. Years.	Judgments. Years.	Specialties.*h* Years.
	Months.	Years.					
Alabama	18	.....	1	3	*6	20	10
Alaska	.....	.....	.....	6	6	10	.....
Arizona	10	.....	1	3	5	5	4
Arkansas	.....	2	3	3	5	10	5
California	4–10	.....	3	2	†4	5	4
Colorado	.....	1	1	6	6	‡‡6	3–6
Connecticut	6–12	.....	1–6	6	(*e*)	‡	17
Delaware	.....	1	1	3	6	(*c*)	20
District of Columbia		3	1	3	3	12	12
Florida	.....	2	2	4	5	20	20
Georgia	12	.....	1	4	6	‡‡7	20
Idaho	4–10	.....	3	4	5	6	5
Illinois	.....	2	1–2	5	10	20	10
Indiana	.....	1	2	6	10	**10	20
Indian Territory	.....	2	1	3	5	10	5
Iowa	6–12	.....	2	5	10	20	10
Kansas	.....	1–3	1–2	3	5	5	15
Kentucky	.....	2	1	(*a*) 5	(*i*) 15	15	15
Louisiana	12	.....	1	3	5	10	30
Maine	18	.....	2	6	‖6	20	20
Maryland	9	.....	3	**3	¶3	12	12
Massachusetts	.....	2	2–6	6	‖6	20	20
Michigan	6–18	.....	2	6	6	10	15
Minnesota	6–12	.....	2	6	6	10	15
Mississippi	12	.....	1	(*j*) 3	6	7	6
Missouri	.....	2	2	5	10	10	10
Montana	4–10	.....	2	3	8	10	5
Nebraska	6–18	or 2	1	4	5	5	10
Nevada	60 days	.....	2–4	4	6	6	5
New Hampshire	6–9	.....	2	6	6	20	20
New Jersey	9	.....	2	6	6	20	16
New Mexico	.....	1	2	4	6	7	6
New York	.....	1	2	6	6	20	20
North Carolina	12	.....	1	3	*3	10	10
North Dakota	4–6	.....	2	6	6	(*f*) 10	10
Ohio	12	.....	1–4	6	15	21	15
Oklahoma Territory	4–6	.....	1–2	3	5	5	5–15
Oregon	6	.....	1–6	6	6	10	10
Pennsylvania	.....	1	1	6	6	20	20
Rhode Island	3–9	.....	1	6	6	20	20
South Carolina	.....	1	2–6	6	6	20	20
South Dakota	4–6	.....	3	6	6	20	20
Tennessee	.....	2–3	1	6	6	10	.....
Texas	12	.....	1–2	2	4	10	4
Utah	4–10	.....	1	4	6	§8	4
Vermont	6	.....	2	6	§§6	8	8
Virginia	12	.....	5	2	5	10	10
Washington	.....	1	1–2–3	3	6	6	6
West Virginia	18	.....	5	5	10	10	10
Wisconsin	6	.....	2	6	6	20	10–20
Wyoming	.....	1	4	8	5	5	10
THE DOMINION OF CANADA.							
Manitoba	.....	.....	.....	6	6	10	.....
New Brunswick	18	.....	2	6	6	20	20
Newfoundland	.....	.....	.....	6	6	20	.....
Nova Scotia	18	.....	1	6	6	20	20
Ontario	.....	1	1	6	6	20	20
Prince Edward Island	.....	.....	.....	6	6	20	.....
Quebec	.....	.....	1–2	5	5	30	20

INTEREST UPON MONEY, ETC.

Interest in the United States, Territories, Etc.

States, Etc.	Penalties for Usurious Contracts.	Legal.	Agreed.
Alabama	Loss of interest and, in some cases, costs	8 P. c.	8 P. c.
Alaska	Forfeiture of debt to school fund	8 "	10 "
Arizona	No penalty	7 "	No limit.
Arkansas	Contract voided	6 "	10 P. c.
California	No penalty	7 "	No limit.
Colorado	"	8 "	"
Connecticut	No recovery beyond legal rate	6 "	"
Delaware	Forfeiture of principal, or equivalent	6 "	6 P. c.
District of Columbia	Recovery of unlawful interest if sued for in one year	6 "	10 "
Florida	Forfeiture of all the interest	8 "	10 "
Georgia	" of excess	7 "	8 "
Idaho	" of 10 per cent. of principal	7 "	12 "
Illinois	" of entire interest	5 "	7 "
Indiana	" of all over 6 per cent	6 "	8 "
Indian Territory	" of principal and interest	6 "	10 "
Iowa	" of interest and costs of suit and 8 cents per $100.	6 "	8 "
Kansas	" of double the sum in excess of 10 per cent	6 "	10 "
Kentucky	" of excess interest	6 "	6 "
Louisiana	" of interest	5 "	8 "
Maine	No penalty	6 "	15 "
Maryland	Forfeiture of excess interest	6 "	6 "
Massachusetts	No penalty	6 "	No limit.
Michigan	Forfeiture of entire interest	6 "	8 P. c.
Minnesota	" of debt and interest	6 "	10 "
Mississippi	" of all interest	6 "	10 "
Missouri	" of usurious interest by applying it to payment of principal	6 "	8 "
Montana	No penalty	8 "	No limit.
Nebraska	Forfeiture of all interest	7 "	10 P. c.
Nevada	No penalty	7 "	No limit.
New Hampshire	Forfeiture of three times amount of illegal interest	6 "	6 P. c.
New Jersey	" of interest and costs	6 "	6 "
New Mexico	" amount of excess interest	6 "	12 "
New York	" of debt and interest	6 "	6 "
North Carolina	" of all interest	6 "	6 "
North Dakota	" of interest	7 "	12 "
Ohio	" of excess over 6 per cent	6 "	8 "
Oklahoma Territory	" of all interest	7 "	12 "
Oregon	" of principal and interest to school fund	6 "	10 "
Pennsylvania	" of excess interest	6 "	6 "
Rhode Island	Any rate fixed by parties is legal	6 "	No limit.
South Carolina	Forfeiture of double the sum received, to be collected by a separate action, or allowed as a counter claim	7 "	8 P. c.
South Dakota	" of interest	7 "	12 "
Tennessee	" of excess interest	6 "	6 "
Texas	" of all interest	6 "	10 "
Utah	No penalty	8 "	No limit.
Vermont	Excess may be recovered back	6 "	6 P. c.
Virginia	Forfeiture of all interest	6 "	6 "
Washington	" of twice the amount of accrued interest and costs	6 "	12 "
West Virginia	" of excess interest	6 "	6 "
Wisconsin	" of all interest; also right of recovery of treble amount of usurious interest which may have been paid	6 "	10 "
Wyoming	" of all interest	8 "	12 "

Interest in the British American Provinces.

Provinces, Etc.	Penalty for Usury.	Legal.	Agreed.
Ontario	No penalty	6 P. c.	No limit.
Quebec	"	6 "	"
New Brunswick	"	6 "	"
Nova Scotia	"	6 "	"
Prince Edward Isle	"	6 "	"
Manitoba	"	6 "	"
British Columbia	"	6 "	"

DAYS OF GRACE.

STATES.	Is Grace Allowed on		Saturday Half Holiday.	Notes Maturing on	
	Sight or Demand Paper?	Time Paper?		Saturday.	Sundays and Holidays.
Alabama	yes	yes	no	Payable Same day.	Payable Day after.
Arizona	yes	yes	no	" "	" "
Arkansas	yes	yes	no	" "	" before.
California	no	no	r yes	" "	" after.
Colorado	no	no	yes	" "	" "
Connecticut	no	no	yes	Next bus. day.	" "
Delaware	no	no	yes	Monday.	a " before.
District of Columbia	no	no	yes	Next bus. day.	" after.
Florida	no	no	no	Same day.	" before.
Georgia	no	yes	no	" "	b " "
Idaho	no	no	no	" "	" after.
Illinois	no	no	r yes	" "	Next bus. day.
Indian Territory	Sight, yes; demand, no	yes	no	" "	Day before.
Indiana	yes	yes	no	" "	" "
Iowa	Sight, yes; demand, no	yes	r yes	d " "	" "
Kansas	no	yes	no	" "	" "
Kentucky	Sight, yes; demand, no	yes	no	" "	" "
Louisiana	no	yes	yes	Monday.	" after.
Maine	Sight, yes; demand, no	no	no	Same day.	e " "
Maryland	no	no	Balt., Harford & Montg Cos.	f " "	g " "
Massachusetts	Sight, yes; demand, no	no	yes	Monday.	" before.
Michigan	Sight, yes; demand, no,	yes	yes	"	" after.
Minnesota	Sight, yes; demand, no	yes	r yes	Same day.	" before.
Mississippi	yes	yes	no	" "	" "
Missouri	no	yes	In cities over 100,000	Monday.	i " after.
Montana	no	no	no	Same day.	" "
Nebraska	Sight, yes; demand, no	yes	no	" "	" "
Nevada	Sight, no; demand, yes	yes	no	" "	" before.
New Hampshire	Sight, yes; demand, no	no	r yes	" "	" "
New Jersey	no	no	yes	Monday.	" after.
New Mexico	yes	yes	no	Next bus. day.	" "
New York	no	no	yes	Monday.	" "
North Carolina	Sight, yes; demand, no	yes	no	Monday.	j " "
North Dakota	no	no	no	Same day.	" "
Ohio	no	no	k yes	" "	" "
Oklahoma Territory	yes	yes	no	" "	" "
Oregon	no	no	no	" "	" "
Pennsylvania	no	no	yes	Next bus. day.	Next bus. day.
Rhode Island	Sight, yes; demand, no	no	yes	" " "	" "
South Carolina	Sight, yes; demand, no	yes	l Cha'ston only	Monday.	Day after.
South Dakota	yes	yes	no	.....	" "
Tennessee	no	no	no	Same day.	" before.
Texas	Sight, yes; demand, no	yes	m yes	" "	n " "
Utah	no	no	no	" "	i " "
Vermont	no	no	no	" "	" after.
Virginia	no	no	yes	" "	p " "
Washington	yes	r yes	r yes	s " "	t " "
West Virginia	no	no	no	" "	" before.
Wisconsin	no	no	r yes	" "	" after.
Wyoming	yes	yes	no	" "	" before.
Canada	yes	yes	yes	Monday.	" after.

a—When a holiday falls on Saturday, notes due Saturdays and Sundays are payable on Friday.

b—If a Sunday and a holiday come together, that is Sunday and Monday, the paper maturing on Monday is payable on Tuesday.

d—Unless a holiday.

e—If the day before is Sunday or holiday, then the day after.

f—If in Baltimore, Harford or Montgomery Counties, next business day.

g—When holiday occurs Monday, note is payable Tuesday.

k—In cities having 100,000 inhabitants or more.

i—When two holidays come together, the first the day before and the second the day after.

j—If holiday falls on Saturday, notes are payable on Monday.

k—In towns and cities of over 50,000 inhabitants.

l—In city of Charleston only.

m—By custom only, during the summer.

n—If grace is waived, the day after.

p—Notes dated prior to May 1, 1896, the day before.

r—By custom only.

s—If without grace.

t—Unless grace is allowed. If last day of grace falls on Sunday or a holiday, then the previous business day.

DESCENT, DOWER AND COURTESY.

ALABAMA.

Where husband leaves no lineal descendants, and his estate is not insolvent, widow is endowed of half his lands; when estate is insolvent, of one-third; when there are lineal descendants, of one-third, whether estate is insolvent or not. Realty descends, subject to dower and debts: 1. To children and descendants, the latter taking ancestor's share. 2. Father and mother in equal parts. 3. When only one parent, one-half to brothers or sisters or descendants. 4. If but one surviving parent and no brothers or sisters, or descendants of brothers or sisters, all goes to surviving parent. 5. If no children, nor parents, to brothers and sisters, and descendants of such as are dead, in equal parts. 6. If none to take under division 5, then all to husband or wife. 7. If none to take under 5 or 6, then to next of kin of equal degree, in equal parts. 8. Then escheat to State.

Personalty distributed same as realty, except that, if no children, widow entitled to all of personal estate; if but one child, to one-half; if more than one and not more than four, to a child's part; if more than four, to one-fifth. If intestate leave a husband, he is entitled to one-half of personalty and use of realty during life.

ARIZONA.

No statutory dower. If intestate leave no husband or wife—1. To children and their descendants. 2. If no children nor descendants, to father and mother equally. 3. If either father or mother be dead, half to survivor, other half to brothers and sisters of deceased and to their descendants. 4. If no such brothers, sisters nor descendants, all to surviving father or mother. 5. If neither father nor mother, whole to brothers and sisters of intestate and their descendants. 6. If no kindred, half to maternal, other half to paternal kindred; and if only one of these be living, one-half to survivor, other half to descendants of deceased grandparent. 7. If no surviving grandparent, whole to their descendants.

If intestate leave husband or wife—1. Third of personalty to survivor, remainder to children or their descendants; the surviving husband or wife being entitled for life to one-third of intestate's land, with remainder to child, or children, or their descendants. 2. If no child, children, nor their descendants, surviving husband or wife entitled to all personalty, and half of lands without remainder to any person, other half to be inherited according to rules of descent and distribution. But if deceased have neither father nor mother, then surviving husband or wife takes whole estate.

ARKANSAS.

Dower is one-third of lands, and absolutely one-third of personalty, unless latter be not over $300, when she takes all. If no children, dower is one-half of real and personal property. Intestate's estates descend, subject to debts and dower—1. To children and their descendants in equal parts. 2. If no children, to father, then to mother, then to brothers or sisters and their descendants in equal parts; then to grandfather, grandmother, uncles and aunts and their descendants in equal parts; and so, without end, passing equally to nearest lineal ancestor, and their children and descendants. If no paternal or maternal kindred, whole to wife or husband, and if none, to State. When no descendants, and estate came by father, it descends to father and his heirs; if by mother, to her and her heirs. In cases not provided for, descent is by common law. Husband entitled to courtesy where children have been born alive.

CALIFORNIA.

No dower right in the State. Intestate's property descends to heirs subject to control of probate court, and is distributed as follows: If survivor be husband or wife and only one child or issue of one child, in equal shares to surviving husband or wife and child, or issue of such child. If more than one child, one-third to surviving husband or wife, balance equally to children and to lawful issue of any deceased child. If no child living, remainder to all lineal descendants equally, if of same degree of kindred; if not, then by right of representation. If no surviving husband or wife, to children and their issue, by right of representation, share and share alike. If no issue, one-half to surviving husband or wife, other half to father and mother in equal shares, or to survivor, if one be dead. If no father or mother, one-half in equal shares to brothers and sisters, or to their issue, by right of representation. If no issue, or husband or wife, to father and mother, or survivor, or, if both be dead, in equal shares to brothers and sisters, and to children of deceased brothers and sisters, by right of representation. If decedent leave husband or wife, but no issue and no father, mother, sister or brother, whole estate to surviving husband or wife. If neither issue, husband, wife, father, mother, sister or brother, to next of kin in equal shares, those claiming through nearest ancestor preferred.

COLORADO.

Dower and courtesy abolished. 1. Estate of intestate descends to surviving wife or husband, if no children; but, if children, or descendants of such, one-half to surviving husband or wife, other half equally to the children or their descendants, subject to debts of deceased. 2. To surviving children or descendants of such. 3. If no children nor their descendants, to the father; if no father, to the mother; if neither father nor

mother, to brothers and sisters and their descendants, in equal parts, descendants representing share of their ancestor. 4. If no relatives above enumerated, to grandfather, grandmother, uncles, aunts and their descendants, in equal parts, descendants representing collectively share of ancestor. 5. If none of above be living, to nearest lineal ancestors and their descendants. Posthumous children inherit. Children of half-blood inherit as of whole-blood, but collateral heirs of half-blood inherit only half. There is a special widow's allowance of certain articles, and she may elect to take value of same in money.

CONNECTICUT.

Surviving husband or wife entitled to use for life of one-third of all property owned by deceased, after payment of debts, and such third may be set apart out of personalty or realty, or both. The right cannot be defeated by will. If no will, survivor takes such third absolutely; and if no children, takes all of estate absolutely up to $2,000, and one-half absolutely of remainder. Survivor may elect to take by will or statute. Above applies since April 20, 1877. Since April 20, 1877, after interest of husband or wife has been set out, residue of personalty and realty equally to children and their legal representatives. Marriage legitimates children born before wedlock. If no children or any legal representative of them, residue of estate to brothers and sisters of intestate, of whole-blood, and their representatives. If no such, to parent or parents. If no parents, equally to brothers and sisters and their representatives, of the half-blood. If no parents and no brothers or sisters, nor any to represent them, equally to next of kin of like degree, whole-blood being preferred to half-blood, and no representatives admitted among collaterals after brothers and sisters and their representatives. Realty of decedent which came by descent, gift or devise of kinsman, goes equally to brothers and sisters of intestate, and their representatives of the blood of the ancestor from whom estate descended. If none such, then to be divided as other real estate.

DELAWARE.

Widow has use for life of one-third of realty. If no children, the use of one-half. She takes absolutely all personalty, after payment of debts, if no children nor kin. If there be issue, she takes one-third of residue of personalty, and one-half if there be no such issue, but brothers, sisters or next of kin. She may take her dower in realty by notes and bonds or in money. Surviving husband, if no issue, takes one-half of deceased wife's realty during life, after debts are paid. If issue, whether living or dead, he takes all of her realty during life. If no surviving children, he takes all of her personalty after payment of debts; if children survive, the residue of such personalty is divided equally between surviving husband and children. Descent is according to the common law, with some slight statutory modifications.

DISTRICT OF COLUMBIA.

Dower is one-third life interest in rents and profits of realty. Since 1896, widow is entitled to dower in equitable as well as legal estate of deceased husband. Intestate's realty descends equally to child or children and their descendants. If no child nor descendant, to the father, if land came on his part. If no father, to brothers and sisters of intestate of the blood of the father, and to their descendants equally. If no brothers or sisters, or descendants of such, to grandfather on part of the father, and to his descendants. If estate came by the mother, it follows the mother's line. If decedent's estate was acquired by purchase, then it descends, first to children; next to brothers and sisters of whole-blood and their descendants equally: next to brothers and sisters of half-blood and their descendants equally; next to father; next to mother, then to grandfather and his descendants, then to grandmother and her descendants. If no descendants or kindred, to husband or wife, or his or her kindred. Estates of courtesy exist as at common law. Personalty, after payment of debts, goes wholly to widow, if there be no child, parent, grandparent, brother or sister. If child, or children, or descendants thereof, widow takes one-third; if no child, or children, or descendants thereof, she takes one-half. Balance divided equally among children and descendants. If none, to father, next to mother, next to brothers and sisters. After above, collateral relations in equal degree take, but no representation.

FLORIDA.

Widow entitled to life-estate in one-third of deceased husband's realty, and to one-third of personalty absolutely. Dower is a preferred claim. She may elect to take, in lieu of dower, a child's part, if done within a year after probate of will or letters taken out. A child's part becomes a fee simple, but subject to husband's debts. Realty descends in parcenary to male and female kindred—1. To children and their descendants. 2. If none, then to father. 3. If no father, to mother, brothers and sisters and their descendants. 4. If none, inheritance divided into moieties, one going to paternal, the other to maternal kindred, as follows: To grandfather; if none, to grandmother, uncles and aunts, on same side, and to their descendants; if none, to the great-grandfathers, or great-grandfather, if but one; if none, to great-grandmothers, or great-grandmother, if but one; and the brothers and sisters of the great-grandfathers and great-grandmothers and their descendants. And so without end, passing to nearest male ancestors, and for want of them to lineal female ancestors of like degree, and to their

descendants. Personalty is distributed according to the laws regulating descents.

GEORGIA.

Dower is one-third estate for life in deceased husband's realty, the dwelling-house not to be valued, unless in a city. Widow cannot waive dower by mortgage or lien. It is superior to judgments or other liens. She may elect to take a child's inheritance in lieu of dower. She is entitled to possession of dwelling and furniture till her dower and furniture are set apart. No tenancy by courtesy. Descent is as follows: 1. Husband is sole heir of wife, unless she leaves children or descendants of such, then he and the children take share and share alike, descendants of children taking *per stirpes*. 2. Wife is sole heir of husband leaving no children or their descendants. 3. If there are children or their descendants, wife takes a child's part, unless the shares exceed five, when she takes a fifth part. If wife elects to take dower, she has no further interest in realty. 4. Children stand in first degree from intestate, and inherit equally. Lineal descendants of children stand in place of parents, and take *per stirpes*. 5. Brothers and sisters of intestate stand in second degree, and inherit, if there is no widow nor surviving husband, nor child nor descendant. Half-blood on paternal side inherits equally with whole-blood. If no whole or half-blood on paternal side, half-blood on maternal side inherits. Children or grandchildren of deceased brothers and sisters stand in place of their parents, and there is no representation further than this among collaterals. 6. Father inherits equally with brothers and sisters. If no father, but a mother, who is a widow, she inherits as the father would. If mother is not a widow, she takes nothing, but takes as widow if estate be that of her only or last surviving child. Paternal and maternal next of kin, in all degrees beyond those above mentioned, stand on equal footing. 7. The next degree embraces cousins, uncles and aunts, who inherit equally. 8. More remote degrees inherit by rules of canon law. Personalty is distributed under the laws governing descent of realty.

IDAHO.

Dower does not exist. 1. Surviving husband or wife, and only one child, share intestate's estate equally; if more than one child, then one-third to surviving husband or wife, remainder in equal shares to children, or their descendants; if no surviving husband or wife, then equal shares to the children, or their descendants. 2. If no issue, one-half to surviving husband or wife; other half to decedent's father and mother equally, but if either be dead, whole of said half to the survivor. If both be dead, half to brothers and sisters or their descendants, in equal shares. If no husband, nor wife, nor issue survive decedent, whole to father and mother equally; if one be dead, whole to survivor. 3. If neither husband, wife, issue, father or mother, to brothers and sisters equally, or their descendants. 4. Whole to surviving husband or wife, when no issue and no father, mother, brother or sister. 5. If neither husband, wife, issue, father, mother sister, brother, nor issue of brother or sister, to next of kin in equal degree, and in equal shares, collaterals claiming through nearest ancestor being preferred. 6. Share of deceased minor and unmarried child goes equally to other children or their issue. 7. If deceased were a widower or widow, and without kin, that part of his estate which was common property at the death of his spouse goes to her father; if he be dead, to the mother; if both be dead, to brothers and sisters, and their descendants, equally. 8. If no husband, wife nor kindred, the estate escheats for benefit of school fund.

ILLINOIS.

Surviving husband or wife has dower in one-third of realty of which either was seized of inheritance during marriage. Either may release by joining in the other's deed. Realty and personalty of intestates descend—1. Equally to children and their descendants, the latter taking share of parent. 2. When no widow nor surviving husband, and no child nor descendant thereof, to parents, brothers and sisters, and their descendants, in equal parts, each parent taking a child's part, and the survivor a double portion. If no parent, to brothers and sisters, and their descendants. 3. Widow or husband surviving, but no child or issue thereof, half the realty and all of personalty to widow or surviving husband, other half of realty descending as in other cases where there is no child nor issue thereof. 4. When widow or husband survive, and also child or issue of such, widow or surviving husband takes one-third of personalty. 5. If no child nor issue thereof, and no parent, brother or sister, nor descendant of such, and no widow nor surviving husband, estate goes in equal parts to next of kin in equal degree. No distinction between whole or half-blood. 6. If widow or husband survive, but no kindred, estate goes to such survivor. 7. If no widow, surviving husband nor kin, estate escheats to county in which it, or greater part thereof, is situated. The State imposes a graduated inheritance tax.

INDIANA.

Dower and tenancy by courtesy abolished. A widower inherits, as heir of wife, one-third of her realty, subject to its proportion of her ante-nuptial debts. A widow, as heir of husband, inherits one-third of his realty in fee, free of all debts, if said realty is below $10,000 in value; if over $10,000 and below $20,000, she inherits one-fourth; if over $20,000, one-fifth. Residue of intestate's estate, real and personal, descends to children in equal proportions. Degrees of kindred are based on civil law rules. Grandchildren in-

herit what would have descended to their father or mother. Other lineal or collateral relatives inherit by same rule. If intestate leave no lawful issue nor descendants of such, half the estate goes to the father and mother jointly, or to the survivor; other half to brothers and sisters, or their descendants, as tenants in common. If neither father nor mother, brothers and sisters and their descendants take the inheritance in common. If no brothers nor sisters, the father and mother take. If neither father, mother, brothers, sisters, children nor grandchildren, estate descends along paternal line, if it came thence; and along maternal line, if it came thence. If it came to intestate otherwise than by gift, devise or descent, half goes to maternal and half to paternal line. If intestate husband leave widow and one child, his realty goes half to widow and half to child; if two children, his personalty is divided equally between widow and the two children; if more than two children, widow's share to be still a third.

INDIAN TERRITORY.

Widow entitled to dower of one-third of estate, of whatever kind, of deceased husband. If no children, she becomes entitled to one-half of personalty. Intestate's estate descends—1. To children or their descendants in equal parts. 2. If no children, to father; if none, to mother; if none, to brothers and sisters, in equal parts. 3. If no children nor descendants, father, mother, brothers or sisters nor their descendants, to grandfather, grandmother, uncles and aunts and their descendants in equal parts; and so in other cases, without end, passing to nearest lineal ancestor and their children and descendants in equal parts. Half-blood inherits equally with whole-blood in same degree.

IOWA.

Widow receives as dower one-third in value of realty, and same proportion of personalty after payment of debts. Husband receives same share in wife's estate. Descent is to children in equal shares, and to their descendants. If no issue, half to his parents, or survivor of them, other half to wife. If no wife, whole to his parents. If no parents, their would-have-been portion goes as if they had survived intestate and died in its possession; and so, through ascending ancestors and their issue. Surviving husband and his heirs inherit wife's estate in same manner.

KANSAS.

Dower and courtesy abolished. One-half of deceased husband's realty set apart for widow in fee simple, but not if at time of conveyance wife was not, nor never had been, a resident of the State. Remaining estate descends equally to children, or their descendants, the latter taking only parent's share. If no children, or issue of such, whole estate to widow. If no wife nor issue, whole to his parents, or survivor of them. If no parents, disposition is as if they had survived intestate, and had died in possession of their portion. And so through ascending ancestors and their issue. Half-blood inherits equally with whole-blood. Posthumous children inherit. Personalty descends same as if it were realty.

KENTUCKY.

Surviving husband or wife has life estate in one-third of decedent's realty, unless relinquished during life, and an absolute estate in one-half of surplus personalty of decedent. Realty of intestate decedent descends in parcenary—1. To his children and their descendants. 2. If none, to his father and mother, a moiety each. If father be dead, mother, if living, inherits a moiety, the other going to brothers and sisters and their descendants. If mother be dead, whole to the father. 3. If no father and mother, to brothers and sisters and their descendants. If none, then, 4, one moiety to paternal, the other to maternal kindred as follows: (*a*) to grandfather and grandmother equally, if living; if one be dead, entire moiety to survivor. (*b*) If no grandfather nor grandmother, to uncles and aunts and their descendants. (*c*) If none, to great-grandfather and great-grandmother, as in (*a*) above. (*d*) If none, to brothers and sisters of grandfathers and grandmothers and their descendants. And so, without end, to nearest lineal ancestors and descendants. 5. If no such kindred, to one of parents, whole to kindred of the other. If no paternal nor maternal kindred, whole to husband or wife of intestate; or, if either be dead, to his or her kindred, as if he or she had survived intestate, and died entitled to estate. Estates derived from parents by inheritance or gift go back to parents if intestate dies without issue. Collaterals of half-blood inherit only half of that of whole-blood. Posthumous children inherit. Husband takes one-half of deceased wife's personalty, and widow one-half of deceased husband's.

LOUISIANA.

Dowry is agreed upon and settled prior to marriage, and cannot be settled nor increased during marriage. Intestate's estates descend—1. To children in equal portion and by heads when of same degree; by roots, when all or some inherit by representation. 2. To father and mother, sisters and brothers, one-half in equal parts to father and mother; other half in equal parts to brothers and sisters. If one parent be dead, his or her share to brothers and sisters; if no brothers or sisters, whole to surviving parent or parents. Half-blood inherits only half of whole-blood portions. 3. Ascendant estates go in equal shares to paternal and maternal lines. Ascendants inherit the money they may have settled as dower. 4. To nearest collaterals. 5. Surviving spouse. 6. If no heirs, to State. Necessitous survivor of rich husband or wife has right to marital portion, usually a fourth,

where no children, or less than three; if more than three, then a child's share.

MAINE.

Dower and courtesy abolished, and instead widow or widower gets by descent one-third of decedent's realty in fee. Intestate's estate, excepting wild lands, descends—1. One-third to widow, balance to issue; if no issue, half to widow; if no kindred, whole to widow. Same as to widower, in wife's estate. 2. Remainder, including wild lands, and if no widow or widower, to children in equal shares and to their issue. If no children, to his lineal descendants of like degree; if not, according to right of representation. 3. If no issue, to father and mother in equal shares. 4. If no issue nor father, one-half to mother. If no issue nor mother, one-half to father. In either case, other half to brothers and sisters, or their children or grandchildren, by representation. 5. If no issue, father, brothers nor sisters, to mother. If no issue, mother, brothers nor sisters, to father. In either case to exclusion of children of deceased brothers and sisters. 6. If none of above, to next of kin in equal degree; when claiming through different ancestors, to those of nearest ancestry. 7. Estate of unmarried minor, derived from his parents, descends to other children of same parent, and to issue of those deceased. 8; When no widow, widower or kindred, estate escheats to State. Half-blood inherits equally with whole-blood of same degree. Personalty descends by same rules as realty, subject (1) to allowance to widow; (2) if issue and widow, latter takes one-third; if no issue, one-half; if no kindred, the whole. Same as to widower.

MARYLAND.

Widow entitled to common law dower in lands held by equitable as well as legal title in husband at any time during coverture; but purchase-money or other lien on same remains paramount. Husband acquires by marriage an estate for life in one-third of lands owned by wife at date of marriage, purchase-money or other liens remaining paramount. Wife cannot, by conveyance, bar her husband's estate. Descent is— 1. To children and their descendants. 2. If none, to father, if estate descended from him. 3. If no father, to brothers and sisters of the blood of the father, and their descendants. 4. If none, to paternal grandfather. 5. If none, to his descendants and their descendants, in equal degree. 6. If none, to father of such grandfather; if none, to descendants of the father of such grandfather, in equal degree; and so, passing to next lineal male paternal ancestor, or to his descendants in equal degree. 7. If no paternal ancestor or descendant, to intestate's mother. 8. If none, to her deseendants of equal degree equally. 9. If no mother nor her descendants, to maternal ancestors and descendants, same as above respecting paternal ancestors. 10. If intestate die without issue, and estate came from his mother, it goes back to her. 11. If no mother, to brothers and sisters of blood of the mother, equally, and to their descendants. 12. If none, to grandfather on part of the mother. 13. If none, to his descendants of equal degree, equally. 14. If none, to father of such grandfather, and his descendants. And so on, passing to next male maternal ancestor, and descendants. 15. If no such maternal ancestor nor descendants, to father of intestate. 16. If no father nor his descendants, to paternal ancestors and their descendants, same as before as to maternal ancestors. 17. If estate is vested in intestate by purchase and there be no children nor descendants of such, it descends to intestate's brothers and sisters of whole-blood, of equal degree, equally, and to their descendants. 18. If none of whole-blood, to those of half-blood.

MASSACHUSETTS.

Widow's dower is substantially as at common law. Realty descends in equal shares to issue of same degree, otherwise by right of representation. If no issue, to father and mother, or to survivor. If no issue, father or mother, to brothers and sisters and their issue, equally, if of same degree, otherwise by representation. If none of above, to next of kin in equal degree, according to civil law. If no widow, husband or kindred, it escheats to the State. Husband has courtesy in wife's lands, if there has been issue born to them. If no issue he has estate for life in half her lands. If no issue surviving her, then to $5000 fee. If no kindred, he takes whole estate. Wife takes fee of $5,000, if husband leave no issue, and also life estate in half his other realty; but may elect to take dower instead of such life estate. Personalty of deceased wife goes to husband, if no issue; if issue, half to him, balance descending as realty. Personalty of intestate husband descends as realty, except that if there is a widow and issue, she takes a third; if widow and no issue, the $5,000 and half of excess over $10,000; if widow and no kindred, she takes all.

MICHIGAN.

Widow entitled to dower estate of one-third in husband's lands, but a purchase-money mortgage remains paramount. Non-resident wife not entitled to dower in lands conveyed by husband. Wife may contract for release of dower. Realty of intestates descends—1. To children and their issue; or, if none, to other lineal descendants by right of representation. 2. If husband or widow survive, and no issue, half to husband or widow, remainder to father and mother in equal shares. If no issue, husband or widow, to father and mother in equal shares, or to survivor of them. If no issue, father or mother, to brothers and sisters, and their descendants by right of representation, subject

to the provision above made for husband or widow, if living. The provision for widow is in lieu of her dower. 3. If none of above survive, then to next of kin of equal degree, those claiming through nearest ancestor preferred. 4. Share of unmarried minor child of intestate goes to other children of same parent, or their issue. 5. If intestate leave husband or wife, and no other child or lineal descendants, the estate goes to husband or wife. 6. If decedent leave no kindred, estate escheats to State for benefit of primary school fund.

MINNESOTA.

Survivor of intestate husband or wife takes homestead for life discharged of debt, except mortgage executed by both, or purchase-money mortgage. Widow entitled to an allowance of furniture not exceeding $500 in value, and of other personalty not exceeding $500. If intestate leaves no issue, the homestead becomes absolute property of surviving husband or wife; and survivor is entitled to one-third of other lands of which intestate died seized, after it has borne its share of debts. Residue of realty descends—1. To children and their issue, equally and by representation. 2. If no children, whole to surviving consort. 3. If none of above, to intestate's father. 4. If none, to mother. 5. If none, to brothers and sisters, and their descendants, by representation. 6. If none, to next of kin of equal degree, those of nearest ancestor preferred. 7. Estate of intestate unmarried minor goes to other children and their issue of same parent. 8. If no issue, husband, wife or kindred, estate escheats to State. Personalty descends same as realty, excepting when provison is made for widow and children. Half-blood inherits as whole-blood, unless inheritance comes to intestate through an ancestor. Then only the blood of that ancestor inherits.

MISSISSIPPI.

Dower and courtesy do not exist. Realty and personalty of intestate decedent descend —1. To children equally, and to their descendants, the latter taking parents' share. 2. If no children nor descendants of such, to brothers and sisters, and their descendants, in equal parts. 3. If none of above, to father, if living; if not, to mother; if both be living, to both in equal parts. 4. If none of above, to next of kin, in equal degree, according to civil law rules. No representation among collaterals, except among brothers and sisters. Kindred of whole-blood in equal degree preferred to those of half-blood in same degree. Widow may, within six months of husband's death, renounce any devise or bequest to her in his will, and elect to take her legal share in his estate, as if he had died intestate, except that even if husband left no child nor descendant of such, widow shall be entitled to one-half of husband's realty and personalty. So husband may renounce, and elect, with like effect.

MISSOURI.

Widow endowed of one-third of husband's lands during life. In lieu thereof, she may elect to take a child's part, if she does so in writing within fifteen months after letters of administration. Such part becomes her's absolutely. Realty and personalty of intestate descend—1. To children in equal parts. 2. If none nor their descendants, to father, mother, sisters and brothers, or their descendants, in equal parts. 3. If none of above, to husband or wife. 4. If none, to grandfather, grandmother, uncles, aunts, and their descendants, in equal parts. 5. If none of above, to great-grandmothers and great-grandfathers and their descendants in equal parts; and so in all cases without end, to nearest lineal descendants equally. 6. If none of above, to nearest of kin of husband or wife, in like course as if such husband or wife had survived the intestate, and then died entitled to the estate. Half-blood takes only half of share of whole-blood. All heirs in same degree of relation to intestate take *per capita*; otherwise, *per stirpes*. When husband dies without issue, widow takes half of his estate. If wife dies without issue, husband is entitled to courtesy.

MONTANA.

Widow entitled to dower of one-third in husband's lands, but same not to affect a mortgage for purchase-money. Devise to widow bars dower, unless she elect, within a year of probate, to prefer dower to the devise. Decedent's realty and personalty descends thus: 1. If decedent leave husband or wife and one child, or issue thereof, equally between the survivor and child, or issue thereof. 2. If more than one child, and issue of deceased child or children, one-third to surviving husband or wife, remainder equally to children, or issue of such by representation; but if no child living at decedent's death, remainder to lineal descendants. 3. If no surviving husband or wife, but issue, whole to such issue. 4. If no issue, in equal shares to surviving husband or wife, and to decedent's father and mother in equal parts; and if either of latter be dead, entire moiety to survivor. 5. If no father or mother, half in equal shares to brothers and sisters and their descendants. 6. If a surviving husband or wife, and no father, mother, sisters or brothers, nor descendants of such, whole estate to such surviving husband or wife. 7. If none of above, to next of kin in equal degree, those of nearest ancestry preferred. If none of above, estate escheats to the State.

NEBRASKA.

Widow's dower is life estate of one-third of husband's lands. She may elect between dower and a devise, within one year from husband's death. A purchase-money mortgage precedes dower. Wife bars dower by

joining in deed of conveyance. When wife dies without issue, husband takes life estate in her estate of inheritance as tenant by courtesy, at his death it goes to her relatives. Descent is—1. To children equally, and to their issue, *per stirpes*. 2. If none, to widow during life, then to his father. 3. If no issue nor widow, to his father. 4. If no issue, widow nor father, to brothers and sisters equally, and to their descendants by representation. 5. But if a mother, she takes equally with brothers and sisters. 6. If no issue, widow, father, sisters or brothers, to mother, to exclusion of issue of brothers and sisters. 7. If none of above, all to next of kin. 8. If no kindred, all to widow. 9. Estate of unmarried minor child, coming by inheritance from deceased parent, goes to other children of said parent.

NEVADA.

No dower. Descent of intestate estate is—1. Where survivors are husband or wife and one child or issue thereof, half to surviving husband or wife, and half to child, or issue thereof. If surviving husband or wife and more than one child, one-third to such survivor, balance in equal shares to children. If lineal descendants, but no children, remainder to said descendants. 2. If no issue, to surviving husband or wife. If none, to intestate's father, if any. 3. If no father, in equal shares to brothers and sisters; and if there be a mother, she takes a brother's or sister's share. 4. If a mother, but no brothers or sisters, the mother takes the estate to exclusion of issue of deceased brothers and sisters. 5. If no issue, father, mother, brothers or sisters, all to surviving husband or wife. 6. If none of above and no lineal descendants, all to next of kin. 7. In default of heirs, estate escheats to State.

NEW HAMPSHIRE.

Widow's dower is so much of husband's real estate as will produce a yearly income equal to one-third of that yielded by the estate in which she has dower. Husband is entitled to courtesy in wife's estate. Widow is also entitled to a distributive share in deceased husband's personalty equal to a third thereof, if he leave issue; half, if he leave no issue. Husband has same distributive share in wife's personalty. By waiving her right to any devise, dower or homestead right, widow may become entitled to a fee simple in one-third of husband's estate, if he leave issue; and to half thereof, if he leave no issue. Intestate's realty descends—1. To children equally and to legal issue thereof. 2. If no issue, to father. 3. If no issue or father, in equal shares to mother, brothers and sisters, or their representatives. 4. If none of above, to next of kin, equally. 5. If child or children, and no widow or widower, whole to children in equal shares. No representation beyond degree of brothers' and sisters' grandchildren. Estate of unmarried minor, derived from parents, goes to children of said parents and their representatives. Personalty of decedent is distributed by court to—1. Widow, the share prescribed by law. 2. Residue to same persons and under same rules as if realty.

NEW JERSEY.

Widow's dower is life estate of one-third of husband's realty. She may enjoy the mansion till dower is assigned. Husband has common law courtesy in wife's estate. Descent is—1. To intestate's children and their issue, by representation, to remotest degree. 2. To brothers and sisters of whole-blood, and to their issue. 3. To father, unless the estate came from the mother, when it descends as if the father had previously died. 4. To the mother for life, and after her death as if the mother had previously died. 5. If no such kindred, to brothers and sisters of half-blood, and their issue; but if the inheritance came to decedent from an ancestor, those not of the blood of such ancestor are excluded, provided there be any blood of that ancestor to inherit.

NEW MEXICO.

Dower does not exist. One-half of acquest property, after payment of debts, is set apart to surviving wife or husband. Remainder of acquest property and separate estate of decedent descends, in absence of a will, as follows: 1. One-fourth to surviving wife or husband; remainder in equal shares to children. 2. If no issue, whole to wife. 3. If no wife, what would have been her portion, to his parents, or the survivor of them. 4. If no parents, it passes as if the parents had outlived the intestate, or died in possession of their share. And so throughout the ancestral line. 5. If no heirs thus found, estate goes by like rules to heirs of the wife of intestate, if dead; and if he had more than one wife who died, it goes equally to heirs of all such wives by representation.

NEW YORK.

Widow's dower is a life estate in one-third of husband's realty. Husband has courtesy in estate of wife who has borne him one child. But she may dispose of the entire use of her estate, by devise or deed, during his life. Descent of intestate estate is—1. To children and descendants. 2. If none, to father. 3. If none, to mother. 4. If none, to brothers and sisters, and their descendants. 5. If none, to more distant collateral relations, the descendants of those deceased taking by representation parents' shares, *per stirpes*. 6. One-third of personalty, if any descendant, goes to widow or husband. If no descendant, all to husband. If no parent and no descendant, one-half to widow. If no parent nor descendant, but brother or sister, nephew or niece, the other half to them. If none such, all to widow. What does not go to husband or widow goes to the others. Collaterals take by representation, same as in realty. Posthumous children inherit as others.

NORTH CAROLINA.

Widow entitled to life estate of one-third of husband's lands. Husband has estate by courtesy, if wife bore issue capable of inheriting. Estate of an intestate descends lineally forever to the issue of decedent. It does not ascend lineally except as herein provided. All advancements made to children to be accounted for, and their inheritable shares equalized. Lineal descendants represent their ancestor, and stand in his place. On failure of lineal descendants, and where the inheritance came by descent, gift, devise or settlement from an ancestor, to whom the person thus advance would have been an heir, the inheritance goes to the next collateral relations of the intestate capable of inheriting, and who were of the blood of such ancestor. On failure of lineal descendants, and of above conditions as to acquisition, descent is to next collateral relations capable of inheriting, whether of paternal or maternal line. Collaterals of half-blood inherit as those of whole-blood. If intestate have left no issue capable of inheriting, nor brother nor sister nor issue of such, the inheritance vests in the father, if living; if not, in the mother. When there is none to claim as heir of an intestate, his wife shall inherit.

NORTH DAKOTA.

Dower and courtesy are abolished. Intestate's estate, except homestead and certain personalty, descends thus: 1. If surviving husband or wife and one child, equal shares to each. 2. If no surviving husband or wife, whole to children in equal shares. 3. If no children, and estate is not over $5,000, all to surviving husband or wife; and the excess over $5,000, if any, goes one-half to surviving husband or wife, other half to decedent's father, if living; if not, to the mother. 4. If no issue, husband or wife, to the father; if none, to the mother. 5. If no issue, husband, wife, father, brothers or sisters, to the mother, to exclusion of issue of brothers and sisters. 6. If a surviving husband or wife, and no issue, father, mother, sister or brother, whole to surviving husband or wife. 7. If no issue, husband, wife, father nor mother, to brothers and sisters equally, and to their issue by representation. 8. If none of the above, to next of kin of equal degree, those claiming through nearest ancestor preferred. Share of deceased unmarried minor goes to brothers and sisters. 9. If no kindred, estate escheats to State for benefit of school fund. Half-blood inherits equally with whole-blood, unless estate came from one of intestate's ancestors, when half-blood is excluded. Homestead descends to surviving wife or husband; if neither, to minor child or children till youngest comes of age. When conditions of homestead estate are satisfied, it is distributed as other property.

OHIO.

Widow's dower is life estate in one-third of husband's realty, and in interest held by article, bond or other evidence of claim. Husband has courtesy. Either may release by joining in conveyance. Both may elect to take dower or testamentary provision. Descent of acquired realty and personalty is—1. To children of intestate and legal representatives. 2. To husband or wife. 3. To brothers and sisters of whole-blood and their representatives. 4. To brothers and sisters of half-blood and representatives. 5. To father; if dead, to mother. 6. To next of kin, or representatives, of whole-blood.

If realty came by descent, devise or gift from ancestor, it passes—1. To children or representatives. 2. To husband or wife during life. 3. To brothers or sisters of blood of ancestor. 4. If no such brothers or sisters or legal representatives, and estate came from living ancestor, to such ancestor. 5. If such ancestor be dead, to children of such ancestor or representatives. 6. If none such, to husband or wife, relict of such ancestor, if a parent of decedent, during life. On death of such, or if no such, to brothers and sisters of such ancestor, or representatives. If no such brothers and sisters, or representatives, to brothers and sisters of half-blood, or representatives. 7. If no such, to next of kin of blood of ancestor whence estate came and legal representatives.

OKLAHOMA.

Dower and courtesy do not exist. Surviving husband or wife resides on homestead till legally disposed of. On death of husband and wife, children occupy till youngest is of age. Homestead equipments of a certain value remain with it. Court may also set apart certain other property for use of surviving husband or wife and minor child or children. Subject to these, and to lawful debts, intestate's estate descends as follows: 1. If surviving husband or wife and one child, or issue thereof, half to each. 2. If surviving husband or wife and more than one child, or issue thereof, one-third to surviving husband or wife, remaining two-thirds in equal shares to children, or their issue by representation. 3. If no child or children, remainder to lineal descendants of equal degree equally; but if of unequal degree, by representation. 4. If no surviving husband or wife, but issue, whole to such issue, or descendants of same, by right of representation. 5. If no issue, equally to surviving husband or wife, and to decedent's father. 6. If no father, half in equal parts to brothers and sisters, by representation. If a mother also, she takes equally with a brother or sister. If no surviving husband or wife, nor issue, whole to father. 7. If no issue, husband, wife, father nor mother, to brothers and sisters, and their descendants, by representation. 8. If none of above except a mother, she takes all to exclusion of descendants of brothers and sisters. 9. If a surviving husband or wife, but no issue, father, mother, brother or sister, all to such surviving husband

or wife. 10. If none of above, to next of kin in equal degree, those claiming through nearest ancestor preferred. 11. Estate of deceased unmarried minor, coming by inheritance from decedent, goes in equal parts to children, and their issue, by same parent. 12. If no husband, wife nor kindred, estate escheats to State for benefit of school fund.

OREGON.

Widow's dower estate is life interest in one-half of husband's lands. Husband has courtesy for life in wife's lands, whether there be issue or not. Intestate's realty descends—1. Equally to children, and their issue, by representation. 2. If no child, to all his or her lineal representatives, who take equally if of same degree, otherwise, by representation. 3. If no lineal descendants, all to widow, or if intestate be a married woman without lineal descendants, all to husband. If no wife nor husband, to his or her father. 4. If no husband, wife, father nor lineal descendants, equally to brothers and sisters of intestate, and their descendants, by representation; but if a mother, she takes a brother's or sister's share. 5. If none of above, except a mother, she takes all to the exclusion of issue of deceased brothers or sisters. 6. If none of above, to next of kin of equal degree, those claiming through nearest ancestor preferred. 7. Personalty is distributed by same rules, except that widow or surviving husband takes half when there is issue; when no issue, all. Half-blood inherits as whole-blood.

PENNSYLVANIA.

Where there is issue, a widow is entitled to one-third of deceased husband's realty for her life, and to one-third of personalty absolutely. Where no issue, but collateral heirs or kindred, widow is entitled for life to one-half of husband's realty, and to one-half of personalty absolutely. Husband has courtesy in wife's estate. Widow may retain $300 in addition to dower. If intestate husband leaves no known heirs, widow succeeds to all his realty in fee. Subject to above estates, realty of intestate decedent descends—1. To children and their issue equally, if in same degree. If not, they take by representation, not per capita. 2. If no issue, to father and mother jointly, and to the survivor for life; if both be dead, to brothers and sisters of whole-blood, and their children and grandchildren, in fee, in equal shares. 3. If no issue of intestate, nor brother, sister, nephew or niece of whole-blood, to next of kin being descendants of brothers and sisters of whole-blood. 4. If no issue, nor brothers and sisters of whole-blood, nor their descendants, to father and mother for such estate as the intestate had therein. 5. If none of above, to brothers and sisters of half-blood and their descendants. 6. If none of above, to next of kin, of blood of last purchaser. 7. If none, to widow or surviving husband in fee. 8. If none, to next of kin generally. Where grandparents are entitled as next of kin, their children and descendants shall represent them. Personalty is distributed thus:—1. If issue, widow takes a third absolutely. 2. If no issue, she takes a half. 3. If issue, surviving husband takes an equal share with the children. 4. If no issue, he takes all. Subject to above, children and issue divide personalty same as realty. 5. If no issue, to father and mother, or survivor. 6. If no issue, surviving husband, father or mother, to brothers and sisters, and descendants thereof, same as realty, but without distinction of blood.

RHODE ISLAND.

Widow dowable in one-third of husband's realty. Also entitled to court allowance suited to her situation and support. Husband entitled to courtesy. Descent of intestate's realty is—1. To children or descendants of same. 2. If none, to father. 3. If none, to mother, brothers and sisters and their descendants. 4. If none of above, in equal moieties to paternal and maternal kin: (*a*) to grandfather; (*b*) if no grandfather, to grandmother, uncles and aunts, on same side or their descendants; (*c*) if none, to great-grandfather; (*d*) if none, to great-grandmothers, their brothers and sisters and descendants. Personalty not otherwise disposed of goes: 1. One-half to widow, if no issue. 2. One-third to widow, if issue. 3. Residue to intestate's heirs, the same as realty, but without distinction of blood.

SOUTH CAROLINA.

Courtesy is abolished. Widow takes statutory dower as below. If intestate leave widow and one or more children, she takes one-third of his estate; other two-thirds is divided equally between the children; or if only one child it takes all of it. If no child or other lineal descendant, but a widow, father, mother, brother or sister of whole-blood, widow takes one-half, other half to be divided equally between the father, or, if he be dead, the mother and brethren of whole-blood. If no father or mother, but brothers or sisters of whole-blood, widow takes one-half, and brothers and sisters the other half as tenants in common. If there be a widow and brothers and sisters of half-blood and child or children of brothers and sisters of whole-blood, widow takes one-half, and other half goes equally to said brothers and sisters of half-blood, and child or childrer of brothers and sisters of whole-blood. Hus and and wife inherit from one another.

SOUTH DAKOTA.

Dower and courtesy do not exist. Estate of intestate decedent descends as follows: 1. If husband or wife survive, and one child, equal shares to each. 2. If two or more children, one-third to surviving husband or wife, balance equally to children, or their issue, by representation. 3. If no children, or issue of such, half to surviving husband or wife, other half to intestate's father; or, if he be dead, in

equal shares to brothers, sisters and mother, issue of such brothers and sisters taking by representation. 4. If no surviving husband or wife, but issue, whole to such issue and their descendants by representation. 5. If no issue, nor surviving husband or wife, to the father; or if none, to the brothers, sisters and mother. 6. If no issue, father, mother, brothers nor sisters, whole to surviving husband or wife. 7. If no husband, wife, or kindred, the estate escheats to the State for benefit of school fund. The homestead exemption continues after death for benefit of surviving husband or wife and children, or until youngest child reaches its majority. In addition certain personalty may be set aside for surviving husband or wife and children.

TENNESSEE.

Widow takes dowable estate in one-third of husband's lands, even if mortgaged or conveyed in trust to pay debts when husband dies before foreclosure or sale. She may bar dower by joining husband in deed. Husband has estate by courtesy in wife's lands. Estate of intestate descends thus: 1. To children eqally, and to descendants of such by representation. 2. If no issue, nor brothers and sisters, or issue thereof, to either parent. 3. If intestate acquired estate, and died without issue, to brothers and sisters of whole and half-blood, and to their descendants by representation. 4. If no brothers or sisters, nor issue of such, to father and mother as tenants in common. 5. If both be dead, to heirs of mother and father, by moieties, in equal degree. 6. Where estate came to decedent from parent or ancestor by gift, devise or descent, and decedent leave no issue, and have brothers or sisters of paternal and maternal line of half-blood, the estate shall be inherited by such brothers and sisters on the part of the parent from whom it came, in same manner as by brothers and sisters of the whole-blood, until the line of such parents is exhausted of the half-blood, to the exclusion of the other line. 7. If no brothers or sisters, to parent from whom, or whose ancestor, it came. 8. If both parents be dead, to heirs of parent from whom, or whose ancestor, it came. Same rules apply to inheritance by grandchildren and nephews. 9. If no heirs, husband or wife takes the estate in fee simple. Personal estate goes to widow and children in equal shares, widow taking a child's share. If no children, all to widow; and if no widow, all to children. If no children, to father. If no father, to mother, brothers and sisters. If none, to the mother. If no mother, brothers or sisters, to next of kin.

TEXAS.

No dower in the State. Estate of intestate descends thus: 1. To children and their issue. 2 If none, to father and mother equally. 3. If only a father or mother survive, survivor takes half; other half to decedent's brothers and sisters and descendants thereof. 4. If no such descendants, whole to surviving parent. 5. If neither father nor mother, whole to brothers and sisters and their descendants. 6. If no kindred as aforesaid, estate is divided into two equal moieties, one for paternal, the other for maternal kindred, and goes thus: (*a*) To grandfather and grandmother equally, or, if one be dead, half to survivor, other half to descendants of such deceased grandparent. (*b*) If no surviving grandparent, whole to their descendants. And so without end, along line of nearest lineal ancestor and descendants. 7. If husband or wife survive, and have issue, such survivor takes one-third of personalty, balance equally to children and their issue. Surviving husband or wife also entitled to an estate for life in one-third of realty, with remainder to intestate's child or children and descendants thereof. If no issue, nor descendants thereof, surviving husband or wife takes all the personalty, and half of the lands of decedent, without remainder to any one; the other half to descend according to the rules of descent. But if decedent leave no surviving father, mother, brothers or sisters, nor descendants of such, the surviving husband or wife takes whole of decedent's estate. Half-blood takes only half with whole-blood.

UTAH.

No dower nor courtesy. But on the death of husband, one-third of his realty is set apart in fee for widow, if a resident of the State. Estate of intestate descends thus: 1. In equal shares to surviving husband or wife and one child, or its issue. 2. If more than one child, or issue of child or children, one-third to surviving husband or wife, remainder equally to children, or their descendants, by representation; but if no such child or children, or issue thereof, the above remainder goes to decedent's lineal descendants of same degree, equally; if of unequal degree, by representation; and above share to widow not to be in addition to her interest in husband's estates provided for her in lieu of dower. 3. If no surviving husband or wife, but issue, whole to such issue, or descendants thereof, by right of representation. 4. If no issue, all realty and personalty, not over $5,000 in value, to surviving husband or wife; if over $5,000 in value, the excess goes half to surviving husband or wife, and other half to decedent's father or mother equally; and if either be dead, whole of said half to sûrvivor. 5. If no father or mother, half of above excess equally to brothers and sisters and their descendants, by representation. 6. If no issue nor husband nor wife, estate goes to father and mother equally, or, if either be dead, to the survivor. 7. If no issue, husband, wife, father nor mother, to brothers and sisters, and their descendants, equally by representation. 8. If surviving husband or wife, but no issue, father, mother, brothers nor sisters, whole to surviving husband or wife. 9. If no issue, hus-

band, wife, mother, father, brother nor sister, to next of kin of equal degree, those claiming through nearest ancestor preferred. 10. Estate of unmarried minor coming by inheritance goes equally to other children of same parent, and to their issue by representation. 11. If husband or wife and no heirs to take, estate escheats to the State.

VERMONT.

Widow takes one-third of realty as dower, unless barred. If estate be indivisible, she will be endowed of one-third of the rents thereof. If personalty does not exceed $300, court may assign it all to her. Personalty, after payment of debts, descends as realty. Realty of intestate descends thus: 1. If no issue, widow takes all, if not over $2,000 in value; if over $2,000, widow takes $2,000 and half of remainder; balance to descend in same manner as if no widow survived. 2. If wife leave no issue, husband takes same share as wife would have in his estate if he left no issue. 3. If no issue nor surviving husband or wife, equally to his father and mother; if latter be dead, to the father; if father be dead, to mother. 4. If no issue, husband, wife, father nor mother, equally to brothers and sisters and their legal representatives. 5. If none of above, to next of kin, in equal degree; but no person shall be entitled by right of representation to the share of such next of kin who shall have died. Half-blood inherits equally with whole-blood of same degree. 6. If no kin to inherit, estate escheats to town for use of schools.

VIRGINIA.

Courtesy as at common law. Widow is endowed of one-third of husband's real estate, unless she has relinquished. Realty of intestate descends thus: 1. To children and their descendants. 2. If no issue, nor descendant of such, to father. 3. If no father, to mother, brothers and sisters, and their descendants. 4. If none, one moiety to paternal, and one to maternal, kindred, as follows: (*a*) to grandfather; (*b*) if none, to grandmother, uncles and aunts on same side, and to their descendants; (*c*) if none, to great-grandfathers; (*d*) if none, to great-grandmothers, and brothers and sisters of great-grandfathers and great-grandmothers and their descendants; (*e*) and so on to nearest lineal male ancestor; or, if none, to female ancestors in same degree and their descendants. 4. If no father, mother, brother nor sister, nor descendant of such, nor any paternal kindred, whole to maternal kindred; and if neither paternal nor maternal kindred, whole to husband or wife. 5. If husband or wife be dead, to his or her kindred, as if either husband or wife survived the intestate, and died entitled to the estate. 6. Collaterals of half-blood inherit only half with those of whole-blood. 7. Those entitled in same degree take per capita, but descendants of such as are dead take *per stirpes*. 8. Estate of unmarried minor passes to kindred of parent from whom it was derived. 9. Personalty passes same as realty, except that (*a*) personalty of infant passes as if it were an adult; (*b*) if widow has issue, she takes a third; (*c*) if no issue, she takes all that came to her husband by virtue of his marriage, and which remained in kind at his death; also one-third of his personalty, if he leave issue by another marriage; but if no issue, she is entitled to one-half.

WASHINGTON.

Dower and courtesy abolished. Realty of intestate decedent descends thus: 1. If husband or wife survive, and one child, or issue thereof, equally to surviving husband or wife, and to such child, or its issue. 2. If surviving husband or wife, and children, or their issue, one-third to surviving husband or wife, remainder equally to such children, or their descendants, by representation; but if no issue, remainder to lineal descendants. 3. If no issue, equally to surviving husband or wife and decedent's father and mother. 4. If no father and mother, half equally to brothers and sisters, or their issue. 5. If no issue, nor husband nor wife, all to father and mother. 6. If no issue, wife, father, nor mother, equally to brothers and sisters, or their issue. 7. If decedent be husband or wife, and leave none of above-named kindred, estate goes to survivor. 8. If no issue, husband or wife, father, mother, brothers nor sisters, to next of kin. 9. Estate of unmarried minor goes equally to children of same parent, and to their issue, by representation. 10. If no wife nor kindred, estate escheats to State. 11. Community property goes half to wife; other half in the general way.

WEST VIRGINIA.

Widow is endowed of one-third of husband's realty, unless legally barred. Husband is entitled to courtesy, whether issue or not. Estate of intestate decedent passes—1. To his children and descendants. 2. If none, to father. 3. If none, to mother, brothers and sisters, and their descendants. 4. If none, to paternal and maternal kindred in equal moieties. 5. Collaterals of half-blood inherit only half with whole-blood. 6. Personalty descends as realty; but if children, the husband or wife takes a third; if no children, all.

WISCONSIN.

Widow's dower is one-third for life of husband's realty, unless barred. Does not prevail against mortgagee. Descent of intestate's estate is—1. Equally to children, and their issue, by representation. 2. If no child, equally to other lineal descendants, and to their issue, by representation. 3. If no issue of decedent, to widow; and if she leave no issue, to parents, or the survivor of them. 4. If decedent be a wife, and leave no issue, whole to husband. 5. If she leave neither issue nor husband, to her parents, or to survivor of

them. 6. If deceased husband leave no issue, widow, father nor mother, equally to brothers and sisters, and their descendants by representation. 7. If none of above, to next of kin of equal degree, those claiming through nearest ancestor preferred. 8. Estate of unmarried minor, which came from parent, goes equally to children of same parent, and to their issue by representation. 9. If intestate leave no widow nor kindred, estate escheats to State. 10. If intestate leave no issue, the homestead descends to widow. If widow and issue, to widow during widowhood; and, on her marriage or death, to heirs. If issue and no widow, to such issue. If no issue or widow, by statute. 11. Undevised personalty distributed—(*a*) to value of $450 selected by widow; (*b*) to widow and children under probate court allowance, till their shares assigned; (*c*) residue as per statute.

WYOMING.

No dower nor courtesy. Estate of intestate descends—1. If husband or wife and children, or descendants of such, half to surviving husband or wife, other half to children, or their descendants. 2. If no descendants, three-fourths to surviving husband or wife, and one-fourth to intestate's father and mother, or survivor of them. 3. If estate does not exceed $10,000, and there is a husband or wife, but no child nor descendant of such, whole to husband or wife.

BRITISH COLUMBIA.

Widow entitled to dower as at common law. Estate of intestate decedent descends—1. To lineal descendants. 2. To father. 3. To mother. 4. To collateral relatives.

MANITOBA.

No dower. Estate of intestate decedent descends—1. If widow and child or children, one-third to widow, two-thirds to child or children. 2. If no issue, whole to widow. 3. If no widow, whole to father. 4. If child or children and no widow, whole to child or children. Half-blood shares equally with whole-blood. 5. If no widow, child, or lineal descendants of such, whole to father. 6. If no father, equally to mother, brothers and sisters of equal degree.

NEW BRUNSWICK.

Widow entitled to dower. Estate of intestate descends—1. Equally to children and their legal representatives. 2. If no children, to next of kindred and their representatives, it being held that father and mother are next of kin, in preference to brothers and sisters. 3. Personalty goes, one-third to widow, remainder equally to children and their representatives. If no children, one moiety to widow, the other to next of kin of same degree; but no representation among collaterals after brothers and sisters. If no widow, all to children equally; and if no children, to next of kin in equal degree.

ONTARIO.

Dower and courtesy as at common law. Estate of intestate descends—1. If widow and children, one-third to widow, remainder equally to children, or their descendants. 2. If widow and no children, half to wife, remainder to next of kin in equal degree. 3. If only children or their representatives, all to them, representatives taking *per stirpes*. 4. If husband and child, one-third to husband, two-thirds to child. 5. If husband only, half to him, other half as if he had previously died. 6. If father, mother, brothers and sisters, equally to all, and excluding grandfather and grandmother.

QUEBEC.

Both legal and conventional dower exists. Descent is—1. To children. 2. If no issue, descendants take half, and their brothers and sisters the other half. 3. Husband and wife do not inherit from each other, till beyond the twelfth degree of relatives.

NOVA SCOTIA.

Realty descends equally to children and their descendants. If no issue, half to father and half to widow in lieu of dower. If no father or issue, half to widow and half to mother, brothers and sisters and children of such by representation. If no widow, whole to mother, brothers and sisters and their children. If none such, to next of kin. Half-blood inherits equally with whole-blood. Widow takes one-third of personalty; balance distributed to others the same as realty. If no widow, others get all of personalty. Posthumous children inherit. Widow's dower is a third interest in husband's realty.

NORTHWEST TERRITORY.

No dower. Realty and personalty descend alike. 1. If intestate leave widow, and issue or descendant of such, widow takes a third, balance to issue equally; if no issue, she takes half, the remaining half to intestate's father. 2. If no widow nor issue, all to father. 3. If no father, to mother, brothers and sisters of intestate in equal parts, subject to widow's right to a half, as above.

Of Justices.—Much ancient and interesting history surrounds the title "Justice of the Peace;" and the function of the office, while for the most part experiencing little real change for centuries, has found administration under different titular names, though not widely variant in meaning. The title "Justice of the Peace" is of great antiquity. Before the time of Edward III. the title was "Conservator of the Peace," but by a law of that reign they were given the power to try felonies, after which they acquired the more honorable appellation of "Justices;" not in the abstract sense of "Judge," or of general "judicial officer," but as magistrate of a local court of limited jurisdiction, and one not of record. "Justices of the Peace" constituted the minor judiciary of England by special commission under the great seal to keep the peace in the county for which they were appointed. Said Lord Coke: "The whole Christian world had not the like office as justice of the peace, if duly executed."

With but little, if any, change in the function of the office, justices of the peace have, in many places, and under certain regulations of the minor judiciary, come to be designated as "Magistrates." When the word "magistrate" is used without qualification, in almost any State of the United States it implies a minor local justice, or justice of the peace; and even with such qualification as *police* magistrate and *committing* magistrate, as in many of our cities; or *district* magistrate, as in India; or *stipendiary* magistrate, as in England; its meaning and function are not radically changed. Of course this limited use of the word "magistrate" is outside of that general, comprehensive use, as when we speak of presidents, governors, mayors, prefects, etc., as chief magistrates of nations, States or cities.

The good old Saxon word Alderman (elderman) originally implied a chieftain, lord or earl. It afterwards came to signify the chief magistrate of a territorial district, as of a county or province, and also the chief officer of a gild, and was therefore suggestive of a function quite analogous to justice of the peace, or magistrate. But this good old word deserted in a measure its primitive and rural significance, and found a welcome in the cities. In fact, it became, in the course of time, and especially in its transit to America, almost a purely urban or municipal word. In the constitution of Pennsylvania "justices and aldermen" are provided for, and in the act of assembly prescribing for the election of such "justices and aldermen," townships and boroughs shall elect *justices*, but "for each ward in a city shall be elected two *aldermen*." This was a distinction in title with scarcely any difference of function. In New York the word alderman denoted a great broadening and radical change of function. There an alderman became a member of the municipal legislative body, though still retaining certain judicial functions. And more than this, there as well as elsewhere, where the municipal legislative body consisted of two branches, the board of aldermen constituted the upper branch. This blending of function ceased, in a measure, to be popular, and aldermanic governing bodies have undergone radical changes, or been abolished. Even in Philadelphia, where an alderman was but little else than a justice, the name gave way, under the provisions of the constitution of 1874, to "magistrate," or "police magistrate," with function almost identical with [illegible] former alderman.

Esquire was an old English title [illegible] office or courtesy, meaning one [illegible] wear a shield, and next in rank to [illegible]. Courtesy extended its use to officers royal courts, sheriffs, justices of the peace, often to literary and professional men. [illegible] the United States the title, in its original abbreviated form of Esq., seems to have been largely appropriated by lawyers, but justices of the peace have been scarcely less tenacious of it under the shortened form of "Squire."

After this brief review of titles and functions, it is easy to see how comprehensive is the title "Justice," or "Justice of the Peace," and how completely it suggests the function of one of the most ancient and universally recognized of minor civic officials. The office exists in some form or other, or its functions and powers are recognized under certain conditions, in every State and Territory of the United States. By whatever title known, this official is either elective by the people, or appointive by governors or courts, and his duties, powers and, to a great extent, his practice, are prescribed by statutes of the respective States. He is expected to be a man of probity and judicial turn. He holds office under a commission. He is, as a rule, authorized to use a seal, though, owing to the expense of this, the primitive and convenient use of a scroll is accepted as a substitute.

The office is essentially a minor one, an adjunct of the county and State judicial system, a ramification, as it were, of justice, in its most popular, convenient and acceptable form, to the remotest corners of population. It is an office presumably always open, especially in rural sections, or except where the functions of justices are embodied in district, aldermanic or magistrate courts of cities or of prescribed and thickly populated sections.

The jurisdiction of justices and of justices' courts in the respective States and Territories is regulated by statute, but is so phenomenally uniform as to have almost the sanction of a common law prescription. Thus in civil suits they either have sole jurisdiction where the amounts involved are small, seldom exceeding $300, and more rarely $500, or else concurrent jurisdiction with the higher courts for like amounts. But such jurisdiction seldom embraces cases which involve questions relating to land titles. For jurisdiction of justices

in actions arising from contract, *see* COLLECTION OF CLAIMS, DEBTS AND DEMANDS (*ante*).

Justices are generally given jurisdiction in actions of trespass, and of trover and conversion, and in cases of rent collections, and distraint, subject to statutory limitation as to the amount. Judgments rendered by justices are universally subject to appeal to higher tribunals, except where the amount is too trifling to warrant further suit. So the superior courts may issue writs of certiorari to justices compelling them to send up certified records of their proceedings for review and correction. When there is no appeal, execution issues upon the judgment of a justice, and levy and sale are had through a constable, the procedure being analogous to that in the higher courts through their sheriffs. Certified copies of judgments before justices may be filed in the superior courts, where they become liens on real estate as other judgments rendered in said courts, and transcripts of such judgments may be filed in the various courts throughout a State.

Justices may administer oaths, take depositions and acknowledgments, administer the marriage ceremony; but generally their acknowledgments, when for use outside of their own State, and when unaccompanied by a regularly engraved seal, must be attested by a court of record, having a seal. One of the most important of the primitive endowments of the justice of the peace was his jurisdiction in criminal affairs, and this almost universally maintains in the United States. He may issue attachments, capiases and warrants, and after arrest may hear, exact bail, and bind over for appearance at court, where the offence is a bailable one.

Of Notaries Public.—In Roman law the notary (*notarius*) was the person—generally a slave or freedman—who took notes of judicial proceedings in shorthand or cipher. He corresponded to a modern clerk of the court, or to a stenographer. By a singular transition and survival of titles, that of notary came, in the course of time, to be applied to the Roman official called tabellion, who drew up legal documents, and performed the general function now implied by the word scrivener. The tabellion, therefore, corresponds more nearly with the modern notary than the title *notarius*.

Both the name and function of notary found their most rapid development through the canon law, under which a notary became a person of wide importance. Indeed, it was a maxim of that law that the evidence of a notary was worth that of two unskilled witnesses. In most European countries he still holds something of his old position under the canon law. In France, for instance, a document attested by a notary is said to be "legalized," a term quite too strong to express the effect of such attestation in England, where the notary public, in spite of his name, is not recognized as a public official to the same extent as in some other countries.

But in more modern times it is to the needs of commerce, banking, jurisprudence and general business that the notary owes his almost universal existence and the great convenience and importance of his function. Like that of justices, the notarial function, though ascertained and regulated by statute, varies but little, especially in the United States. In brief, it is to protest bills and notes, and certify the same, administer oaths, take depositions, acknowledgments of deeds and other instruments, and to authenticate the same by his official signature and seal. It will be seen that this function, as far as it goes, is almost identical with that of a justice.

Notaries are, as a rule, created by commission, mostly, in this country, from governors of the States. They must have engraved seals of office, and give bond for good conduct. They are usually men of some business quality, as conveyancers, law students, and young practitioners, but bank presidents, directors and stockholders and persons exercising judicial office are generally, for evident reasons, not eligible to the office, at least, not preferred for it. Their terms of office are prescribed in their commissions, as well as the place, or places, where they are expected to reside and officiate.

The rule is quite general, that the official acts, protests and attestations of notaries public, when certified in due form, under their hands and seals, in respect to the dishonor of all bills and promissory notes, and of notice to drawers, acceptors or endorsers thereof, may be received and read in evidence as proof of the facts therein in suits pending in courts of justice. But there are many exceptions to this rule throughout the States, where the notary's attestation, or official act, relates to other than strictly commercial paper. Then, some of the States accept such attestation or acknowledgment, when properly sealed, as sufficient to sustain evidence in court, the seal being presumed to be *prima facie* genuine. Other States require that the notary's seal shall be certified by a court of record. This is especially so in some of the older States, which make large use of Commissioners of Deeds for the acknowledgment of deeds and mortgages.

Though a notary's commission may designate his residence, city or district, his jurisdiction extends throughout his State. An important function of a notary, especially in commercial and legal centres, is the taking of depositions. In this capacity he may act solely or simply as clerk for contending counsel, writing down faithfully the questions and answers, or seeing that they are so written. Banks, as a rule, select special notaries to make their protests and serve their notices. Notaries are paid by fees, which are regulated in many States by statute, and should be in all. No officials in the world are so general and so universally recognized as notaries public.

LEASES AND THEIR TERMINATION.

LANDLORD AND TENANT.

Leases of lands and tenements, or other corporial and incorporial things, their general nature, rights and duties of parties thereunder, the common law respecting their termination, and their various legal forms, are found fully treated at pages 312–333, *ante*. But as the statutes and local customs of the several States of the United States, and of the Provinces of Canada, give rise to a variety of procedure respecting their termination, and of the rights and duties of landlords and tenants, when it becomes necessary for the former to take legal steps to secure repossession of leased premises, it is thought proper here to indicate, for the use of business men and non-resident lawyers, a little more in detail, the laws and usages relating thereto. For a standard form of notice by landlord to tenant to terminate a lease, see Pennsylvania, Oklahoma, Connecticut, New York, District of Columbia, Indiana, etc.

Alabama.—If lease is for specified term, landlord cannot terminate it till end of term, except for violation by tenant of one or more of its covenants. Lease of land for more than a year must be in writing. If tenant does not quit at end of term, or is permitted to occupy by sufferance after term ends, without a new contract, landlord may, on six days' notice, institute proceeding to evict. If successful, the constable puts him in possession under a writ of restitution. Holding-over tenants, after possession is demanded, are liable for double rent.

Arkansas.—Where the relation of landlord and tenant exists, either by written lease to expire at a certain date, or tenancy by the month, etc., if tenant refuse to surrender possession at the end of his term, or to pay rent when the renting is by the month, or at will, or by sufferance, the landlord may bring action in unlawful detainer, after 3 days' notice to quit. Tenant then has 5 days in which to give bond and retain possession till case is tried. If no bond is given in 5 days, the officer ejects tenant and puts landlord in possession. The following form of notice accords with the statutes:

Little Rock, Ark., ———, 19—.

To John Doe:

You are hereby notified that I demand that you quit and deliver to me, or to my agent, John Smith, on or before the —— day of ——, 19—, the possession of the house and premises No. —— Arch Street, situated in Block —— in Little Rock, Arkansas.

RICHARD ROE,
by John Smith, his agent.

Arizona.—Whether for non-payment of rent for 5 days, or for any other violation of covenants by tenant, landlord may take possession of premises without formal demand, which shall be tried, without notice, before any justice of the peace in not less than 5 nor more than 30 days. In tenancy from year to year tenancy terminates at the end of each year, unless written permission is given to remain. Thirty days' notice is required to terminate a lease from month to month. When tenancy is for a definite period fixed in the lease, tenant is bound to surrender possession at end of term, and no notice to quit is necessary; but, as a rule, 10 days' notice is given. No particular form of notice required, but it should be in writing, plain, and contain a description of the property.

California.—Lease of property other than lodging or dwelling house, where there is no other usage, presumed to be for one year. Lease of lodging or dwelling houses, presumed to be for such length of time as parties agree upon to pay and receive rent. If monthly, then the lease is for a month. If no time be fixed for payment of rent, the lease is monthly. If tenant remains beyond term, and landlord accepts rent, the term is renewed, for the same time and terms, not exceeding one month if the term is monthly, nor in any case exceeding one year. Terms of leases from month to month may be changed by the landlord on fifteen days' notice, to take effect at the end of the month. If tenant continues to hold, it shall be on the conditions specified in the notice. Tenancy at will may be terminated by notice to remove within one month. Unlawful detainer by a tenant is where he continues to hold, without permission of the landlord, and after default of rent pursuant to agreement, and three days' notice in writing, requiring payment or possession. Such notice may be served at any time within one year after rent is due. In leases of agricultural lands, where tenant has held over for more than sixty days, he is entitled to hold for a full year. Assignment or subletting by a tenant contrary to lease covenants terminates a lease upon three days' notice. Notices to terminate may be served on the tenant personally, by leaving a copy at his house or place of business, by mail, or by affixing a copy on the premises.

Colorado.—Three days' notice is required to evict a tenant at will. No notice required if lease expires at a time certain. Three months' notice, if lease is from year to year. In all cases where repossession is sought for failure to pay rent, or other breach of covenant, landlord must give three days' notice, in the alternative. If the tenancy be for 6 months, one month's notice is required; if monthly, 10 days' notice. No form of notice prescribed, but it must be in writing and specific as to dates, the landlord's intent and description of property.

Connecticut.—The following notice must be given 10 days before a tenant can be compelled to leave:

I hereby give you notice that you are to quit possession of the —— now occupied by you on or before the (date 10 in the future).

I. B.

Above notice to be made in duplicate, and one served on the party.

Delaware.—Whether a tenant is occupying under a hold-over lease for one or more years, or from year to year, for less than a year, or at will, a landlord cannot terminate it without giving the tenant three months' notice in writing to remove: excepting where the lease is by the month or week, when a month's or week's notice is sufficient. No particular form of notice.

District of Columbia.—When the lease is of realty for a certain term, no notice to quit is necessary. When the tenancy is from month to month or quarter to quarter, 30 days' notice in writing to quit is required, same as to tenancy at will. Notice to quit must be served personally on the tenant, or delivered to some proper person on the premises. When a lease for any time has expired, or tenancy has been terminated by notice, and the tenant fails to quit, the landlord may bring ejectment proceedings in the supreme court, or action before a justice of the peace.

Florida.—Where tenancy is by the month, 3 days' notice is required before he can be evicted by legal proceedings. The statutes do not prescribe the length of notice required where the tenant is occupying under a lease from year to year, or is holding over, but probably one month's notice would be deemed sufficient. No particular form of notice prescribed.

Georgia.—Where tenant occupies premises from month to month without lease for a definite length of time, landlord must give tenant 60 days' notice to quit; tenant must give landlord 30 days' notice of his intention to vacate. No notice required by landlord to terminate a written lease to expire at a fixed time. This would apply to a lease from year to year. If a tenant holds premises under a lease for a year, and does not vacate at end of term, but continues to occupy without further agreement, he holds for the same period as the lease ran. Notice must be in writing, but no particular form required.

Idaho.—Wherever the right of re-entry is given to a landlord under the terms of a lease, such re-entry may be made at any time after the right accrues upon three days' notice, as provided in the civil code. Thirty days' notice must be given in order to terminate a tenancy at will, and then three days in order to secure possession. No particular form of notice prescribed.

Illinois.—Sixty days' notice in writing required to terminate a lease from year to year. It may be given at any time within four months preceding the last sixty days of the term. If the tenancy be from month to month, or for any term less than a year, and the tenant hold over without special agreement, the landlord may maintain action in forcible detainer or ejectment upon 30 days' notice in writing to tenant. In all cases where tenancy is for a fixed period the tenant is bound to quit at expiration of the period, and no notice is necessary. The required form of notice is:

You are hereby notified that the lease of your premises terminates on the —— day of ——, 19—, and you are hereby notified to quit and deliver up possession of the same to me at that time.

Indiana.—If lease be for a certain and definite time, landlord need give no notice to terminate it. It expires at the end of the term, and tenant may be evicted without notice. Where a tenant is holding over under a lease for a definite term, he is in for a term equal to the original lease, and may be evicted at the end of the term without notice. Tenancies from year to year may be terminated by three months' notice given to tenant prior to expiration of the year; and when tenancies are by consent of the parties, express or implied, or from one period to another for less than three months' duration, a notice equal to the interval between such periods is sufficient. The statutory form of notice is:

To W. B.

You are hereby notified to deliver up to me, at the expiration of the current year of the tenancy, the possession of the following described premises, situate in —— county, and State of Indiana, to wit, ——, now held of me by you as tenant.

I. R.

Indian Territory.—To terminate a lease, all that is necessary, when tenant is one at will, or from month to month, is reasonable notice in writing to deliver up the premises by a certain day, or at the expiration of the month. Usually ten days' notice is given. Tenants by the year are given thirty days' notice.

Iowa.—For non-payment of rent landlord may always terminate a lease on 3 days' written notice. Tenants holding over become tenants at will, and do not hold under the provisions of the expired lease, unless it is so provided therein. Such tenant may be evicted upon 3 days' notice to quit, if served within 30 days after expiration of the lease; otherwise it requires a 30 days' notice to quit. If the tenancy be a farm property, the lease must terminate before March 1, otherwise the tenant can hold for another year. Notice must be in writing, but no particular form prescribed.

Kansas.—If a lease provides a date for ending a term, no notice to terminate is required. Three months' notice is required to terminate a lease from year to year. Hold-over leases, with consent of landlord, become leases from year to year. In farm leases, where tenant is holding from year to year, or for any indefinite term, a three months' notice should be given fixing the termination on the 1st of March. No particular form of notice is required, but simply to recite that

the undersigned, owner of the following described premises ——, hereby notifies you that your tenancy thereof is terminated, and will end on the —— day of ——, 19—.

(*Landlord's signature.*)

Kentucky.—No notice to terminate lease required where the term is certain, or notice to quit is dispensed with. If a tenant fails to

quit after having been given notice; or if, when his term expires upon a date certain, he refuses to quit; or if, where the agreement was to dispense with notice, he refuses to quit when landlord demands possession, he shall pay double rent from the time he should have yielded possession. If tenancy be for a year or more, and to expire on a certain day, tenant must quit on that day, unless there be a new contract to remain. If tenant holds over without such contract, he acquires no right to remain within 90 days, and landlord may repossess without demand or notice, if he institute proceedings within that time. If landlord takes no steps to repossess within that time, tenant holds for a year; after which the above relation is repeated. If the lease is for less than a year, the above relation exists, except that tenant acquires no right within 30 days, and landlord must institute proceedings within that time. If he does not, no proceedings are allowed until after 60 days from end of the term. Thirty days' notice required to end all other kind of tenancies. No particular form of notice required.

Louisiana.—By act No. 52 of 1900, "When any person, having leased any house, store, or other building, or landed estate, for a term of one or more years, or by the month, or otherwise, either verbally or otherwise, shall be desirous, upon the termination of the lease, either by limitation or non-payment of the rent when due, or any other breach of the said lease, he shall demand and require in writing his tenant to remove from and leave the same, on allowing him ten days from the day such notice is delivered; and if the tenant shall refuse to comply therewith after expiration of such delay and to remove therefrom, it shall be lawful for such lessor to cause the tenant to be cited summarily by a rule to show cause, within two days after service of such rule, to appear before any court having competent jurisdiction, in order to be there condemned to deliver him the possession of the leased premises."

Notice to Tenant.

State of Louisiana, Parish of Orleans, City of New Orleans.

New Orleans, La., ———, 19—.

M———

Please Take Notice, That you are hereby required, within ten (10) days from the serving of this notice, to surrender and deliver me possession of the —— known as No. ———— Street, in this City, which you now hold of me, as tenant under lease, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant. Act No. 52 of 1900.

(*Signature.*)

Maine.—At the end of the term of a written lease landlord may enter without notice and dispossess tenant; but must give 30 days' notice where tenant is one at will, holding without a written lease, said notice to expire on rent-day, when, within 7 days after its expiration, landlord must bring suit for repossession by eviction.

Maryland.—In written leases the terms govern as to notice. In Baltimore, landlord must give 90 days' notice in order to terminate a lease from year to year, and tenant must give 30 days' notice. If the lease be for a month, or any less period than a year, and tenant continues to occupy after its expiration, he holds for the term of the expired lease, and landlord must give 30 days' notice to terminate. So, 30 days' notice is required to terminate a tenancy at will or sufferance. In estates from year to year, in the State, outside of Baltimore, both landlord and tenant must give 6 months' notice in writing. In estates by sufferance no notice is required. Estates at will require immediate notice. Such notice is sufficient as to form if it is in writing and makes the intention of either landlord or tenant plain. It must be properly served.

Massachusetts.—The termination of an existing lease is governed by its contents, except where there is breach of its covenants. If tenant is holding over, he is entitled to notice equal in length of time to the period between rent-days; but if rent be payable at periods of six months, he is entitled to 3 months' notice. The notice provides that tenant shall deliver possession at the end of the quarter, month or week of the tenancy, which shall begin next after the date of the notice. In case of breach of covenants—as failure to pay rent—fourteen days' notice is required. The usual procedure for obtaining possession is by writ of ejectment.

Michigan.—Tenancy at will or sufferance terminated by 3 months' notice: Provided, that where rent reserved in lease is payable at intervals of less than 3 months, notice equal to the time between payments is sufficient. If tenant is in default of rent, 7 days' notice to quit is sufficient. In case of tenancy from year to year, notice given at any time terminates the lease at the expiration of a year from the date of such notice. A tenant holding or claiming possession adverse to landlord or owner is not entitled to notice. Hold-over lease may be a tenancy at will or sufferance. No particular kind of notice required.

Minnesota.—If tenant is holding from year to year, under a lease originally for a year or term of years, the landlord, in order to terminate, must serve him with a written three months' notice in the clear before the end of the year. If tenant is holding from month to month, a thirty days' notice in the clear is required. A three months' notice is required to terminate a tenancy at will.

Mississippi.—Where tenant is holding under a term which expires at a fixed date, landlord need give no notice to terminate lease. Where tenant is holding over under an expired lease, 60 days' notice would be required to terminate a lease, and also a year to year lease; 30 days' notice, if lease be for half or third of a year; one week's notice, if lease be for a month or week. Notice must be in writing. No particular form prescribed.

Missouri.—All leases, estates, interest in freehold or term of years, and not in writing, have the effect and force of leases, and stand at will only. No lease, estate, interest, either of freehold or term of years, or any uncertain interest of, in, to or out of any lands, tenements or hereditaments, can be assigned unless in writing. The rule is that notices to terminate leases are subject to their terms. There is no particular form of notice.

Montana.—A landlord may terminate an estate at will by giving at least one month's notice, after which, and upon three days' notice, he may maintain an action of ejectment or unlawful detainer. An estate at will may terminate without notice, on conditions broken. Covenants broken terminate a lease, and landlord is entitled to possession on three days' notice. If tenant holds over after expiration of his term, he is liable to landlord for treble rent during time of such holding over. Notice should be in writing, but no particular form prescribed.

Nebraska.—Notice by landlord to tenant to terminate a lease for an uncertain period must be 6 months in length, as at common law. Same as to tenancy from year to year. Where the term is for one year or other certain period no notice to quit is necessary, and if tenant holds over he may be summarily ejected under proceedings in forcible entry and detainer, begun after three days' notice. If tenancy be from month to month, or week to week, notice must correspond with the period named. No prescribed form of notice, but it should specify the lease dates and fully describe the property.

Nevada.—Where the lease is from year to year, and the tenant is holding over, not more than ten days' notice is necessary to deliver possession. Only three days' notice required when rents remain unpaid. The custom is to give ten days' notice when termination of a lease is desired.

New Hampshire.—If the lease be written, parties thereto are bound by its terms. Where written lease has been given and parties are holding over by mutual consent on the same terms by a verbal agreement or understanding, there would be no lease under the law, and any such tenancy may be terminated on 30 days' notice. Such notice must be in writing, must particularly state the date of its expiration, and in other respects be certain and definite in its terms. All tenancies are at will, and the rent payable on demand, unless a different contract is shown. The landlord may terminate such tenancies, or those at sufferance, by giving the above notice. Seven days' notice must be given when tenant neglects or refuses to pay rent upon demand. If rent be payable oftener than once in three months, and whether due or not, thirty days' notice is sufficient, and three months' notice is sufficient in all cases.

New Jersey.—If in the lease no term is agreed upon, and the rent is paid monthly, the tenant is entitled to 3 months' notice prior to the 1st day of April succeeding his entry upon the premises. Same notice is required to terminate a lease from year to year. If no notice has been served, and tenant holds over and pays rent, the lease holds good for another year. For violation of covenants landlord may begin eviction proceedings on 3 days' notice.

New Mexico.—The relations of landlord and tenant are as at common law. Thirty days' notice to quit is usual in leases from month to month.

New York.—If a tenant take possession under a lease which is silent as to the length of the term, but fixes terms of payment at definite periods—as monthly, in advance, or at end of the month, or quarterly—a tenancy at will or by sufferance is created, and either party desiring to terminate it must give 30 days' notice, and the date of termination mentioned in the notice must be at the end of such time as is fixed in the lease for payment of rent—month, quarter, etc. But where the lease is for a fixed term—month, quarter or year—and tenant holds over, such holding over implies a quasi consent on the part of the landlord; and the lease is construed as operative for a like term. In such case, and in every other, where the term is fixed, no notice is required to terminate. On the day of expiration of the term a summary precept to remove may issue, returnable forthwith; but if issued after the date of expiration, it cannot be returned in less than three days; and it can issue at any date unless from lapse of time or other circumstances a new lease has been created by implication. Leasing implication applies to the tenant also. If a tenant fails to pay rent on a stipulated day, he may be removed at any time thereafter by summary precept upon showing that personal demand had been made for the rent, or that he was given three days' notice "to pay rent or quit." No particular form of notice is required, but it should be in duplicate, so that a copy can be preserved as proof of service. The following form is in constant use:

To —— ——, Tenant.

Take Notice, That I hereby require you to remove from the house and premises now occupied by you, situate in the —— of ——, in the County of ——, N. Y., and described as follows: ——, on or before the —— day of ——, 19—.

Dated at ——, N. Y., the —— day of ——, 19—.

Yours, &c.,

——————,

Landlord.

North Carolina.—If the term of the lease in regard to the time thereof is fixed, then no notice is required to be given the tenant. If landlord allows tenant to hold over, and collects rent from him, then a tenancy from year to year is created, and a notice of one month must be given. No particular form of notice required, but it should be in writing.

North Dakota.—If tenant holds over, lease

is renewed for same rent and time, not exceeding one year. So a lease for a term not specified is deemed to be renewed at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same at least as long before the expiration thereof as the term of the lease itself, not exceeding one month. Action for dispossession for non-payment of rent may be begun three days after rent is due, and three days' written notice to quit must be given. No prescribed form of notice required, but it should be plain, state the reason for landlord's action, be served by an adult, or officer, and supported by affidavit of service, or official return.

Ohio.—If the term of a lease is about to expire, and the landlord desires the premises, he must give at least 3 days' notice to tenant that he desires to get possession. Same notice is required where tenant is occupying under a hold-over lease, or a lease from year to year, unless there be a stipulated length of time of notice in the original lease. No prescribed form of notice.

Oklahoma.—Substantially there is no tenancy from year to year. Tenancy never becomes unlawful until after three days' notice to terminate. Wherever notice is required it must be in writing, and served on the tenant or some responsible party on the premises. It must contain the name and definite description of the property. In an action of forcible detainer the statutory words of a notice are: "For the possession of which action is about to be brought." Thirty days' notice is required to terminate a tenancy from month to month, and the same would be required to terminate a tenancy from year to year, if the same were recognized under the statutes. For shorter terms the notice is of the length of time of the term. Where the lease is for one year and the tenant holds over and pays rent, it is a lease for one additional year, and not from year to year, and requires no notice to terminate.

Oregon.—Where a landlord desires to terminate a lease because of any failure of the tenant to observe his covenants, he must give tenant ten days' notice. If there is no breach of duty on the part of the tenant, but the landlord simply desires to repossess, the length of time of notice ought to be equal to the time between the regular rent payments. No form of notice is prescribed, but it must be in writing.

Pennsylvania.—A lease should be in writing; but an unwritten lease may have the effect of a lease from year to year, not, however, to exceed the term of three years. Leases creating estates for years and at will are recognized as at common law. A tenancy from year to year is where the landlord demises to the tenant to hold from year to year, or as long as the respective parties please. A tenancy from quarter to quarter, from month to month, etc., is when the tenancy is for a short period, as for a quarter, month, or week; and if the tenant hold over, there is, as in the case of a tenancy from year to year, a tenancy from quarter to quarter, month to month, or week to week, established. Where no term is stated, the lease is from year to year. Where a lease is for a definite period and the tenant holds over, the landlord may treat him as a tenant by sufferance, and turn him out without three months' notice previous to the end of the term; but the landlord may elect to treat his tenant as one from year to year. Tenant by the month may terminate his lease at the end of a month. A lease for one year, say from April 1, expires on March 31 of the next year. A tenant is bound for the rent, even though he assigns his lease. Where there is a covenant for a re-entry on failure of tenant to pay rent, there need be no formal demand of the amount due. After service of landlord's warrant to distrain for rent, tenant has five days in which to replevy. There must be six days' public notice of sale of distrained goods given. If tenant has no goods subject to distraint, landlord must give fifteen days' notice to quit, if between April and September, and thirty days, if between September and April. The act of March 21, 1772, authorizes a procedure similar to ejectment, but speedier, to enable a landlord to recover possession at the end of a lease. Under it landlord must give notice to quit three months before his application for the remedy. The act of December 14, 1863, passed for a like purpose, requires three months' notice before the end of the term. Such notices need not be in writing unless required in the lease. As at common law, where the term of a lease is of absolutely certain duration, the landlord need give no notice to end it. He may even enter the demised premises without notice to quit, and remove the tenant's goods, provided he do no public or private wrong. But when the term is of uncertain duration, as in case of a tenancy from year to year, he must give three months' notice. And if the tenancy be from quarter to quarter, month to month, or week to week, his notice to terminate must be a quarter, a month, or a week in length. While the law specifies no particular form of notice, it should be in writing, properly served, and something like the following, which has been approved by immemorial usage:

Three Months' Notice to Tenant to Quit at End of Term.

To —— ——:

Being in possession of certain premises, with appurtenances, situate ——, which you now hold as tenant under —— (date of lease), I hereby give you notice that it is my desire to have again and repossess the same, at the expiration of your lease, to wit, on the —— day of ——, 19—.

(*Landlord's signature.*)

Notice to Quit When Lease Has Expired.

To —— ——:

Being desirous to have again and repossess the premises situate ——, which you hold as

my tenant, and as your term for said premises expired, to wit, on the —— day of ——, 19—, I hereby give you notice to remove from and leave the same.

C. D.

Rhode Island.—The time agreed upon in a lease shall be the time of the termination thereof for all purposes. If there be no time fixed, it is a letting from year to year. Tenants by parol of land, building, or parts of buildings from year to year shall quit at the end of the year upon notice in writing from the landlord given at least three months prior to the expiration of the occupation year. Notice must be in writing, but no particular form required.

South Carolina.—Written leases are interpreted by their own terms. Others are presumed to be for one year, January 1st to December 31st, and full three months' notice must be given to terminate them. The form of notice depends on the facts of each case. Tenants may be ejected for non-payment of rent or unlawfully holding over.

South Dakota.—Length of notice to terminate depends on the character of the lease. If a tenant holds over, and landlord accepts rent, the lease is renewed for another term, not, however, exceeding one year. If tenant fails to pay rent, or otherwise breaks covenants, landlord may take action to evict upon three days' notice in writing to tenant. If a lease is from month to month or a tenancy at will, landlord must give 30 days' notice in writing to quit; but if the lease is from week to week, or fortnight to fortnight, notice only equal to the term is required. No form of notice provided for, but it should be plain and to the point.

Tennessee.—No notice of any kind is necessary by a landlord to get possession of premises held by a tenant at the expiration of the lease, either to terminate the lease or to entitle the landlord to maintain a suit for possession. Of course, this can be varied by contract so that the landlord will be compelled to give the contract notice in order to terminate a lease.

Texas.—No particular time fixed for notice to terminate a lease. Any notice in writing before or after end of term is sufficient. Even the notice to terminate need not be in writing, but must be written when before suit for forcible entry or detainer. No particular form of notice required. If lease provides for notice, the terms of lease govern. And yet it is customary in the State for landlords to give 30 to 60 days' notice.

Utah.—When the lease is for a specified term, whether written or parol, the tenancy terminates without notice at the expiration of such term. If the lease be for an indefinite time, with monthly or periodic rent reserved, the tenant continues in possession, after the end of any such, or month, or period, in all cases where the landlord shall not have, fifteen days prior to the end of such month or period, served him with notice to quit; ten days' notice required to terminate a tenancy at will. Three days' notice, when rent is overdue, to pay or surrender premises. Same notice when tenant has violated other covenants. In case of agricultural lands, where tenant holds over for sixty days after expiration of term, he is entitled to hold for balance of the year. No particular form of notice required, but it should be in writing, and served by copy personally on tenant, or some responsible person, at his place of abode.

Vermont.—Where the tenancy is from year to year it requires 6 months' notice to terminate it, so as to entitle the lessor to possession and the lessee to exemption from payment of rent. If the tenancy be at will, only reasonable notice is required—say 30 days. Notice must be in writing, and in duplicate, the landlord retaining a copy. No particular form required.

Virginia.—Tenancy from year to year may be terminated by either party by three months' notice in writing, prior to the end of any year, if it be of land within a city or town, or six months' notice if it be without. When such notice is by the landlord, it may be served on the tenant or any one holding under him; when by the tenant, upon the landlord, or his agent, according to common law. If the lease provides that no notice shall be given, none is required; and no notice is required if the lease is to end at a certain time. There is no prescribed form of notice.

Washington.—Tenancies from year to year abolished except when created by express written contract. Tenant holding over after expiration of term; or, if the term be indefinite with monthly or other periodic rent-days, he holds over after the end of any such month or period, and the landlord shall have served him with 20 days' written notice to quit, prior to the end of such month or period; or, if he holds over after receiving three days' notice in writing to quit or pay rent due; or, if he holds over after ten days' notice in writing to quit for violation of other covenants; or, if he holds over after three days' notice in writing to quit for permitting waste or violating other implied covenants; such tenant is guilty of unlawful detainer, and may be ousted by procedure in forcible entry and detainer.

West Virginia.—Three months' notice in writing required to terminate a tenancy from year to year, except where the lease specifies that no notice is to be given. Notice is not necessary when the term is to end at a certain time. If tenant is in default of rent, and has left the premises, without goods sufficient to satisfy the rent by distraint, landlord may post notice in writing requiring payment within one month. If same is not paid in that time, he may enter and repossess the premises, and is entitled to collect rent to that date.

Wisconsin.—No notice to tenant required when lease expires at a fixed date, unless lease

provides for notice. Tenancy at will or by sufferance may be terminated upon one month's notice to quit; but when rent is payable at periods of less than a month, such notice is sufficient if equal to the interval between the times of payment. Where tenant neglects or refuses to pay rent, landlord must give 14 days' notice in order to terminate a tenancy at will. If tenant holds over without permission after default in payment of rent, or after any other breach of covenant, three days' notice in writing is required, either to pay rent, or remedy breach, or yield possession. Such notice must be served same as a summons. No particular form of notice required.

Wyoming.—After the expiration of a lease, the tenant becomes a tenant at sufferance, as at common law, which required in England six months' notice to terminate a tenancy from year to year, and a quarter, month, or week's notice to terminate leases of like length. Three days' notice is necessary before beginning action for forcible entry and detainer.

CANADA.

Ontario Province.—If tenancy is monthly, landlord must give a month's notice to tenant to quit; if tenancy is yearly, then half a year's notice is necessary. A lease for a specific term terminates itself, and no notice is necessary; but if landlord accepts rent after termination of a lease, that creates a new tenancy, whose terms as to time and otherwise will depend on the special circumstances of the case. Ordinarily, on an overholding on a yearly lease, a new tenancy from year to year is presumed, and a half year's notice would be required. No special form of notice is necessary, though it is preferable to have one drawn by a lawyer to insure its sufficiency.

Manitoba.—Aside from a few statutory provisions, the law relating to landlord and tenant is the English common law. A month's notice is required to terminate a monthly lease, and six months' to terminate a yearly lease. If a tenant is holding over under an expired lease, notice must conform to the terms of that lease. Proceedings for eviction generally embody a notice pursuant to the terms of the lease, and application to the Queen's Bench for eviction. No particular form of notice is required, provided it is definite and certain.

New Brunswick.—To terminate a yearly tenancy, landlord must give three months' notice to tenant; if the tenancy be monthly, one month's notice. If tenant be holding over from year to year, a three months' notice is required. No particular form of notice prescribed.

Northwest Territories.—Six months' notice is required to terminate a lease where there is no provision in the lease itself. This length of notice is rather by custom than a requisite of strict law. Same length of time of notice required to terminate a hold-over lease. This also applies to a tenancy from year to year. No particular form of notice required, provided it demands the giving up of all demised premises at the proper time. Ejectment rarely resorted to, the usual procedure being by action in court to recover land.

Quebec.—If a lease is for no special time, it is presumed to be annual, if the rent is so much per annum; monthly if so much per month, and so on. Such leases may be terminated by giving the notice of the term, whatever it may be. If the tenant occupies by sufferance, with no contract as to rent or time, it is held in the case of houses to be an annual lease, expiring on May 1, and landlord may prove the value of the occupation. Leases of houses are supposed to expire on May 1, and where such leases are written notice must be given by either party on or before the first day of February of their intention to discontinue the same, otherwise there is a tacit renewal. Leases for a specified time terminate of their own accord on the date specified; but if the tenant remain over for eight days, the lease is renewed for another period. In this case a three months' notice to terminate must be given by either party. If a written lease be for a month, a month's notice to terminate is required. No special form of notice required, provided the intention be made clearly known.

British Columbia.—All leases in writing should contain provision as to notice to terminate. If they do not, they end of themselves at the end of the term mentioned. A hold-over tenant is one at will, and can be ejected by legal process after demand for possession. Three months' notice is required to terminate a lease from year to year, unless some other agreement exists. No particular form of notice required, but it must be certain and definite.

Nova Scotia.—The relations of landlord and tenant are for the most part subject to common law regulations.

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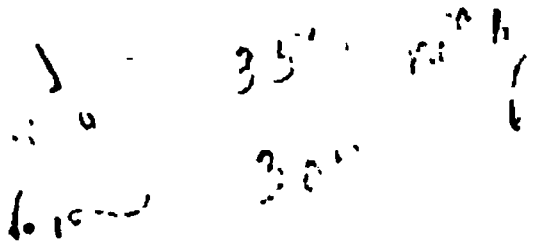

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